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Arctic Climate Change
Economy and Society



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WP5 – Deliverable 5.61

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

LCP, participant n 26

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Executive summary

Based on observations of current and projected increased environmental and economic changes in the Arctic region, an analysis of the present means of Arctic indigenous populations' participation in political decision-making processes affecting them appears as particularly timely and relevant within the framework of the ACCESS programme. While this report provides information related to the governance of maritime areas and the implications for indigenous populations (in particular Inuit), it however also considers a larger array of policies than those related to the offshore Arctic zones ACCESS expertise is principally concerned with.

Anders Oskal, Executive Director at the International Center for Reindeer Husbandry and Contributing Author of the IPCC's Fifth Assessment Report,¹ supports this view, indicating that "Arctic indigenous societies are among the most exposed to climate change, both because climate change occurs more rapidly in the Arctic, and because of the interaction with other change drivers"

The aim was to evaluate a level of "indigenous population-state partnership" for each of the Arctic countries with an indigenous population. This will include to study if the main international and national recommendations or instruments providing the framework for Arctic indigenous populations' participation in governance are concrete and effective.

The core analysis of this assessment is presented in Chapter 4- *Arctic indigenous peoples' current political participation at national level* and conclusive elements can be found in section 4.6 and 4.7. In chapter 5, a discussion proposes some interpretations and implications of these results as well as guidelines for future studies.

¹ IPCC, WGII AR5 (31 March 2014). *Chapter 28 Polar Regions*.
(http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap28_FGDall.pdf)

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1- INTRODUCTION

1.1- INDIGENOUS PEOPLES AND THE ARCTIC

This report studies the mechanisms of representation and integration of indigenous peoples into the **future system** of Arctic governance. Considering that the Arctic Council² is one of the main structures of the system at the moment, the analysis will concentrate on groups recognized as indigenous participants within the Arctic Council and thus perceived as such at international level: Inuit, Aleut, Gwich'in, Arctic Athabaskan, Sámi and a small number of indigenous peoples of Russia.

The status of “indigenous people” is both a legal status and a status to distinguish a group from the rest of the society and/or dominant ethnical group. The definition and counting of Arctic indigenous peoples depend on the delimitation of the Arctic region³ adopted. It is most commonly assessed that, according to the *Arctic Human Development Report* definition of the Arctic, approximately four millions people live in this Arctic region⁴, of whom around 10% are indigenous peoples⁵.

Arctic indigenous peoples' status and rights greatly vary over the Arctic region. There is also a great variation in their cultural, historical, and socio-economic backgrounds, as well as in the language they use⁶. Nevertheless, one cannot deny the existence of characteristics common to all these communities, which fully legitimates the concept of indigenesness and a specific status at the global level. These common characteristics are notably the prevalence of traditional subsistence-oriented ways of life based on fishing, hunting/gathering or reindeer herding/ husbandry. They also involve a specific attachment to the territories they have occupied for many centuries, and to the environment on which they mainly or totally rely. They are often described as very resilient to changes that have occurred in the past. Yet, the current implications of the climate change throughout the Arctic could seriously endanger their livelihoods.

² See section 3.7.2- Indigenous peoples representative bodies (Forums, NGOs, Commissions...) for further details.

³ The Arctic is a separate entity within the “North”. Its definition has also to do with the representations and perceptions of Westerners as well as the Arctic inhabitants themselves concerning the “*nordicity*” of their territories. See the works of L.-E. Hamelin, B. Collignon in 1996, and more recently of E. Canobbio and M. Therrien.

⁴ According to the broader definition of the University of the Arctic Atlas, 13.1 million people live in the Arctic (Arctic Centre page on Arctic IPs, consulted on March 11, 2013).

⁵ See the Arctic Center website. There are approximately 500,000 indigenous people according to T. S. Pedersen distributed as follows: 150,000 Inuit and Yuit in Greenland, Canada, Alaska and Russia, 120,000 Sámi in Norway, Sweden, Finland and Russia, 250,000 in the Russian Federation, and 50,000 Athabaskan Indians in Canada and Alaska.

⁶ See Arctic Centre website's page on Indigenous Peoples and NGO Submission to the Human Rights Council Universal Periodic Review Mechanism of RAIPON, October 9, 2012, p.2.

As the first inhabitants of the Arctic and, in some areas, the main inhabitants, indigenous peoples are also the first to be affected by climate change and development projects⁷. In accordance with the European and international law standards, indigenous peoples have specific rights. These rights mainly concern the territories and lands they have occupied for many centuries and the resources on which their way of life totally or mainly depends⁸.

However, this statement does not reflect the present situation in every part of the Arctic. Throughout the region, status, rights and political representation of indigenous peoples vary a lot from one country to another. The variation of the implementation of such rights is even more extreme.

Still, there is an enormous disparity between the reality of everyday life of the indigenous peoples and the political and juridical decisions made through a top-down process. In order to give an assessment of Arctic indigenous peoples level and means of participation in governance decisions, the present study will notably examine the following questions;

- what is the current situation of Arctic indigenous peoples in terms of political representation, (socio-economic, linguistic and cultural rights) at both regional, national and international levels,
- how can decision-making mechanisms such as the European Union further include them in the ongoing regulation and development processes in the Arctic?
- how are and how can indigenous peoples be included in the Arctic governance's structure as true participants?
- how their participation in different regional, national and international cooperation bodies could be initiated, and for already existing participation, how could it be strengthened.

⁷ As the European Parliament admits it, "the economies of the indigenous peoples rely to a high extent on sustainable use of natural resources and therefore that the reduction of climate change and its effects and the right of the indigenous peoples to an unpolluted natural environment are also questions of human right" (2011 EP Resolution, §35).

⁸ United Nations Declaration on the Rights of Indigenous Peoples (2007), article 26.

1.3- STRUCTURE OF THE REPORT

Taking into consideration the above elements, the following methodological principles were established to complete the study at supra-national, national and subnational levels.

Firstly, we will present the results of consultations undertaken with indigenous representatives both from the political field and from the associative and civil environment. Results of these consultations will provide an overview of indigenous peoples current main demands and claims

The second chapter will cover the main international guidelines, principles and instruments of governance applicable or available to Arctic indigenous populations.

Current rights, responsibilities and projects of political representation of Arctic indigenous peoples will then be cited within the seven Arctic states concerned.⁹ This will lead to the establishment of an “Indigenous Partnership” chart, based on a list of scientific criteria. This study includes research on the history of each indigenous people, rights and related legislation at both national and international levels.

2- INDIGENOUS PEOPLES CONSULTATIONS

2.1- METHODOLOGY USED IN CONSULTATIONS

In order to provide a direct assessment of the main demands of indigenous representatives and communities, consultations were undertaken with indigenous representatives of each community represented in the Arctic Council. Interlocutors were engaged in the political field and in the associative and civil environment. A common chart of interview was elaborated to favor a comparative analysis¹⁰. The semi-open chart also gave the possibility to elaborate about other elements if needed. Information was also collected from indigenous individuals such as students from Nunavut or Nenets reindeer herders.

Additional information was supplied by the analysis of speeches, declarations , interviews of indigenous leaders and indigenous organizations. Finally, academic experts of indigenous demands and claims were also consulted.

2.2- KEY ELEMENTS FROM CONSULTATIONS

⁹ Iceland population does not include indigenous peoples, even if it does underline the necessity to deal with indigenous peoples and specific issues related to them in its Arctic policy.

¹⁰ See the list of interviews and the common chart of interview in [Appendix I and II](#).

2.2.1- PARTICIPATION IN DECISION-MAKING

Patricia Cochran, former leader of the Inuit Circumpolar Council (ICC), emphasizes the importance of as well as the gap in Arctic indigenous peoples political participation :

“Indigenous people must have a place at the table where decisions are being taken, where policies – that severely and critically impact our people – are being made. It is not enough to have an advisory group, we need to be part of the decision making process, part of an agreement that allows indigenous representation in that decision-making. (...) Indigenous peoples should be equal partners on decisions that are made in our land and our territories”.

D. Sambo-Dorough, an Alaskan jurist, indicate that while Inuit communities are impacted by climate change and the associated increased shipping and resource development, they don't have “any measure of direct, meaningful and effective participation” in the preparation of the UN Convention on the Law of the Sea (UNCLOS) content.

Demands and claims of Arctic indigenous organizations such as the ICC, the Inuit Tapiriit Kanatami (ITK), or the Arctic Athabaskan Council (AAC) are established in several documents and are hoped to become binding laws in the future. These declarations deal with the governance, management, development, and use of resources on Inuit lands:

- They demand to “put economic activity on a sustainable footing”, to take measures that would prevent indigenous peoples to be demographically overwhelmed and marginalized in their own territories, to “achieve standards of living (...) that meet national and international norms and minimums”.
- They ask Arctic states to go further in affirming the rights Inuit have gained in the last decades than they did in 2008 Ilulissat Declaration. But they also state that indigenous peoples must be associated with “the conduct of international relations in the Arctic and the resolution of international disputes in the Arctic”, as well as to the “multi-level governance systems”.

John Amagoalik and Canadian Arctic specialist Eric Canobbio emphasize that the Inuit character of Arctic territories is being erased from the political and economical speeches and orientation of today's Canadian federal government. The government speaks about “Nordic inhabitants” and “Nordic growth”, from which Inuit are *de facto* excluded. The resources and potential (both strategic and industrial) of Nunavut lands are integrated into this national Nordic strategy. The Canadian authorities are valorizing the “Canadian High Arctic”, but don't recognize the ethnical specificities of these territories.

The lack of Inuit participation in important decisions affecting them seems to be illustrated by Quebec' government “Plan Nord” elaborated in 2010 without consulting

indigenous peoples. The Canadian government is asked to prove its commitment to ensure that Nordic territories are not developed at the expense of Inuit.

As a result of interviews conducted for this assessment, demands of Inuit and American Indians of Canada therefore principally concern:

- every day social issues such as of housing, education, employment, healthcare,
- resources management and impacts of their exploitation on regional development,
- recognition of a specific ethnic identity.

In Patricia Cochran's opinion, the United Nations may offer a solution to the loss of their rights to lands and resources, "but the United Nations means bureaucracy; it took around 25 years working on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)". "We are now looking at communities in partnership with other people who care about indigenous communities", as she explains the ICC strategy.

For Madeleine Redfern, a former mayor of Iqaluit, Greenland could be a model to follow: "I think we're going to see an increase in awareness among Canadian Inuit of the value of independence (...). Otherwise, we might see ourselves becoming like the Métis in Manitoba, which was created with the idea of Métis nationhood, and there's little or no evidence of that now".

2.2.2- GAP IN REPRESENTATION AT THE LEVEL OF INDIGENOUS COMMUNITIES.

An interview undertaken with students from Nunavut who had spent one year studying in Ottawa revealed a gap between the demands of individual leaders and Inuit peoples not involved in politics. Most interlocutors appeared to be ignorant of all the processes of Inuit representation beyond Nunavut's borders. They didn't seem to have heard of the Arctic Council either.

This observation is not specific to the Inuit community. Many specialists analyzed how, from the moment an indigenous individual begins to be interested in the history and the rights of its people and wants to take action to bring these rights to a superior political level, he systematically cuts himself out of the community and of every day life in its community. In Russia too, indigenous leaders are part of the "indigenous intelligentsia", who is rather urban than rural. Most indigenous leaders are not living in tundra or taiga camps anymore, even if there are a few exceptions (Anna Nerkagi in Yamal tundra, Yuri Vella among forest Nenets camps in taiga). Some demands of indigenous spokespersons do not at all correspond with every day issues of indigenous peoples or their main demands.

Organizations of the defense of indigenous peoples' rights in Russia stress the necessity to "strengthen indigenous participation in the democratic processes"¹¹.

¹¹See IWGIA website, « Projects in Russia ».

Regional branches of RAIPON's demands are much more concerned with resources' issues. Everyday, indigenous communities have to face the ambition of very powerful gas, oil, mining, or hydroelectric companies, depending on local raw materials.

2.2.3- CONCLUSIVE ELEMENTS: "MODEL" AND SPECIFICITIES

Despite these declarations and the full-time activity of numerous Inuit organizations, in reality their situation has not much improved since the late twentieth century.

Thus, there is no unique model of juridicial protection that could be applied to all indigenous peoples. The "model" to transpose, proposed by several indigenous leaders, is a delicate issue. Some elements can be inspired by a system of "national governance" regarding indigenous issues. But a whole system cannot be transposed because of historical, political and cultural specificities. The best way to evolve may be to work in stages, as Greenland did, revising prior measures to better respond to current issues¹².

3- INTERNATIONAL GUIDELINES, PRINCIPLES AND INSTRUMENTS OF GOVERNANCE APPLICABLE TO ARCTIC INDIGENOUS PEOPLES

The Polar Law Textbook II¹³ indicates that "an important issue which concerns the study of the implementation of good governance principles resides in the differences between principles of a "general character" such as those presented above, and those implemented at national or local level" and notes that "for the most part, the guidelines are not intended to be legally binding unless and until they emerge as customary law or can be based on treaty law as with the anti-corruption treaties". Good governance principles or guidelines essentially have the status of recommendations and their incorporation into national customary law rests on the decision of national states.

Therefore, as the study of Arctic indigenous peoples participation in governance will be most relevant at national and local level (Chapter 2), this section aims at giving the background of international and supranational principles of governance supportive of indigenous peoples' political involvement. This section is not intended to provide an exhaustive list of all the legal instruments, commissions or organizations framing or advocating the respect of indigenous rights, but rather to highlight important guidelines of governance applicable at national level as well as to give an overview of the international and supranational resources available to indigenous peoples

3.1- UNITED NATIONS GOVERNANCE AND GOOD GOVERNANCE PRINCIPLES

¹²Morettí 2006, p.238.

¹³ Loukacheva, Natalia (Editor, 2013). Polar Law Textbook II. Nordic Council of Ministers (<http://norden.diva-portal.org/smash/record.jsf?pid=diva2%3A701016&dswid=5319>)

The United Nations Economic and Social Council gives the following definition of *governance*, *participatory governance* and *effective participation* in the governance context :

- “governance entails processes and institutions that contribute to public decision-making. When those processes and institutions concern the public sector, the term public governance is used. It can be argued that there are three categories of public governance: civic, political and development. Civic and political governance deal with issues that are related to human rights. Development governance mainly pertains to planning, budgeting, monitoring and accountability of socio-economic development policies and programmes. Participatory governance is one of many institutional strategies of development governance. Citizen engagement is the desired outcome or logical end of participatory governance.”¹⁴.
- “Effective participation is that which helps ensure efficiency and economic growth on the one hand, and equity and social justice on the other. Attempts to achieve effective participation do not always work. There is a need to determine the conditions that enable participation to be effective. A great deal of current research is focusing on that area in institutional design, incentive structures and social mobilization, for example”.¹⁵

Good governance and human rights principles

In Article 3 of the resolution¹⁶ on *The role of good governance in the promotion of human rights*, the United Nation Commission on Human Rights’ requests the United Nations High Commissioner for Human Rights to:

“invite all States to provide practical examples of activities that have been effective in strengthening good governance practices for the promotion of human rights at the national level, including activities in the context of development cooperation between States, for inclusion in a compilation of indicative ideas and practices that could be consulted by the interested States when required”

The United Nations also link the concept of good governance to sustainable human development and emphasize principles of :

- “transparency
- responsibility

¹⁴ United Nations Economic and Social Council, (2007). *Participatory governance and citizens’ engagement in policy development, service delivery and budgeting*, paragraph 7. Committee of Experts on Public Administration Sixth session, Item 3 of the provisional agenda. New York. E/C.16/2007/1 <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan025375.pdf>

¹⁵ Ibid, paragraph 10.

¹⁶ United Nations Commission on Human Rights, (2000). *Resolution 2000/64. The role of good governance in the promotion of human rights*.

- accountability
- participation
- responsiveness (to the needs of the people)
- rejecting prescriptive approaches to development assistance”.¹⁷

A human rights approach to governance further advocates the use of good governance principles by national governments and other political and social actors of democratic institutions:

“When led by human rights values, good governance reforms of democratic institutions create avenues for the public to participate in policymaking either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes, especially locally. Finally, they may encourage civil society and local communities to formulate and express their positions on issues of importance to them”.¹⁸

According to international human rights, indigenous peoples enjoy the same rights as non-indigenous peoples, good governance principles of also apply to them automatically.

Moreover, European and international law standards emphasize that indigenous peoples have specific rights. These rights mainly concern the territories and lands they have occupied for many centuries and the resources on which their way of life totally or mainly depends¹⁹ For this reason, according to an (almost) uncontested principle, it is now acknowledged that indigenous peoples need to be included in the process of regulating and developing the future Arctic. It is no longer a possibility to ignore their existence on any level of what we call here ‘Arctic governance’.

Governance processes are not limited to inter-states cooperation. Various other actors such as communities, non-governmental organizations, the industrial and military actors, cooperate on current and future issues. Governance covers economic, social and ecological aspects. All law dispositions and bodies presented below and relevant in studying the status and rights of Arctic indigenous peoples on the international stage are part of the ongoing elaboration of the system of Arctic governance.

3.2- GOOD GOVERNANCE AND INDIGENOUS PEOPLES

¹⁷ United Nations Office of the High Commissioner for Human Rights
(<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>)

¹⁸ Ibid.

¹⁹ UNDRIP, article 26.

The Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII, 2005, p.2) provides the following observations on the engagement of indigenous peoples in governance processes²⁰:

- “Despite numerous methodologies and concepts of engaged governance, indigenous peoples and their organizations often find themselves excluded from the policy making, budget discussions, design, implementation and evaluation processes”,
- “Even where policy and service delivery models are targeted towards indigenous communities, they often operate in a non-inclusive, topdown manner, which creates dependency on government services and does not promote sustainable human development that protects and promotes the cultural, political, social and economic integrity of indigenous communities”,
- “In recent years, however, there has been an emergence of international legal and policy frameworks, especially in the United Nations system, that advocate specifically for full and effective participation of indigenous peoples in matters that concern them in national and local governance. These frameworks are premised on the human-rights based approach to development, which is now policy in the United Nations system and which changes the relationship of addressees of development programmes, including indigenous peoples, from passive recipients to rights holders and active participants”.
- “One of the fundamental emerging frameworks, which provides the rationale of fully and meaningfully engaging indigenous peoples in governance is the principle of free prior and informed consent”

Table 1: United Nations principles of good governance

UNITED NATIONS PRINCIPLES OF GOOD GOVERNANCE	
Principles	
²⁰ Secretariat of the United Nations Permanent Forum on Indigenous Issues Division for the Americas. <i>Engaging Indigenous Peoples: A Guide for Governments and Organizations</i> . UN Publications, 2005. http://www.un.org/indigenous/engaging/index.html	<ul style="list-style-type: none"> • democratic institutions and human-rights based approach to development <ul style="list-style-type: none"> • free prior and informed consent • consider indigenous peoples as rights holders and active participants • preserve the cultural, political, social and

Indigenous Affairs, (2005). *Works for Peoples*, p. 13/68

3.3- POLAR LAW TEXTBOOK 21: “GOOD GOVERNANCE GUIDELINES”

²¹ Op. cit. note 14.

Based on the Polar Law Textbook II, several underlying principles or guidelines expressing the values of good governance can be listed:

Table 2: Principles of good governance listed in the Polar Law Textbook II

PRINCIPLES OF GOOD GOVERNANCE	
source: Loukacheva, Natalia (Editor, 2013). Polar Law Textbook II. Nordic Council of Ministers	
Principles	Content
Noncorruption	<ul style="list-style-type: none"> • free press to identify, • report on and evaluate the performance and proper behaviour of elected and appointed officials, • competent police and independent and impartial prosecutors and judges.
Transparency	freedom of information and expression, including political debate.
Accountability	<ul style="list-style-type: none"> • face the public in elections at regular intervals transparency, • the rule of law checks and balances, • independence and impartiality of the judiciary and of prosecutors, • participatory budgeting, independent budget analysis, public expenditure tracking, citizen report cards, community scorecards, social audits, citizen’s charters, public hearings, e-governance and e-procurement, citizens’ juries and community radio.
Equal participation and inclusiveness	<ul style="list-style-type: none"> • Aim: maximise the number of participants in economic development (gender equity, minorities, disabled persons), • equal opportunities and treatment on education, culture, employment, ,labour unions, collective bargaining, social security and health.
Decentralisation	<ul style="list-style-type: none"> • facilitating local democracy and public participation in local development, delegation of powers to institutions closer to the people concerned. • for minorities and indigenous peoples : self-government, autonomy, traditional government, self-management or devolution.
Law reform and rule of law	<ul style="list-style-type: none"> • fair, stable and equitable laws, predictability and legitimacy, • equal protection under the law and non-discrimination, independent and impartial judiciary and impartial and incorruptible police and prosecutors, • appropriate legal frameworks as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.

Chapter 11 of the Polar Law Textbook²² indicates that “Half the membership of the UN Permanent Forum on Indigenous Issues (PFII), the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Expert on Minority Issues are indigenous or minority persons. The decision to grant indigenous representatives the status of

²² Ibid p194.

permanent participants in the Arctic Council is another example of such a measure being put into practice”.

3.4- INTERNATIONAL INSTRUMENTS SUPPORTING INDIGENOUS PEOPLES’ POLITICAL PARTICIPATION

3.4.1- BACKGROUND ELEMENTS

Indigenous Peoples’ specific rights and integration in decision-making processes are recognized by international instruments and national laws.

- At international level, legal instruments applied at citizens are Conventions, which are legally binding, and Declarations, which are non-binding.²⁴ For the support of indigenous peoples’ rights, Indigenous the three most important instruments commonly cited are:
 - International Labor Organization’s Indigenous and Tribal Peoples Convention n°169 (ILO 169, 1989)²⁵,
 - United Nations Convention on Biodiversity (1992),
 - United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007).

ILO 169 and the United Nations Convention on Biodiversity are therefore binding instruments, on the contrary of UNDRIP. However, UNICEF reminds that “while the 1948 Universal Declaration of Human Rights (...) was not originally intended to have binding force, its provisions have since gained binding character as customary law”²⁶.

The assessment of Indigenous Peoples’ legal means of political participation must also pay careful attention to the differences between “signature”, “ratification” and “entering into force” of a convention²⁷: international conventions only become legally binding from the date they enter into force.

- At national level, domestic laws are the dominant instruments applied at citizens (indigenous and non-indigenous) and occasionally include incorporation of the above international instruments. Arctic indigenous peoples’ participation in national governance decisions will be described in chapter 2 of the study.

3.5.2- LEGAL INSTRUMENTS

The following legal instruments are supportive of good governance principles towards indigenous peoples.

²⁴ A definition of legal terms according to the Human Rights Resource Center, Minneapolis (US) is available at : http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm

²⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

²⁶ UNICEF, Introduction To The Convention On The Rights Of The Child, definition of key terms. (<http://www.unicef.org/crc/files/Definitions.pdf>)

- The International Labor Organization Convention n°169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169, 1989). **Legally binding**

ILO 169 is “the only legally binding international instrument on the rights of indigenous and tribal peoples”.²⁹ It is especially important for giving indigenous and tribal peoples the right to “free, prior and informed consent”, especially in the context of relocations, but also in relation with other issues affecting them³⁰.

Article 6 emphasizes the need for consultation, but “does not directly provide a right to veto”³¹

- United Nations Convention on Biological Diversity (1992). **Legally binding.**

Article 8(j)³² of the UN Convention on Biological Diversity - Traditional Knowledge, Innovations and Practices:

“Each contracting Party shall, as far as possible and as appropriate: Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices”.

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)³³ **Non-binding.**

Article 3: the UNDRIP’s main provision is the indigenous peoples’ right to self-determination.

Article 4: “Indigenous peoples, in exercising their right to selfdetermination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”

Article 5: “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

²⁹ International Labor Organization, <http://www.ilo.org/indigenous/Conventions/lang--en/index.htm>

³⁰ See T. Søvndahl Pedersen, *op.cit.*

³¹ ILO Convention 169, *Indigenous peoples: Consultation and participation.*

http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_099187.pdf

³² <http://www.cbd.int/traditional/>

³³ See UN Resolution A/61/1.67. The Declaration was adopted by vote, with 144 in favour, 4 against and 11 abstentions.

Articles 10,11,19,28, 29 and 32 emphasize the right to free, prior and informed consent and consultation.

- CERD General Comment No. 23 : free, prior and informed consent in relation to rights to lands, territories and resources.
- World Bank, Bank Policy 4.10 and IFC Performance Standard No. 7 : concept of free, prior and informed consultation.
- The United Nations International Covenant on Civil and Political Rights (ICCPR, 1966)
- The International Covenant on Economic, Social and Cultural Rights (ICESC, 1976).
- Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).

Table 1: UN law dispositions including indigenous peoples' rights' issues

	Canada	Alaska (US)	Greenland (Dk)	Norway	Sweden	Finland	Russia
ILO 169 Convention (1989) Binding	Not ratified	Not ratified	Ratified 1996, in force	Ratified 1990, in force	Not ratified(considering ratification)	Not ratified	Not ratified
UN Biodiversity Convention (1992) Binding	Ratified 1992	Not ratified	Ratified by Denmark 1992	Ratified 1993	Ratified 1993	Ratified 1994	Ratified 1995
UNDRIP (2007) ³⁴ Non- Binding	Endorsed 2010	Supports Since 2010	Voted in favour	Voted in favour	Voted in favour	Voted in favour	Abstained
ICCPR (1966/1976)	Ratified (1976)	Signed 1977, Ratified 1992	Signed 1968, Ratified (1972)	Signed 1968, Ratified 1972	Signed 1967, Ratified 1971	Signed 1967, Ratified (1975)	Signed 1968, Ratified 1973
ICESC (1966/1976)	Ratified (1976)	Only signed 1977 but not ratified	Signed 1968, Ratified 1972	Signed 1968, Ratified 1972	Signed 1967, Ratified 1971	Signed 1967, Ratified 1975	Signed 1968, Ratified 1973

³⁴ Though, in 2010, both the governments of Canada and of United States issued a statement or announced that they were finally endorsing the UNDRIP. Their positions on the Declaration remain nevertheless officially unchanged. See E. Hanson, <http://indigenousfoundations.arts.ubc.ca/?id=1097>.

3.7- SUPRA-NATIONAL COOPERATION RELATIVE TO INDIGENOUS PEOPLES' POLITICAL PARTICIPATION IN THE ARCTIC

3.7.1- INDIGENOUS PEOPLES REPRESENTATIVE BODIES (FORUMS, NGOS, COMMISSIONS, INSTITUTIONS)

- The Permanent Forum on Indigenous Issues (UNPFII). The UNPFII is “an advisory body to the Economic and Social Council (ECOSOC), with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights”.³⁶
- The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP, 2007), The EMRIP “provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of Indigenous peoples” and may suggest proposals to the Council”.³⁷
- The Special Rapporteur on the rights of indigenous peoples (first appointed 2001), promotes good practices and constructive agreements between indigenous peoples and states.
- The Arctic Council:

Created in 1996 at the initiative of the 8 Arctic States, the Arctic Council is a forum with mandate to “provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic”.³⁸ The Arctic Council is at present the only international body where indigenous peoples are officially represented and can co-operate with Arctic governments.

Under the status of Permanent Participants of the Council, the six indigenous organizations³⁹ are meant to be on “an equal footing with governments” and can “influence the priorities and programmes of the Arctic Council” (Arctic Council Indigenous Peoples Secretariat, 2002). However, the Declaration on the Establishment of the Arctic Council indicates that inasmuch as indigenous peoples permanent participation is concerned, “the use of the term “peoples” in this Declaration shall not be construed as having any implications as regard the rights which may attach to the term under international law”⁴⁰

³⁶ <http://social.un.org/index/IndigenousPeoples.aspx> ECOSOC Section.

³⁷ OHCHR Website.

³⁸ **Arctic Council, (1996).** *Declaration on the Establishment of the Arctic Council. Ottawa Declaration*, p2. Documentation. Arctic Council. (http://library.arcticportal.org/1270/1/ottawa_decl_1996-3..pdf)

³⁹ Inuit Circumpolar Conference (ICC), Russian Association of Indigenous Peoples of the North (RAIPON), Sámi Council (SC), Aleut International Association (AIA, appointed in 1998), Arctic Athabaskan Council (AAC, appointed in 2000), Gwich'in Council International (GCI, appointed in 2000).

⁴⁰ Ibid p3.

- The Indigenous Peoples Secretariat (IPS).
- The Northern Forum: mainly deals with environmental issues, though its mission includes improving the quality of life of Northern peoples, and a programme is being developed on health issues.
- The Organization of American States' Declaration on the rights of the indigenous peoples of Americas.
- The Nordic Sámi Convention.
- The Inuit Declaration of Sovereignty.
- The European Convention on Human Rights (ECHR).
- The Inter-American Commission on Human Rights (IACHR).
- The Barents Euro-Arctic Council (BEAC).

Table 2: Supra-national law dispositions on indigenous rights in the Arctic

	Canada	Alaska (US)	Greenland (Denmark)	Norway	Sweden	Finland	Russia
OAS's American Declaration on the Rights of the Indigenous Peoples							
Nordic Sámi Convention							
European Convention on Human Rights ECHR			Ratified in 1953	Ratified in 1952	Ratified in 1952	Ratified in 1990	

	Ratified and legally binding
	Ongoing ratification
	Absence of any supra-national law disposition for one country

Table hereabove shows how cooperation in the Arctic on human rights law is not equally distributed. Russia remains the only country with no involvement in any of these supra-national law dispositions.

Table below gives an indication of Arctic indigenous peoples' level of political representation in the Arctic Council. It is based on four criteria:

1. global representation in the Arctic Council,
2. access to the high-level meetings and negotiations in the Arctic Council (voting seat),
3. part of the country's indigenous peoples represented within the Arctic Council,
4. ratification of the three main international texts supporting indigenous rights: ILO Convention 169, UN Convention on Biological Diversity and UNDRIP.

Methodology for criteria 1-3:

In the table, three main elements determine the final figure attributed for each state to the level of indigenous peoples representation in the Arctic Council:

- 1- the existence of a specific right, along with its level of precision and development in the state law (for each criteria retained), constitute the numerical base between 0 and 5, where 5 represents the most satisfactory level in regards to indigenous peoples' rights and representation,
- 2- the figure is doubled when the right is concretely implemented,
- 3- the final average of all the figures corresponding to all criteria will be finally adjusted depending on the current tendency and policy towards indigenous peoples.

Table 3 Level of political representation in the Arctic Council, ratification of international instruments by Arctic states

Indigenous peoples of a country or region		Alaska (UNITED STATES)	CANADA	Greenland (DENMARK)	NORWAY	SWEDEN	FINLAND	RUSSIA
1- Global representation in the Arctic Council		3	4	4	3	3	3	2
2- Access to the high-level meetings and negotiations in the Arctic Council (voting seat)		0	(Nunavut) 0	0 (Previously 1, now no one)	0	0	0	0
3- Share of the country's indigenous peoples represented within the Arctic Council		5	3	5	5	5	5	2
4- Ratification of international texts	Ilo 169	Not ratified	Not ratified	Ratified 1996, in force	Ratified 1990, in force	Not ratified (considering ratification)	Not ratified	Not ratified
	Convention on Biological diversity	Ratified 1992	Not ratified	Ratified by Denmark 1992	Ratified 1993	Ratified 1993	Ratified 1994	Ratified 1995
	UNDRIP	Endorsed 2010	Supports Since 2010	Voted in favour	Voted in favour	Voted in favour	Voted in favour	Abstained

1-Global representation is taking into account the part of indigenous peoples of the country represented by one or several indigenous organization, the number of such organization by country and in regards to the number of indigenous communities in this country, but also the way indigenous representatives' say is actually or can be taken into account by the state ministerial chair. For example, Canada and Denmark's governmental delegations to the Arctic Council take into account what Canadian and Greenland's Inuit representatives demand (even if Greenland has lost its voting seat, and especially for the Canada as the presidency was attributed to Leona Aglukkaq, a Canadian Inuit.

2- Access to high-level meetings and negotiations through a voting seat is relevant only for indigenous peoples who obtained a territorial autonomy (Nunavut and Greenland). It could be possible for people who achieved a form of self-parliament (Sámi , Lapland), but it is not

pertinent at the moment. To this date, only Greenland had a voting next to Denmark's and Faroe Islands, but saw it retired under Sweden's presidency of the Arctic Council.

3.7.2- CHAPTER SUMMARY AND CONCLUSIONS

This chapter was aimed at highlighting international principles and guidelines of good governance as well as the main related international legal instruments. Still, while these provide recommendations of governance to national states, as indicated in the Polar Law Textbook, they are not legally binding until their incorporation into customary law or based on treaty law.

Hence, of all the guidelines and instruments presented in this chapter, only those including a binding effect oblige, in principle, states to observe them. Once again, as it is incorporated in national customary law, even a binding agreement might have a different content than the original text. Moreover, while several of these principles might be effectively implemented by Arctic states, studying the concrete practices illustrating them would take for each an amount of space and time beyond the scope of this report. Therefore, the following chapter will use more directly accessible social data to assess Arctic indigenous peoples' current level of political participation.

Nevertheless, good governance principles form a solid conceptual basis and reference for the monitoring of human rights, in this case those of indigenous peoples. These principles also constitute the conceptual framework and political objectives supporting the criteria which will now be studied.

Finally, it might be useful to identify from the abundant list of principles mentioned in this chapter, some requiring particular vigilance when indigenous rights are concerned:

1. right to fully participate in the political, economic, social and cultural life of the state,
2. free prior and informed consent,
3. self-determination in matters relating to indigenous peoples (political, legal, economic, social and cultural institutions),
4. inclusion of traditional knowledge in governance decisions,
5. access to information and freedom of expression.

As shown in this chapter, Arctic indigenous peoples are represented in highly developed international and supranational structures such as the Arctic Council and the Indigenous Peoples Secretariat. But is it enough to consider they enjoy the same concrete and effective means of political participation to influence decisions which affect them as non-indigenous citizens?

4- ARCTIC INDIGENOUS PEOPLES' CURRENT POLITICAL PARTICIPATION AT NATIONAL LEVEL

The organization and status of indigenous peoples vary greatly according to the structure of political institutions in the eight Arctic states, their level of centralization or devolution and the relations between sub-entities and government⁴¹. The following section describes the current level of political representation and participation of Arctic Indigenous Peoples in the decisions affecting them, in all of the Arctic States but Iceland.

Collected data will be presented in tables at the end of this section and will help in the assessment of the level of indigenous peoples political participation.⁴²

4.1- METHODOLOGY

To evaluate the level and means of indigenous peoples political participation within each Arctic state⁴³, we have relied on several criteria corresponding to international principles on indigenous peoples' rights:

1- INDIGENOUS PEOPLES' NATIONAL RIGHTS

- Citizenship
- (self) Nationality
- National symbols (flag, hymn etc.) recognized by the state
- Right to vote at local and national elections
- Recognized as an indigenous people
- Self-identification as member of an Indigenous Peoples
- Language's status
- Language's development (medias, education, research etc.)
- Recognition of their activities as exclusive or specific
- Right to lead a traditional life-style
- Right to land property, territorial rights, collective or not
- Right to use ancestral lands and territories
- Indigenous toponymy
- Right for resources' use and exploitation
- Respect for indigenous knowledge, cultures and traditional practices (spiritual habits, way of life, clothes)
- Responsibility for children upbringing, training and education
- Accession to employment without discrimination
- Indigenous courts of justice or juridical systems. Indigenous law

⁴¹ See A. Dubreuil, 2011a et 2011b, E. Canobbio and T. Garcin, 2013.

⁴² For further details about Arctic indigenous peoples, see : M. Therrien, 2012, *Les Inuit*. Guides Belles Lettres des civilisations vol. 31. Les Belles Lettres.

⁴³ With the exception of Iceland.

2- INDIGENOUS PEOPLES' POLITICAL REPRESENTATION AT A NATIONAL LEVEL

- Political representation at local and regional level within public structures
- Indigenous Parliament and its relation with the national Parliament
- Representatives within the national Parliament
- Indigenous political parties
- Representation within a mainstream political party
- Autonomy or self-government (own political institutions and system)
- Self-determination
- Right to influence on decision-making impacting on them (decision taken into account by the national Parliament)
- Representation by non-governmental associations

Table 4: Main Arctic States national dispositions applied to Indigenous Peoples

Canada	- National dispositions: The Constitution Act of 1982 - Regional land claim agreements in Nunavut, Nunavik, Inuvialuit and Nunatsiavut, 1975-2005
Alaska (US)	Alaska Native Claims Settlement Agreement (ANCSA) 1971, US Supreme Court decisions on cases including Native Americans
Greenland (Denmark)	Home Rule Agreement 1979, Self-Government Act 2009
Norway	Norwegian Constitution (article 110§a since 1988), Sámi Act (1987), Sámi Parliament (Sámediggi/Sameting 1989), The Finnmark Act, Lapp Codicil (1751)
Sweden	Swedish Constitution, Sámi Parliament (the more recent), Lapp Codicil (1751)
Finland	Finnish Constitution, Sámi Parliament (1973)
Russian Federation	- Article 69 of the Russian Constitution - Federal framework laws "On the guarantees of the rights of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russian Federation" (1999) ; - "On general principles of the organization of (their) obshinas" ; - "On (their) Territories of Traditional Nature Use" (2001)

4.2- INUIT

Table 5: Important dates in the evolution of Inuit political status since the colonization

COUNTRY	EVENT	DATE
	Universal Declaration of Human Rights	1948
Pan-Arctic	Emergence of Inuit demands regarding their status, their rights, and in particular concerning rights on lands and resources	1970s and 1980s
Pan-Arctic	Creation of the Inuit Circumpolar Council (ICC), reflecting Inuit peoples as a cultural and political community beyond national boundaries and recognized as such internationally	1977
Russia/US	Russia sells Alaska to US, the treaty doesn't mention substantively the rights of Alaska Native peoples	1867
US/Alaska	Alaska Native Allotment Act, providing for individual allotment of land, and thus fractionalization and sale of private parcels	1906
US/Alaska	Indian Reorganization Act (IRA), recognized the collective nature of their land rights, their traditional councils and tribal governments	1934
US/Alaska	Statehood Act denies any right to self-determination and land property for "Indians, Eskimos or Aleuts" called "natives"	1959
US/Alaska	Alaska Native Claims Settlement Act (ANCSA) signed by Iñupiat, Yup'ik, Aleuts, American Indians of Alaska and the American government	1971
Canada	The James Bay and Northern Quebec Agreement (JBNQA) = creation of Nunavik	1975
Canada	Inuvialuit land claim	1984
Canada	Nunavut Land Claim Agreement (NLCA)	1993
Canada	Creation of Nunavut regional government	1999
Canada	Negotiation Framework Agreement (Nunavik)	2003
Canada	Nunatsiavut's creation	2005
Dk/Greenland	Greenland forced to enter into the EEC	1973
Dk/Greenland	Greenland Home Rule agreement with Denmark	1979
Dk/Greenland	Greenland retreats from the EU (remains an EU partner by its status of Overseas Countries and Territories)	1985
Dk/Greenland	The Act on Greenland Self-Government" or "Self Rule Act	2009
Dk/Greenland	Greenland is responsible for the mineral resource area, including all possible inshore and offshore oil and gas resources	2010

4.2.1- ALASKA

The Alaska Native Claims Settlement Act (ANCSA, 1971): comments and critics.

In Alaska, for the 16 per cent of Alaska Natives out of the State population, the situation regarding land and resources is ambiguous. Indigenous peoples have obtained a very advanced set of rights through the ANCSA in 1971, the first agreement of the sort in the Arctic. Still, observers such as T.R Berger (quoted by D. Sambo-Dorough) and D. Sambo-Dorough, criticize the ANCSA for having “abolished the aboriginal rights of Alaska Natives” and “extinguished” aboriginal title to all other lands and aboriginal hunting and fishing rights of Alaska Native people despite their dependence upon a subsistence-based economy”.

“In the ANCSA of 1971 Congress abolished the aboriginal rights of Alaska Natives, including their aboriginal rights of hunting, fishing and trapping. Congress had spoken. Yet twenty years later Alaska Natives refuse to acknowledge the loss of their tribal right, their right as collectivities, to take fish and wildlife and to regulate their own subsistence activities”⁴⁴.

D. Sambo-Dorough confirms this statement by explaining that “many of the village corporations are without resources to generate profits. And, even if they do have such resources, to exploit them for profit is inconsistent with their values, customs, practices, and land and resource use”.⁴⁵ Corporations and ancestral lands are exposed to “taxation, alienation of shares and takeover by more powerful forces”.

The 1991 amendments to the ANCSA didn’t change the situation. With the law resulting from the battle between the ANC and AFN organizations, the land can still be lost or sold, no provisions ensure a Native ownership forever nor control of the corporations (the amendments even allow corporations to sell new stock to non-Natives), and no provisions provide for returning land to the traditional and tribal governments.

Moreover, no single provision of the ANCSA addresses their right to self-determination. Political rights of Alaska indigenous peoples are omitted. According to D. Sambo-Dorough, an Inuit-Alaska Professor at the Fairbanks University, “many Alaska Natives contend that it was intentionally omitted in order to assimilate Alaska Natives into mainstream society and terminate their distinct relationship with the federal government”.⁴⁶

To conclude on the current situation, despite some recent and local initiatives by tribal governments, one can only remark “the inconsistencies between domestic United States’ policy and international norms”. The “purported ‘extinguishment’ of the hunting and fishing rights of Alaska Native peoples” is fully in contradiction with the 1966 ICPRC stating that “In no case may a people be deprived of its own means of subsistence”.

⁴⁴ T. R. Berger, p.203 in Loukacheva 2010.

⁴⁵ Ibid.

⁴⁶ Ibid, p.202-203.

Indeed, Alaska Natives live from hunting and fishing and cannot relinquish their fundamental individual and collective human rights.⁴⁷

For many indigenous representatives in Alaska, the UNDRIP has an important potential for the re-definition of the political and legal relationship between Alaska Natives (including Inuit) and the federate and federal State.

It seems that the effort to elaborate these last years on a declaration of the rights of the indigenous peoples of the Americas, under the auspices of the Organization of American States (the OAS Declaration), has not succeeded as expected. In 2007, “both indigenous and state representatives [agreed] that considerable cleaning of the text [was] needed before the OAS Declaration text [would be] ready for adoption” (but they don’t agree on what parts of the text needs to be improved).⁴⁸ Yet, efforts and deliberations are ongoing and may be the chance for indigenous peoples of Alaska to see their rights better recognized⁴⁹.

4.2.2- CANADA

Canadian Inuit are part of the Aboriginal peoples along with First Nations (Indians) and Métis. Together they represent 4.4 per cent of Canada’s total population of 30 million inhabitants⁵⁰. Inuit do not benefit from the specific status of First Nations. They are full Canadian citizens. In a way, they have thus a lower protective status at the national level than American Indians.

The Constitution Act of Canada, 1982, recognizes existing Aboriginal and treaty rights “that have been subsequently reaffirmed by the courts”. “In its new Aboriginal policy of 1998, known as “Gathering Strength”, the federal Government has pledged to strengthen the relationship between Canada and the Aboriginal peoples”⁵¹

The Canada’s Minister of Aboriginal Affairs and Northern Development (still called in legal documents “Minister of Indian Affairs and Northern Development”), is in charge both of the Inuit and First Nations’ affairs, and of Arctic affairs. Each Canadian Inuit region has its own department for these issues. In the Northwest Territories, the Department of Aboriginal Affairs and Intergovernmental Relations (DAAIR) supports the Minister Responsible for Aboriginal Affairs and Intergovernmental Relations (DAAIR’s website). These departments deal with the coordination and the negotiation of the implementation of land, resources and self-government agreements, negotiate such agreements, and manage relations with federal, provincial, territorial, Aboriginal and international governments.⁵²

⁴⁷ D. Sambo-Dorough, op.cit, p.207.

⁴⁸ *Áhrénetalii*, 2007.

⁴⁹ T.Søvn Dahl Pedersen, 2009.

⁵⁰ Stavenhagen R., Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mission to Canada, 2004.

⁵¹ E/CN.4/2005/88/Add.3 2 December 2004 Human rights and indigenous issues Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen.

⁵² Op.cit.

In regional parliaments in Canada, several members are indigenous (and of aboriginal origin as well) representatives. Some of these are appointed to federal cabinets, such as the Minister of Health, Leona Aglukkaq, MP for Nunavut⁵³.

According to D. Sambo-Dorough⁵⁴, the Labrador Inuit Land Claims Agreement is “the most far-reaching example” in terms of standards established by the UNDRIP. It was adopted by referendum in December 2004. It “provides for Inuit rights to lands and resources, including harvesting rights and jurisdiction over management of corresponding activities and resources, (...) recognizes the right of the Labrador Inuit to the adjacent ocean zone extending to the limit of Canada’s territorial sea, [and] specifies Inuit self-government rather than merely public government or an ANCSA type corporate structure”. The Agreement thus “provides a more accurate and expansive understanding of lands, territories and resources as well as the real nature of self-determination”.

Rights on lands and resources

In the Northwest Territories, the Inuvialuit are negotiating to regulate the Mackenzie Gas Project, first proposed in the 1970s. The Inuvialuit Regional Corporation (IRC), responsible for the enforcement of the Inuvialuit land claim agreement, agrees to the opinion that the project “would provide the foundation for a sustainable northern future”⁵⁵. Now (that) the land claims are more or less settled in the region and that Inuit and Aboriginal peoples are prepared to play a role in the project’s development, the indigenous peoples will now be partners in the project’s consortium, once it receives final approval. But concerning the hydrocarbon exploration, the IRC is less disposed to give its consent. It asked the Canada’s Minister of Aboriginal Affairs and Northern Development to withhold the issuance of exploration licenses until the environmental risks and other issues had been fully addressed.⁵⁶

In Inuvialuit, the National Energy Board (NEB) held hearings regarding Arctic offshore drilling among 11 communities in 2010 and 2011. “People in the North told the NEB that they understood the importance of the energy sector and were not opposed to development but that any drilling activity had to be carried out responsibly and that Northerners wanted to be involved in preparing for potential drilling in the future”.⁵⁷

Devolution process: the IRC, the Northwest Territories Premier and the federal Minister of Aboriginal Affairs and Northern Development signed in 2011 an agreement-in-principle for the devolution of lands and resources from Canada to the Northwest Territories. For the IRC Chair Nelly Cournoyea, the devolution will “*achieve our goals*” (quoted in Hendrie 2012, p.45). However, it is just a step to commence negotiations towardss a final Devolution Agreement, which will “include the transfer of

⁵³ Hendrie, 2012.

⁵⁴ 2010, *op.cit.*, p.212.

⁵⁵ in Hendrie 2011, p.53.

⁵⁶ *Ibid.*

⁵⁷ Hendrie 2012, p. 44.

administration, control and management of land, water, minerals and other resources such as oil and gas to the Northwest Territories”.⁵⁸

The Canadian Inuit regions are rather advanced in the cultural rights’ area. Initiatives include: Inuit College in Ottawa; Inuit Knowledge Centre founded by ITK to develop research from an Inuit point of view and to create and reinforce interaction between Inuit knowledge and Western science⁵⁹ ; the development of a national Inuit education strategy for Inuit regions in Canada (by ITK President Mary Simon) – Hendrie 2012. “The strategy aims to empower parents, expand early childhood education, invest in curriculum development, and create a fully bilingual education system”.⁶⁰ In particular, the strategy aims to establish a standardized writing system for the Inuit language.

The Canadian Truth and Reconciliation Commission was created in 2008 to allow Inuit to testify on several affairs such as abuses against students in church and government-run residential schools, the “High Arctic Relocates”⁶¹, or the slaughter of Inuit sled dogs in the 1950s and 1960s. Monuments were erected to commemorate the episode of relocation and formal and personal apologies were issued in 2010 by the government of Canada and its Prime Minister Stephen Harper.⁶² Apologies were also made in regards to the abuses in schools and the slaughter of dogs.

It is worth noting that the present-day Director of ITK is himself a victim and survivor of this relocation’s experience.

Lawsuit possibilities also reflect a certain degree of implementation of the indigenous peoples’ rights. The law itself is not enough. The existence of a lawsuit launched by indigenous communities, and even more the issue of positive Court decisions prove that law is not just a theory, but needs to be applied.

In Nunavut, Nunavut Tunngavik Incorporated (NTI) launched a lawsuit in 2006 against the Crown in right of Canada in the Nunavut Court of Justice for several breaches of the NLCA. As S. Hendrie underlines, this lawsuit “is of key importance not just to the Inuit of Nunavut but for all Aboriginal peoples in Canada”.⁶³

Deficiencies in the land claims agreements implementation policies of the Government of Canada are pointed out by the NTI, the Auditor General of Canada and the Senate Committee on Aboriginal Peoples.⁶⁴

⁵⁸ Ibid, p.45

⁵⁹ Hendrie 2011.

⁶⁰ Hendrie 2012, p.44.

⁶¹ In the 1950s several Inuit families of Inukjuak and Pond Inlet (in now Nunavut and Nunavik regions) were relocated to desolated communities of Grise Fiord and Resolute Bay in the High Arctic, without any material assistance, officially to help Inuit to recover their independence and traditional way of living, but actually to assert Canada’s sovereignty on the high Arctic territories during the Cold War.

⁶² Hendrie 2011.

⁶³ Hendrie 2012, p.45

⁶⁴ Ibid.

The non-governmental organisations' landscape is diverse and developed in Canada. The national Inuit organization of Canada, Inuit Tapiriit Kanatami (ITK), has played an important role too over history. It is directed now by Terry Audla, the "national Inuit Leader", "the national voice of 55,000 Inuit living in 53 communities" across the four Canadian Inuit regions, called Inuit Nunangat⁶⁵. ITK was founded in 1971 as an advocacy organization. It deals with the rights of Inuit on both an international and national level, but also with issue such as climate change and its impact on Inuit's everyday life.⁶⁶

Each region has its own local indigenous organizations, such as the Kativik regional government and the Avataq Cultural Institute in Nunavik.

The Makivik Corporation holds summits to debate on market-based opportunities in the fields of mining, natural resources and tourism; in the areas of community economic development and the land-based economy.⁶⁷ It discusses the concept of sustainable development in local context. Many economic development initiatives are led by the Makivik Corporation, in particular Cruise North, an Arctic cruise line.

In the US and Canada, one could think that individual property rights is the most advanced stage of right to land, but in practice, the individualization of lands means the fragmentation of the indigenous living territory, and progressively the loss of indigenous lands in favor of companies.

4.2.3- GREENLAND/DENMARK

Since January 2010, Greenland is responsible for the mineral resource area, including all possible inshore and offshore oil and gas resources. It can therefore grant exploration and exploitation licenses for any deposit.

The Self Rule arrangement is still placed within the framework of the unity of the Danish Realm⁶⁸, but the process of accession to independence is possible with a favorable vote from the Danish Parliament at any time if Greenland's authorities consider the territory ready for it.⁶⁹

One must not forget that Greenland's Self-Government is not synonymous to Inuit self-government. Composed of a legislative power lying with *Inatsisartut* (the Greenland Parliament), of an executive power lying with *Naalakkersuisut* (the Greenland Government)⁷⁰, and soon of a judicial power⁷¹, Greenland's government is public and

⁶⁵ See ITK website, www.itk.ca and www.itk.ca/about-itk.

⁶⁶ See the position defended by the former ITK leader, Mary Simon; Hendrie 2011.

⁶⁷ Hendrie 2011 p.54.

⁶⁸ Under the Self-Government status, Greenlandic authorities are not able to assume responsibility for the constitution, foreign affairs, defence and security policy, the Supreme Court, nationality (citizenship), the currency and monetary policy (M. Kleist, *op.cit.*).

⁶⁹ O. Truc in Canobbio 2011, p.37

⁷⁰ For the first time in the Act on Greenland Self-Government, Greenlandic words (*Inatsisartut* and *Naalakkersuisut*) were used in a piece of Danish legislation (M. Kleist, *op.cit.*).

not indigenous, even if the vast majority of Greenland's population is part of an indigenous group. As M. Kleist reminds in the *Polar Law Textbook*, all Danish citizens who live for a certain time in Greenland constitute together the people of Greenland, that is to say the persons who have the right to vote and to run for public office in Greenland. The right to vote in Greenland "is not attached to ethnicity".⁷²

The Inuit Circumpolar Council holds Consultative Status II at the United Nations and plays a major role in bearing demands and claims of Inuit on the international stage. They are considered as the most active indigenous players of the Arctic, in particular because of "A Circumpolar Inuit Declaration on Sovereignty in the Arctic" that they signed and submitted to the Arctic states in 2009.

In Greenland, the 2009 Act recognizes Greenlanders as "a people according to international law with a right to self-determination".⁷³

Concerning the exploitation of resources in Greenland, the Act on Self-Government states that revenues from mineral resource activities will now return to Greenland⁷⁴. Since 2009, Greenland is fully competent and responsible for this area. "The rights to the Greenlandic mineral, gas and oil resources are now controlled and owned by the Greenlandic people" – including offshore Arctic drilling, uranium mining, and all resources of the sub-soil.⁷⁵

Under the Act on Greenland Self-Government the Greenlandic language became the official language in Greenland. While the former Home Rule Act mentioned that Danish had to be taught thoroughly in Greenland even if Greenlandic was the main language, the 2009 new Act doesn't mention any other language than Greenlandic (M. Kleist *op.cit.*). Yet, other languages are not excluded: Greenlandic and Danish can be used in public and official matters, and education in other languages is meant to be further strengthened.

Under the new Self-Government status, Greenland cannot assume responsibility for foreign affairs but it can have "a foreign 'policy' on matters and interests that affect it". The interests of Greenland are therefore safeguarded by a Department of Foreign Affairs within the Government of Greenland, in particular in areas such as fisheries – Greenland can enter into agreements with the EU or bilaterally with other states (Norway, Iceland) for that matter – and other fields for which Greenland already assumes the responsibility, says M. Kleist.⁷⁶ As a non-state entity, Greenland can also become a member of international organizations in its own name. For example, Greenland operates as an individual entity within the Nordic cooperation. In addition, Denmark must take into account the opinion of Greenland when it becomes member of

⁷¹ Judicial power is still under the Danish judicial system in 2010 but these courts are physically situated in Greenland. "Greenland will explicitly be able to take over authority for the court system in Greenland under the Self-Government provisions, though control over the Supreme Court will remain with Denmark" as long as Greenland is not an independent state, M. Kleist, *op.cit.*, p.184.

⁷² Loukacheva 2010, p.181.

⁷³ M. Kleist, p.195.

⁷⁴ Yet, as of 2010 Greenland has no revenues from mineral resources activities (M. Kleist *op.cit.*).

⁷⁵ M. Kleist, in Loukacheva 2010, p.195.

⁷⁶ *Ibid*, p.188.

international organizations or when it enters into international law agreements, especially if it is of particular interest to Greenland.

The Greenland Self-Government Act states that the decision regarding Greenland's independence shall be taken by the people of Greenland – through a referendum or by the Greenland Parliament or Government if it feels it has a strong mandate to do so. Since Greenland is still under the Danish Constitution and that a move towards independence would represent an act of relinquishing territory for the Danish Kingdom, the decision would have to be approved by the Danish *Folketing*.⁷⁷ The Act also states that in order to be legally prepared for independence, the Self-Government can begin the writing of its own future constitution.

In addition to this option, the Act provides for a possible form of future cooperation under the process of “free association”: Greenland could in this case cooperate with and get assistance in some areas from Denmark, being independent but continuing to “enjoy formalized cooperation with Denmark” (or another state), explains M. Kleist.

4.2.4- RUSSIA

The general situation of indigenous peoples in Russia will be further developed in section 4.4, since all minority indigenous groups have the same status and rights under Russian law. Nevertheless we can focus here on a local situation in which Inuit are, unlike in other countries where Inuit live, far from reaching self-determination.

In the Chukotka autonomous district regional Parliament (called *Duma*) as well as in regional executive structures, the RAIPON organization denounces the lack of representation of Yupiget people. The main orientation of the regional power is formal equality. Discriminations are denied, as well as any need of specific protection for indigenous communities. The only juridical document in defense of indigenous peoples of the district adopted in 1997 does not address the specific situation of Yupiget.

The functions of self-determination are played by the Association Of Small-Numbered Indigenous Peoples Of Chukotka which includes Yupiget and is part of the state-wide umbrella organization RAIPON. This web of associations is the only way for Yupiget to defend their rights but the diversity of these associations and their distribution over vast territories may be a handicap to having a strong and united action.

⁷⁷ M. Kleist, op.cit.

4.2.5- INUIT HUNTING RIGHTS : WHALES, SEALS AND POLAR BEARS

Indigenous whaling is permitted for Denmark/Greenland, the Russian Federation, and the US. “It is the responsibility of national governments to provide the Commission with evidence of the cultural and subsistence needs of their people”. It should be emphasized that it is not permitted by Canada.

Concerning seal hunting, trade of baby seals products was completely banned in 1987 and in 2009 EU banned the commerce of seals skin and its other by-products, but not the subsistence hunting practiced by Inuit. In this case however, it happens that the ban had a negative impact on Inuit day-to-day life.⁷⁸

ITK, along with several persons and entities in the Canadian Arctic and in Greenland, responded to the EU ban on the import of sealskin products by launching a lawsuit against the European Parliament in 2010. They are claiming that “when the market is decimated for one group, it is decimated for all”, and that they don’t accept the “paternal notion of an ‘exemption’ for skins hunted by Inuit”.⁷⁹ Inuit have since opposed the EU’s attempts to join the Arctic Council.

On a similar subject, the Convention on International Trade in Endangered Species (CITES) has once more rejected the American proposal to uplist polar bears from appendix II to appendix I (Neme, *Polar Bear Watch*, March 2013). This measure would have banned or restricted the international trade of polar bears. But as with sealskin products, indigenous communities, particularly the Inuit communities, gain a large income from commercial bear hunting licenses bought by foreign tourists and hunters (mainly from the United States), while the meat is still consumed locally (Hendrie 2011).

4.2.6- INUIT REPRESENTATION AT INTERNATIONAL LEVEL

The Inuit Circumpolar Council (ICC), represents Inuit of Canada, Greenland and Alaska since 1977⁸⁰. The ICC is one of the Permanent Participants in the Arctic Council since the very beginning. It also plays a very important role in the UN permanent organization on indigenous issues, with its headquarters in New-York, N.Y.⁸¹

Inuit thus have a good political representation at the international level through the ICC. One example of its activism is the “Inuit Leaders Summit on Arctic Sovereignty” of November 2008, in which they affirmed that considering the history and reality of Inuit use and occupation of Arctic lands and waters, the Arctic-rim nation states must respect “the collective human rights and direct participation of Inuit in all international discussions”.⁸²

⁷⁸ Thevenet, 2009.

⁷⁹ Hendrie 2011.

⁸⁰ In reality it went into effect in 1980 and of Chukotka since the URSS collapse in 1991 (Therrien, 2012).

⁸¹ Therrien, 2012.

⁸² D. Sambo-Dorough, *op.cit.*, p.211.

4.3- SÁMI (NORWAY, SWEDEN, FINLAND, RUSSIA, THE EU)

Table 6: Important dates in the evolution of Sámi political status since the colonization

COUNTRY	EVENT	DATE
Nordic countries	Governmental authorities of Nordic countries introduce individual universal human rights in their national legislation	Since the middle of the 1980s
	Sámi flag was adoption	1986
Sweden	Sámi Council establishment	1953
Sweden	Creation of swedish Sámi Parliament	1993
Russia	Sámi of Russia join the Sámi Council	1989
Norway	Creation of the Sámi Parliament	1987
Finland	Creation of the Sámi Parliament	1973
Finland	Law approving the possibility for Sámi to use their language in relations with authorities.	1992
Norway	Finnmark Act establishing the Finnmark Estate's Board where the Norwegian Sámi Parliament appoints three out of six members (p36)	2005
Norway	State's obligation toward Sámi introduced into the Norwegian Constitution (p36)	1988
Norway/Sweden	Lapp Codicil, which protects Sámi in general and reindeer herders in particular	1751
Fennoscandia	Proposal of a Sámi Convention text to the three governments of Fennoscandia and the three Sámi Parliaments.	2005

Sámi are the first people to have settled down in the Nordic tundra about 10 000 years ago.⁸³ According to archeological data⁸⁴, the primary settlement might have begun in Northern Norway. Sámi traditional living territory spreads accross Fennoscandia (northern Norway, Sweden and Finland) and parts of the Kola Peninsula in Russia.

⁸³ Gustavsen in Charrin et al, 1995.

⁸⁴ *Practical Dictionary of Siberia and the North*, "Saami", pp.803-804, 2005

4.3.1- CURRENT SITUATION: SÁMI NATIONAL RIGHTS AND POLITICAL REPRESENTATION

Because of national borders dividing their traditional territory, Sámi rights and system of political representation vary greatly from one country to another⁸⁵.

While being politically represented in Nordic countries by three Sámi parliaments and much progress has been made for their rights, they are only organized into NGOs in Russia and live under very difficult socio-economic conditions. This is not to say that Sámi NGOs do not exist in the other countries. A rather large network of Sámi NGOs and, more globally, indigenous NGOs represent the Sámi people throughout the region.

WORKINGS OF EACH SÁMI PARLIAMENT

Each Sámi parliament⁸⁶ is regulated by a *Sámi Parliament Act*, and is elected by and represents the Sámi people.⁸⁷ Its role is to look after Sámi interests and, when possible, to define public policies. The three Sámi parliaments of Norway, Finland, and Sweden were established in 2000 in parallel with the Sámi Parliamentary Council, a joint council of representatives.⁸⁸

To vote for a parliament, one person has to be listed in a special Sámi electoral register. The conditions for becoming part of this list are established by the Sámi Parliament Act: mostly self-identification and use of the Sámi language. Only a minority of Scandinavian Sámi is registered (around 12,500 out of more than 50,000 Sámi in Norway for example).⁸⁹

Sámi parliaments are politically autonomous and decide which matter they are going to debate on in a session, but they are totally dependent on state funding. Some funds are meant to be used for specific purposes such as to support Sámi language and culture. Concerning land and resource management however, the parliaments “have no role apart from being able to raise [issues]”⁹⁰. Thus, they have only a consultative role.

The establishment of Sámi parliaments is seen as the greatest sign of progress towards the recognition of Sámi rights and specific status. But it must not be forgotten that the Sámi can also influence political decisions by their vote to the national parliaments, as well as in local and regional elections and cooperative relationships and agreements.⁹¹ “The government administration, at both the local, regional and national

⁸⁵“The present situation in the four countries where we are living differs from hopelessness to hopefulness”, J. Gustavsen, in Charrin A.-V. et alii, 1993, p.185

⁸⁶ *Sámediggi* in Sámi.

⁸⁷ Strömngren, 2011.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Josefsen, 2010.

levels, also plays an independent role in the development of the Saami societies in Finland, Sweden and Norway”.⁹²

It seems that these mechanisms of political representation have influenced Russian Sámi, who are currently trying to establish their own parliament, despite of their smaller number (around 2,000). Indeed, the first Sámi Congress in Russia took place on December 12th, 2008 in Olenegorsk and 76 delegates representing the Sámi population of Murmansk *oblast'* elected the Council of Authorized Representatives of Sámi of Murmansk Region (BIPO)⁹³. The objective of the council is to establish a democratically elected body representing the Sámi of Murmansk region. The two main Russian Sámi NGOs are part of this council: the Association Kola Sámi (AKS), established in 1989, and the Official Organisation of Sámi in Murmansk Oblast' (OOSMO), established in 1998.⁹⁴

According to researchers of the project “Russia in Pan-Sámi Politics”, started in 2008, an information gap prevents Westerners from understanding how Russia Sámi organized.⁹⁵ The project’s goal is to publish a book on the modern Russian Sámi movement. Thus, even if they have no Sámi Parliament for the moment, Russian Sámi are very active, and researchers are talking about a real “Pan-Sámi community”.⁹⁶

HUMAN RIGHTS, RIGHTS ON LAND AND RESOURCES

Johan Strömgren, as a Swedish Sámi lawyer, notes that in the four countries Sámi “have access to all public institutions and services on an equal footing with the other citizens of these countries, and the right to vote in local and national elections”.⁹⁷

In Sweden, Norway and Finland, Sámi have property rights on land but subsoil resources may be accessed by any operator for development and exploitation. Special agreements for indigenous peoples include to respect the activity of reindeer herders.

The Finnmark Authority is the Sámi-dominated body in control of land and natural resource management in the northernmost county of Finnmark, Norway. Other provisions may be relevant in regards to the protection of indigenous peoples’ culture (both material and immaterial): the Planning and Building Act, the Mineral Act, the Reindeer Herding Act.

As the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Professor James Anaya examined the situation of the Sámi during 2010, and his report was submitted in 2011.

⁹² Op.cit.

⁹³ <http://www.barentsindigenous.org/organisations.116558.en.html>

⁹⁴ Op.cit.

⁹⁵ M. Cappa in Barents Observer, 2010

⁹⁶ In Barents Observer *op.cit.*

⁹⁷ Strömgren, 2011, p.30.

Some progress was achieved in the most recent decades both at national level, laws and provisions providing a “stronger formal protection for Sámi rights”⁹⁸, and at local level, by bi-national agreements and local initiatives. Along the Tana/Deatnu River between Finland and Norway, an agreement has been reached and came into force during 2011 on a new local administration for the fisheries of the river.⁹⁹ The local people’s rights to manage the fisheries were one of the recommendations of the 2005 *Finnmark Act*.¹⁰⁰

But there are still “national variations as regards how far the nation state is willing to (...) recognise the Saami (...) as an ethnic group entitled to collective rights beyond ordinary civil rights”.¹⁰¹

In Finland, even if the formal Sámi rights and status appear as the strongest (in its Constitution and through the Act of the Sámi Parliament of 1995), these rights have no concrete application. The conditions to apply these rights are not ensured, and there is a lack of structures to establish a real link between the Finnish Government and the Sámi Parliament, as well as a lack of competence in administration and a splitting (up) of Sámi issues between various Ministry.¹⁰² The issue of land rights seems to be an obstacle for ratifying ILO Convention 169. Sámi have no special land rights in Finland, and reindeer husbandry is not a legally protected Sámi livelihood, unlike in Norway and Sweden.¹⁰³

In Sweden, Sámi people are mentioned as a people in the Constitution since January 2010 (and not as a minority, as it was first proposed in 2008). The IWGIA expert denounces “a lack of political will” from the Swedish government to give the conditions to finally ratify ILO Convention 169.¹⁰⁴ The government has to adapt national legislation with Article 14 of the Convention on land rights. The Sámi parliament was asked to make suggestions for a new policy on Sámi land rights in 2010.

The Sámi language act, regarding the enlargement of the area in which people have the right to use the Sámi language as an official one, came into force on January 2010.

The UN Working Group on the Universal Periodic Review (UPR) reviewed Sweden’s human rights situation in 2010. Sweden supports UNDRIP and ILO 169, but had not implemented them. The UN Working Group particularly noted the un-resolution of land issues and recommended to eliminate discrimination in access to land and to basic services.

⁹⁸ Josefsen, 2010.

⁹⁹ Strömngren, 2011.

¹⁰⁰ Op.cit.

¹⁰¹ Josefsen, 2010, p. 7.

¹⁰² Josefsen, 2010.

¹⁰³ Beary, 2011; Strömngren, 2011.

¹⁰⁴ Strömngren, 2011.

On April 2011, the Swedish Supreme Court delivered its decision concerning the right of Sámi villages' herders to winter-pasture on properties of private landowners in Nordmaling Municipality. The so-called "Nordmaling case"¹⁰⁵ has been ongoing for 14 years. The Court ruled that the Sámi reindeer herders have common/customary law rights (*sedvanerätt*) on winter-pasture areas. It was the first time a Sámi rights claims succeeded, after several lost cases in lower courts.¹⁰⁶ "In the future, the Swedish Sámi Association hopes that the government and parliament will take responsibility for the Sámi policies and actively work with questions of rights to land and water, instead of leaving them to be resolved by the courts" (Swedish Sámi Association, www.sweden.se). This is "an important step forward for the recognition of the Sámi reindeer herding right in Swedish law".¹⁰⁷

This case shown similarity with the Selbu case in Norway from 2011, regarding reindeer husbandry on private lands.¹⁰⁸

But there are still unsolved legal issues regarding Sámi rights to other traditional activities such as hunting, fishing and handicraft.¹⁰⁹

OTHER PROVISIONS FOR SÁMI RIGHTS

E. Josefsen (2010) notes that the relationship between the state and an indigenous people has also changed the understanding of representation through elections. Since the principle of equal weighting of ballots condemns the minority to be dominated, some solutions were to be found to ensure that the minority would be heard.

The role of the Nordic Council¹¹⁰: until 1993 at least, Sámi were refused representation on the Nordic Council.¹¹¹

¹⁰⁵See C. Allard, "Case Review: The Swedish Nordmaling case", University of Troms..., 2011, available on...; and the Swedish Sámi Association, « Supreme Court decides Sami land dispute », April 27, 2011, available on <http://www.sweden.se/eng/Home/Society/The-Sami-People/Reading/Supreme-Court-decides-Sami-land-dispute1/>, consulted on March 20, 2013

¹⁰⁶ Allard, 2011.

¹⁰⁷ Allard, 2011, p.2.

¹⁰⁸ Allard, 2011.

¹⁰⁹ Allard, 2011.

¹¹⁰The Nordic Council is the official inter-parliamentary body in the Nordic Region. It was formed in 1952 and has 87 elected members from Denmark, Finland, Iceland, Norway and Sweden as well as from the Faroe Islands, Greenland and Atland (the Nordic Council website, www.norden.org).

¹¹¹ Gustavsen, *in Charrinet alii*, 1995.

4.3.2- THE EUROPEAN UNION

The role of the EU towards Arctic indigenous peoples is highly related to:

1. The position of the EU towards the Arctic in general.
2. The action of the EU and its institutions towards indigenous peoples around the world.

1- The EU justifies the ongoing formulation of an EU policy on the Arctic in the European Parliament (EP) Resolution of 2008 and of 2011¹¹² by considering that three of the EU's Member States (Denmark, Finland and Sweden), and two of its strongly associated neighbours through the European Economic Area (Iceland and Norway), are Arctic nations. Thus, the EU and its associated states represent more than a half of the Arctic Council's members. In addition to these numerical facts, the EU has been a long time a great supporter and actor for projects in both poles, and has recently become more and more concerned by the Arctic. The EP stresses how the climate change has international impacts, and thus the importance of finding an international solution. On this basis, the 2008 EP Resolution calls for "a standalone EU Arctic policy" (§5), and the 2011 EP Resolution pursues in the same direction.

2- The EU also elaborated several principles concerning the rights of indigenous peoples throughout the world and has always been a principle actor in the UN policy relative to Human rights, in particularly indigenous peoples' rights¹¹³. The first essential disposition of the EU pertaining to indigenous peoples and their rights is the *European Commission Working Document on Support for Indigenous Peoples in Development Cooperation*, issued in May, 1998, then followed by the European Council Resolution on the same year and promoting the concept of "self-development"¹¹⁴. All these principles are in total accordance with the standards established by the 2007 *United Nations Declaration on Rights of Indigenous Peoples* (UNDRIP). As it is not yet possible to speak of a European juridical system relative to indigenous peoples as a unique system, some European jurisdictions do exist on this subject. Moreover, the European Commission (EC) is one of the main sources of funding of the UN Human Rights programme, which aims in particular at developing and protecting indigenous peoples' rights throughout the world. The EC has been giving about four million US dollars per year to this programme since 2011¹¹⁵

¹¹²European Parliament Resolution "Governance of the Arctic in a globalized environment", October 9, 2008, §N, and European Parliament Resolution "A Sustainable EU Policy for the High North", January 20, 2011, §1.

¹¹³ See the *EU Charter on Fundamental Rights* (Article 21), The European Instrument for Democracy and Human Rights (EIDHR) founded in 1999 and constituting EU's support to the promotion of human rights and democracy, first for third countries and after 2006 worldwide. See also the recent declarations of Catherine Ashton about indigenous peoples.

¹¹⁴ « The relevance of EU policies on indigenous peoples in EC cooperation with Greenland and the Arctic », Tove Søvndahl Pedersen, October 29, 2009.

¹¹⁵ European Union backs indigenous peoples' rights worldwide, OHCHR.
<http://www.ohchr.org/EN/NewsEvents/Pages/EUFundingDoCip.aspx>

Concerning the relation of the EU towards indigenous peoples of the Arctic in particular, several facts must be emphasized:

Firstly, since Sweden and Finland are European Arctic states, Sámi inhabitants of these countries are the numerically most important EU indigenous peoples and its only Arctic indigenous people¹¹⁶. Sámi represent around 28,000 inhabitants within the EU borders, but between 50,000 and 100,000 people if the Sámi of Norway (as a European partner) are included (see further down in “Sámi” section for more detailed figures about Sámi). The EU has already set up programmes for indigenous peoples, and in particular for Sámi. For example, one programme is aimed at developing Sámi cultural life and industry (Interreg Program IV A North).

This policy towards Arctic indigenous peoples is not limited to the Sámi people. The 2008 EP Resolution clearly takes into account Arctic indigenous peoples with their own individual specificities, pointing out for example the various impacts of climate change on Inuit everyday life (§M). In this Resolution, the EP calls on the European Commission communication on Arctic policy to address “policy options that respect the [Arctic] indigenous populations and their livelihoods” (§7b). The 2011 EP Resolution recognizes the progress made since 2008¹¹⁷ and calls as well for “greater involvement of indigenous peoples in policy-making” (§34), the enforcement of ILO Convention 169, more dialogue and interactions with the EU institutions¹¹⁸. In addition, as a political player of the Arctic governance, the EU participates in high-level bodies in which many Arctic indigenous peoples are included, such as the Arctic Council¹¹⁹, the Barents Euro-Arctic Council (BEAC)¹²⁰ or the Nordic Council of Ministers. (“Northern Dimension” between EU, Iceland, Norway and the RF, see 2011 EP Resolution §53).

As well, several Arctic indigenous peoples and Arctic governments highly concerned with indigenous issues benefitting from European funds through development projects. For example, the Commission Communication of 2008 points out that “significant community financial assistance is to be provided to Greenland through

¹¹⁶ Some documents are even talking about “the EU’s only indigenous people” (the 2011 EP Resolution, §C), the EU needed to develop a policy toward indigenous peoples because of the Kanaks of Nouvelle-Calédonie as well.

¹¹⁷ See the Commission communication works:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0763:EN:NOT>,

and the Council Conclusions on Arctic issues,

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/111814.pdf.

The 2011 EP Resolution <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0024+0+DOC+XML+V0//EN>

¹¹⁸ It emphasizes in particular the importance of “supporting capacity-building programmes in order to improve the quality of life of indigenous and local communities in the region and gain more understanding of the living conditions and cultures of these communities” (§7), and “stresses the need to adopt special measures to safeguard the culture, language and land rights of indigenous peoples” (§34).

¹¹⁹ The application of the European Commission on behalf of the EU to obtain observer status to the Arctic Council in December 2008 (and reconfirmed in 2011) was approved at the Kiruna Arctic Council Meeting on May 15, 2013 (European Commission, Press release, IP/12/739, July 3, 2012, <http://europa.eu/rapid/press-release-IP-12-739-en.htm>, and European Union, Joint Statement by EU High Representative Catherine Ashton and EU Commissioner Maria Damanaki regarding Arctic Council decision on EU’s observer status,

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137127.pdf).

¹²⁰ “An important hub for cooperation between Denmark, Finland, Norway, Russia, Sweden and the European Commission”, 2011 EP Resolution, §55.

Annual Action Programmes”, aiming at helping Greenland “in managing its fragile environment and the challenges confronting its population” by supporting in particular the fisheries, the education and vocational training sectors under the OCT-regime and the Partnership agreement between Greenland and EU (p.12). Other areas may be concerned in the future to strengthen cooperation such as environment, research and food safety.

The EU policy towards indigenous peoples has nonetheless been a subject of debate for a long time. In 1993, at an international conference of UNESCO for the UN International Year of Indigenous Peoples, the Sámi writer John Gustavsen shared his doubts and concerns on the subject. Talking about the foundation of a then-new indigenous body, the Barents association, he maintains that the Sámi wanted representatives of indigenous peoples living in the Barents region¹²¹ in Russia to be represented in the Ministry Board, but that representatives from the European Economic Community (EEC) and the US opposition led to the refusal of this proposition. He added:

“My personal opinion is that, concerning the ethnic situation in Europe, the rise of the Barents association will act as a barometer. Another big body, which Sweden and Norway are going to enter, is the EEC and the big bureaucratic body in Brussels. What is the politics towardss minorities and smaller ethnic groups? (...) The majority of the Norwegian population faces antagonism against the EEC. Norway has 1% of the European total population. Which influence can such a small family have in Brussels? We, Saami, are 1% of all inhabitants in Norway; which influence can we have in Brussels? Can you give me the answer? Will they be given democracy or led into a new dependency?” p.187.

The creation of a European body has impacts on the situation of indigenous peoples. And indigenous representatives entirely have the right to raise such questions and concerns about the future policy of such a new and important body. For instance, 2009 EU ban on the import of sealskin products did not take into account every aspect of the everyday life of Inuit hunters.

But according to F. Scarpa, “Arctic indigenous peoples issues have been set as a political priority” in the formulation of the EU Arctic policy. “Since the first Resolution by the EP to the newest Commission Communication in 2012, indigenous peoples have been mentioned as highly relevant in the EU’s approach to the Arctic” (p.2).

“Thus it is clear that the EU through its own policies and through its international commitments to international instruments have a strong obligation to take due account of the rights of indigenous peoples – also in its Arctic cooperation as these are highly relevant for Arctic peoples” in “The relevance of EU policies on indigenous peoples in EC cooperation with Greenland and the Arctic”¹²².

¹²¹ Some 200 Nenets live in the Kola Peninsula.

¹²² Mrs.ToveSøvdahl Pedersen, October 29, 2009.

4.4.1- CURRENT SITUATION: RIGHTS AND POLITICAL REPRESENTATION

Several dispositions in Russian law would be likely to protect the “native small-numbered peoples of the North” (KMNS)¹²³ rights. The Article 69 of the Russian Constitution, and the federal framework laws:

- “On the guarantees of the rights of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russian Federation” (1999),
- “On general principles of the organization of (their) obshinas”, and
- “On (their) Territories of Traditional Nature Use” (2001).¹²⁴

But these laws are the results of a lack of implementation of indigenous peoples rights.¹²⁵ Moreover, changes in natural resource legislation and government decisions on natural resource use in the North have affected these laws relative to KMNS. According to indigenous leaders and experts, these recent changes “have led to deprivation of the rights and possibilities to implement traditional economic activities”¹²⁶.

The situation is legally intricate, which doesn’t improve the conditions for implementation. More globally, Russia has not ratified ILO Convention 169 and abstained from voting in the UN General Assembly on the adoption of the UN Declaration on the Rights of Indigenous Peoples.¹²⁷

The Ministry of Regional Development is actually the administration empowered to address the issues of indigenous peoples in Russia. In practice however, the regions are the real actors in regards to specification, development and implementation of the federal laws. That is why even within Russia, rights and status of indigenous peoples vary from one region to another. They depend in particular on the administrative status of the region: a Republic, a Territory, an Autonomous *Okrug* (district), or an *Oblast*.

Despite the fact that a nation-wide association exists to defend KMNS’s rights and to diffuse information, only very local associations can have an affect, when they maintain good relations with the local authorities in everyday life. These associations are for example Yasavej for the Nenets of Europe, YamalPatomkam for Nenets of the Yamal Peninsula, Spasenie Yugra for Khanty, Mansi and forest Nenets of the Khanty-

¹²³ “*Korennye Malochislennye Narody Severa, Sibiri i Dalnego Vostoka Rossiyskogo Federatsii*” (“native small-numbered peoples of the North, Siberia and the Far East of the Russian Federation”) often abbreviated to AKMNSSDV, or simply KMNS, is an expression used in Russian administrative and official documents and refers to a specific status and specific rights. The more recent list of KMNS was established by a document of April 17, 2006 published by the Russian government:

<http://www.raipon.org/Народы/НародыСевераСибирииДальнегоВостокаРФ/tabid/221/Default.aspx>

¹²⁴ Muraskho et alii, 2012 op.cit.

¹²⁵ Op.cit.

¹²⁶ <http://www.barentsindigenous.org/bipo.160038.en.html>

¹²⁷ Murashko and alii, 2012.

MansiiskOkrug, the Chukotka Association of traditional hunters, or the Association of the Soyot people of Buryatiya.

Concerning the status of the land in Russia, several specialists confirm that in practice, there is no individual property on land by indigenous peoples. They of course do not have property rights on subsoil resources either. "Increased resource development activity in the Arctic has the potential to increase conflict between indigenous peoples and both the state and the resource industry. This is particularly evident where the state has not settled aboriginal title claims or otherwise identified, delimited and titled indigenous lands"¹²⁸.

There are conflicts of interests between KMNS and various powerful industrial companies (oil and gas, hydroelectric, mining companies essentially). Faced with these "different interest groups who are competing for the exploitation and extraction of resources", IWGIA and RAIPON want to "put a strong emphasis on the involvement of indigenous peoples to be able to protect their rights" "and to influence environmental policies and economic interests".¹²⁹ As an example of failed implementation of their rights, some Chukchi inhabitants did not receive permission from the government to embark on sea hunting in 2010¹³⁰.

The point is that KMNS are not aware of their legal rights and ways to implement them. Neither are the companies' workers in many cases. Without this knowledge, it's not possible to develop a dialogue and strategies for co-operations (*op.cit.*).

4.4.2- THE RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH, SIBERIA AND FAR EAST (RAIPON)

The Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON) was created in 1990 by indigenous activists, intellectuals and writers to represent indigenous peoples of the Russian Arctic and to defend their rights at the national and international levels.¹³¹ RAIPON represents currently 41 KMNS, 40 of which are officially recognized.¹³² It represents Russian indigenous peoples' interests in several international fora and entities. RAIPON has a consultative status with the Economic and Social Council of the United Nations (ECOSOC) and collaborates closely with the International Work Group for Indigenous Affairs (IWGIA), an NGO with consultative status in ECOSOC which supports indigenous peoples' organizations globally. Finally, as a member of IWGIA, RAIPON is a permanent participant to the Arctic Council since its creation in 1996.

IWGIA and RAIPON lead actions promoting the rights and protection of KMNS through federal legislation by consulting and lobbying political decision-makers, especially in the Russian Federation parliament.

¹²⁸ Nigel Bankes in Natalia Loukacheva, Polar Law Textbook, 2010, p.122.

¹²⁹ "Projects in Russia" of IWGIA. <http://www.iwgia.org/iwgia/where-we-work-/projects-in-russia>

¹³⁰ IWGIA, 2011.

¹³¹ Murashko and *alii*, IWGIA, 2012.

¹³² *Op.cit.*

An organization under increasing pressure

Between the 1st November 2012 and 20nd April 2013, Russian officials represented by the Ministry of Justice of the Russian Federation “suspended” activities of RAIPON (including participation in the Arctic Council’s Senior Arctic Officials’ meetings¹³³) for “formal causes”. RAIPON’s Charter would not comply with the federal legislation.¹³⁴ R. Sulyandziga, as RAIPON’s First vice-president, claims that RAIPON’s Charter is the one on which the organization has been legally “united, promoted and carried out its activities aimed at protection of the rights” of Russia’s indigenous peoples for the “last 22 years”¹³⁵. He deeply deplores that the hope permitted by the important role of the Arctic Council, “the unique body for cooperation of indigenous peoples and governments”, happens to be down at the present moment .

RAIPON’s role in regional and international cooperation

RAIPON plays a central role in international cooperation among indigenous peoples and other Arctic states. An official cooperation agreement was signed in 2011 between RAIPON and the Norwegian Barents Secretariat¹³⁶. Indigenous peoples groups in the Barents Region (Sámi, Nenets and Veps) have relations with RAIPON. See the article of Barents Observer, interview of Rune Rafaelsen.

Through international human rights mechanisms such as the UN treaty bodies and the UN Human Rights Council, dialogue between RAIPON and high-level representatives of the Russian administration is favored¹³⁷. In 2008 and 2009, the recourse to such UN mechanisms led to recommendations made to Russia and commitments by the Russian government to respect and realize indigenous peoples’ human rights.¹³⁸

IWGIA is engaged along with RAIPON to promote an “Indigenous Peoples’ Parliament” in Russia, taking example on similar initiatives such as the Saami Parliaments¹³⁹.

Local associations

RAIPON is actually what is often called a “national umbrella organization”, which gives connections between the very numerous local and regional indigenous associations of KMNS. RAIPON organizes what they call “legal seminars” focused on regional challenges and in which local activists are trained to act in their regions and to give their input into discussions about concrete concerns (industrial projects, land-rights issues etc.)¹⁴⁰.

¹³³ See R. Sulyandziga, “RAIPON Open Statement To Senior Arctic Officials of the Arctic Council”, 2012, http://www.raipon.info/Documenty/English/RAIPON_Stat_ment_to_SA%CE_Haparanda.pdf

¹³⁴ Op.cit.

¹³⁵ Op.cit., p. 1.

¹³⁶ T. Pettersen, *Barents Observer*, June 03, 2011.

¹³⁷ Muraskho and alii, *Briefing Note*, March 2012.

¹³⁸ Muraskho, op.cit.

¹³⁹ Op. cit. note 73.

¹⁴⁰ Muraskho and alii, *Briefing Note*, March 2012.

Indigenous information centres have also emerged in many regions to respond to regional political challenges.¹⁴¹ For example the centre “Lach” plays “a leading role in defending indigenous peoples’ right to natural resources, particularly fish, and monitors upcoming oil developments on the West coast of Kamtchatka”.

RAIPON updates its website with resources from this network of information centres and diffuses information through a mailing list and the journal entitled “The world of indigenous peoples - the Living Arctic”¹⁴², published from one to three times a year and distributed for free in Russian, even in remote regions.¹⁴³ RAIPON plays therefore a major role in information’s dissemination and regional empowerment.

IWGIA also gives support to regional organisations through small projects’ implementation (establishment of information centres, collection of data about indigenous peoples’ use of traditional territories, legal assistance, etc...).¹⁴⁴

In this precarious context for human rights, pressure is also observed on individual defenders of KMNS’ rights.¹⁴⁵

Macro-regional and international associations

- The International Association of Reindeer Herders
- The ICC for the Inuit people of Chukotka
- The Saami Council for the Saami of the Kola Peninsula
- The Barents Euro-Arctic for KMNS of European Russia
- IWGIA

To conclude, if the 1822 Charter of Mr. Speranski is considered by many specialists as a fundamental document ahead of its time regarding indigenous peoples’ rights to the lands they occupy, it must be noted that current rights and political representation’s mechanisms of indigenous peoples are as of 2013 far too insufficient in regards to international law standards.

¹⁴¹ Muraskho and alii, *Briefing Note*, March 2012.

¹⁴² Its Russian title is *Мир коренных народов – живая арктика*. Issues are available at <http://www.raipon.info/biblioteka/21-2009-03-27-11-44-14/65-2009-03-27-11-47-27.html>, and some articles are translated in English in ANSIPRA bulletins: http://ansipra.npolar.no/english/Indexpages/Back_issues.html.

¹⁴³ Op. cit. note 79.

¹⁴⁴ Op. cit. note 73.

¹⁴⁵ Murashkoetalii, *Briefing Note*, IWGIA, 2012.

CURRENT RIGHTS AND POLITICAL REPRESENTATION

American Indian nations are “theoretically sovereign but limited by individual treaties and federal Indian law, which is in flux and often dependent on individual US Supreme Court decisions”, explain IWGIA services. The US government has treaty and trust responsibilities towards Indian nations, “stemming from historical land sales by Indian nations to the federal government and the assumption of a continuing guardianship over them”.¹⁴⁶ The Bureau of Indian Affairs and the Indian Health Service are separate federal agencies that are responsible for the US government’s obligations towards Indian communities.

However, in practice, American Indian nations are “under the tutelage of the state”. That is why the ANCSA is the main law agreement effective and implemented for Alaska Natives.¹⁴⁷

Concerning the Alaska Natives, the Gwich’in people are organized under state legislation called IRA (Indian Reorganization Act). The Tribes are run by a Chief and Council who are elected. By all Gwich’in, an International Porcupine Caribou Commission (IPCC) has been established to perpetuate their traditional caribou management belief system and their practices. This resolution came as a response of the community to the UN Covenants of 1966 disposition “In no case may a people be deprived of its own means of subsistence”. In 1984, the Canadian domestic agreement on the management of the Porcupine Caribou Herd and its habitat was signed between the federal government, the Yukon Territory, the Northwest Territories (NWT) and three affected native groups (Inuvialuit, Yukon Indians and the Dene-Metis).¹⁴⁸

Athabaskan are represented at the international level by the Arctic Athabaskan Council (AAC). The organization is more precisely the representative of AAC members in Alaska (including fifteen traditional villages), Yukon (the Council of Yukon First Nations and the Kaska Tribal Council), and Northwest Territories (Dene Nation), spanning across 76 communities and numbering approximately 45,000 people.

¹⁴⁶IWGIA website, « Indigenous peoples in the United States », <http://www.iwgia.org/regions/north-america/united-states>

¹⁴⁷ For the formation and working of the ANCSA, see the Inuit of Alaska sections.

¹⁴⁸Arctic Circle, *op.cit.*

4.6- CONCLUSIVE ELEMENTS ON THE EVOLUTION OF ARCTIC INDIGENOUS PEOPLES' REPRESENTATION

Indigenous peoples living in Arctic and sub-Arctic areas have passed through several common experiences and stages. They have common origins as many scientific works (in archeology and geology) emphasize through the analysis of ancient migrations from Eurasia to the North of America and then to Greenland. They were colonized, more often by several peoples than only one (European empires and states in Northern America, Greenland and Northern Europe, Mongol and Russian empires and Soviet Union in Asia). Even if some rebellion movements have existed and are more and more emphasized in Social and Human studies (see Dominique Samson about the Nenets, Khanty and Mansi rebellion against the Russian empire and the soviet authorities), indigenous peoples would not organize themselves to defend their rights and their status until the 1970s in the Western Arctic and the early 1990s in the Eastern Arctic.

These claims and demands have merged in response to a new form of colonization which is materialized by the mass industrial exploitation of Arctic resources in areas inhabited by indigenous peoples and by the sub-consequent urbanization of these areas, restricting the factors that allow them to continue living according to their own way of life.

4.7- LEVEL OF PARTNERSHIP BETWEEN INDIGENOUS PEOPLES AND ARCTIC STATES

The overview of the situation of indigenous peoples in the Arctic made clear that each country has its own set of rules, policy, level of law enforcement and other specific issues. To this date, there is no available common indicator to compare the situation existing in each Arctic country. As it was shown through the overviews of indigenous peoples' national situations, specificities of each community make it difficult to compare countries without taking into account some regional particularities. It is as such necessary to go further in the analysis of indigenous peoples' situation and future in the Arctic by assessing a level of partnership between indigenous peoples and the State in each Arctic country.

METHODOLOGICAL PRINCIPLES

To attribute a level of partnership indigenous people-state to each Arctic country, we have relied on several criteria mentioned earlier in the present analysis and which coincide with international law and EU principles on indigenous peoples' rights. In this respect, it must be emphasized that self-governance of indigenous communities covers more than the just the political aspect. Even if the notion of self-government has been applied to many communities, especially in the Canadian Arctic Right, right to a language, a culture, and recognition of being a specific and distinct group within a given state are also conditions to autonomy and self-determination. An emphasis will however

be put here on the rights to land and resources which are considered nowadays as *sine qua non* conditions to compose a specific identity.¹⁴⁹

In the table, three main elements determine the final figure attributed to a state for its “degree of indigenous partnership”.

- 4- the existence of a specific right, along with its level of precision and development in the state law (for each criteria retained), constitute the numerical base between 0 and 5, where 5 represents the most satisfactory level in regards to indigenous peoples’ rights and representation,
- 5- the figure is doubled when the right is concretely implemented,
- 6- the final average of all the figures corresponding to all criteria will be finally adjusted depending on the current tendency and policy towards indigenous peoples.

Example:

If we take the case of Inuit of Greenland and KMNS of Russia: they can both benefit from judicial dispositions on rights to the management of their territories’ resources by the state law, but the stage of development and precision of such a right varies. A 5 is attributed to Greenland, a 1 to Russia. The adjustment according to the level of implementation of such rights results in a 10 for Greenland, and still 1 for Russia. Since Greenland has recently made a further step towards independence and is permanently developing domestic law towards the Inuit majority of the country, whereas the Russian association RAIPON has known some misfortunes lately as many other NGOs in Russia and representatives of the civil society, the average figure will be adjusted accordingly.

The method and the table established below to evaluate the level of indigenous peoples’ rights and the level of indigenous peoples’ political representation are the first step for a comparative approach. The framework of this evaluation is open to further additional, modifications and uses with other criteria or with a different weighting system depending on what an author wants to underline.

¹⁴⁹ Charrin and *alii*, 1995.

Table 7 : Indigenous peoples' rights

Country or region Partnership criteria	Alaska (UNITED STATES)	CANADA			Greenland (DENMARK)	NORWAY	SWEDEN	FINLAND	RUSSIA
		Nunavut	Nunavik	Other territories					
Citizenship	5	5	N/A	N/A	5	5	5	5	5
(self) Nationality	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	4
National symbols (flag, hymn etc.) recognized by the state	N/A	N/A	N/A	N/A	5 (flag, hymn...)	3 (flag, hymn and Sámi national day)			0
Right to vote at local and national elections	5	5	N/A	N/A	5	5	5	5	5
Recognized as an indigenous people	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3
Self-identification as member of an IP	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2
Language's status	N/A	4	N/A	N/A	5	3	3	3	2
Language's development (medias, education, research etc.)	N/A	4	N/A	N/A	5	N/A	N/A	N/A	1
Recognition of their activities as exclusive or specific	3	3	N/A	N/A	N/A	N/A	N/A	N/A	1
Right to lead a traditional life-style	4	N/A	N/A	N/A	N/A	N/A	N/A	4	3
Right to land property, territorial rights, collective or not	3	4	N/A	N/A	5	2	2 or 1	2	0
Right to use ancestral lands and territories	4	5	N/A	N/A	5	3	3	3	2
Indigenous toponymy	N/A	4	N/A	N/A	4	2	2	2	1
Right for resources' use and exploitation	3	3	N/A	N/A	4	2	2	2	0

Respect for indigenous knowledge, cultures and traditional practices (spiritual habits, way of life, clothes)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Responsibility for upbringing, training, education of the children	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Accession to employment without discrimination	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Indigenous courts of justice or juridicial systems. Indigenous law	N/A	2	N/A	N/A	3	1	1	1	0

N/A: non available data.

Table 8: Indigenous peoples' political representation at national level

Country or region Political representation criteria	Alaska (UNITED STATES)	CANADA	Greenland (DENMARK)	NORWAY	SWEDEN	FINLAND	RUSSIA
Representation at local and regional level (within territorial authorities, regional parliament)	N/A	N/A	N/A	4	4	4	0 (at the exception of the Khanty-Mansiiskokrug)
Indigenous Parliament	N/A	N/A	5	4	4	4	0
Representatives within the national Parliament	Not relevant	1 ¹⁵¹	3	0	N/A	N/A	0
Indigenous political parties	0	1 ¹⁵²	5	1 ¹⁵³	N/A	N/A	0
Representation within a mainstream political party	N/A	N/A	5	N/A	N/A	N/A	0
self-government (own government and	2 ¹⁵⁴	3 ¹⁵⁵	4	1	1	1	0

¹⁵¹ The seven Canadian Members of Parliament of First Nations, Inuit, or Métis origin “occupy 2.3% of the seats in the House of Commons, while aboriginals represent 3.8% of the population (according to the 2006 census, the last to report the aboriginal population)”. Source: Grenier, Éric (2013). *Natives are under-represented in Parliament – and for women and youth, it's even worse*. The Globe and Mail. (<http://www.theglobeandmail.com/news/politics/natives-are-under-represented-in-parliament-and-for-women-and-youth-its-even-worse/article7573722/>)

¹⁵² Aboriginal Peoples Party of Canada (APP) and First Peoples National Party of Canada (FPNP) (deregistered by Elections Canada on July 5, 2013).

¹⁵³ Sami People's Party, founded on 15 October 1999, no parliamentary representation.

¹⁵⁴ « Tribes possess all powers of self-government except those relinquished under treaty with the United States, those that Congress has expressly extinguished, and those that federal courts have ruled are subject to existing federal law or are inconsistent with overriding national policies. Tribes, therefore, possess the right to form their own governments; to make and enforce laws, both civil and criminal; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands ». US Department of the Interior, Indian Affairs. (<http://www.bia.gov/FAQs/>)

¹⁵⁵“The final report (*report of the Royal Commission on Aboriginal Peoples*) offered a vision of a renewed nation-to-nation relationship based on the Aboriginal right of self-government”. Source : Rice, Roberta (2013). *Indigenous Representation and Political Parties in Canada and Latin America*. The Oxford Handbook of Indigenous People's Politics.

political institutions)							
Right to influence on decision-making impacting on them (decision taken into account by the national Parliament	2 ¹⁵⁶	3	4	N/A	N/A	N/A	1 in theory, 0 in practice
Representation by non-governmental associations	4	5	N/A	5	5	5	3

The main areas and themes that are not regularized by national law dispositions (or no sufficiently) are:

1. In Alaska: property rights on lands, right to resources' self-management in a long-term perspective, political representation and language status.
2. In Canada: self-government at the exception from the Nunavut, language and traditional activities' status, right to live from these activities and to commerce resources.
3. Norway, Sweden, Finland: land property, specific status and specific activities, political representation
4. Russia: land property and access, resources' management, political representation, language and indigenous status.

¹⁵⁶ O'Malley, Julia (2014). *Alaska: Where Native groups have corporations – and political heft*. "In Alaska, especially for moderate or liberal candidates, the Native voting bloc has the power to tilt close elections". Al Jazeera America.

(<http://america.aljazeera.com/articles/2014/11/3/alaska-where-nativegroupshavecorporationsandpoliticalheft.html>)

This assessment shows that a study of Arctic indigenous peoples' participation in governance offers a very diversified portrait and that there is no global system of governance applied at these populations. Nonetheless, indigenous communities in the Arctic are among the most active in the world to defend the implementation of their rights. This can be partly explained by their high resilience and adaptation to changes as well as solid social structures. On the other hand, the strong national and international focus on the region's economic potential, the attention of the scientific community on the effects of climate change in the Arctic and the fact that, despite drastic social problems in many parts of the Arctic, indigenous communities are well informed of their rights and live in states with important material capacities, might also be strong components of their dynamism.

If important international instruments produce guidelines for the participation of indigenous populations in decision-making, their rights and means of political influence in the Arctic are dependent on the decisions of national governments. This is not to say that these recommendations have no influence at all, as they indicate the recognition of indigenous peoples' political rights on the international stage and are likely to encourage national indigenous organizations to pursue their demands for increased participation in decisions affecting them. The activism of indigenous representatives towards international institutions certainly plays an important role in this evolution. As the « unique body for cooperation of indigenous peoples and governments », the Arctic Council is seen as an encouraging supranational instrument, but it must be remembered that the opportunity it provides for indigenous representatives to collaborate to the Council's activities (i.e. about environmental issues) doesn't provide options to deal with governance matters. Moreover, although the Council's indigenous Permanent Participants provide advice to ministers of foreign affairs, they do not have a vote and "lack of full participation in the organization's working groups and activities", notably because "they are required to raise the funds domestically".¹⁵⁷

An important network of indigenous organizations exist at national and supranational level throughout the Arctic. This both indicates that while aboriginal populations are increasingly aware of and encouraged by international recommendations for their inclusion in decision-making processes, their representation in traditional national institutions are still considered by them as insufficient.

Within each Arctic state, important disparities exist for the participation of indigenous peoples to political choices and decisions affecting them and it is difficult to distinguish a global « pan-Arctic » trend in the evolution of indigenous political participation. As an example, Sámi people of Fennoscandia have created, under national governments funding, three Sámi Parliaments, while the Russian government has until

¹⁵⁷ Baldesarra, Julia (March 2014). *Having a Say in the North: Indigenous Cooperation and the Arctic Council*. The Atlantic Council of Canada. <http://natocouncil.ca/having-a-say-in-the-north-indigenous-cooperation-and-the-arctic-council/>

now refused the creation of such a Parliament by Russian Sámi¹⁵⁸. However, an important event occurred in Mourmansk oblast on 22 November 2014 at the 3rd Congress of the Saami organized with support of the Government of the Murmansk region¹⁵⁹ : “the establishment of the “Union of Russian Saami”, which for the first time units all the regional organisations of the indigenous Saami people”. The Saami congress also “instructed the elected assembly to develop the constitutive documents of the “Union of Russian Saami” and to register it within relevant state authorities in accordance with the legislation of the Russian Federation”.

Under the Self-Government Act, Greenland appears as the Arctic country where indigenous peoples have the highest means of participation in governance decisions. On the other hand, indigenous groups of the Russian Federation (besides regional disparities) seem to enjoy the less developed means of political influence. The report of the 4th Sámi Parliamentary Conference held on 20 February 2014¹⁶⁰ expresses indeed “a deep concern for the indigenous peoples in Russia, foremost the Sámi , where the situation in Russia has deteriorated and appeals to the Russian state to improve the rights of indigenous peoples”. The same concern was expressed in 2010 by Eva Josefsen¹⁶¹ : “The Saami in Russia still labour under very difficult framework conditions, both economically, socially and politically”. In Canada, Eric Grenier observed that native populations were under-represented in Parliament. Indigenous political parties are also practically inexistent in the country.

Still, another mean of studying indigenous peoples’ participation in political decisions is to consider their influence on national elections. While this indicator might weight differently between Arctic states (which is in itself an important indication), in Alaska for example, “especially for moderate or liberal candidates, the Native voting bloc has the power to tilt close elections ». In Finland, Sweden and Norway, Eva Josefsen also notes that Sámi have obtained central positions in several parties which “have also committed themselves with respect to Sámi policy by approving Sámi political programmes to varying degrees” and that “this is a definite advantage, because the Sámi then have an opportunity to exert direct influence on the parties’ viewpoints”¹⁶². However, disparities of Sámi representation in national parties remain between Finland, Sweden and Norway (Norway being the country where Sámi have more possibilities of influencing the national Parliament¹⁶³) and they represent only a minority of voters.

¹⁵⁸ Karlsbakk, Jonas (December 2008). *Fighting for Sami parliament in Russia*. Barents Observer. (<http://barentsobserver.com/en/node/20706>)

¹⁵⁹ III Congress of the Saami – the indigenous people of the Kola Peninsula. (<http://finugor.ru/en/iii-congress-saami-indigenous-people-kola-peninsula>)

¹⁶⁰ 4th Sami Parliamentary Conference, held on 20 February 2014 in Umeje/Umeå, for Sami Commissioners from Finnish, Norwegian and Swedish Sami parliaments and participation by Russian Sami representatives.

¹⁶¹ Josefsen, Eva (2010). *The Saami and the national parliaments: Channels for political influence*. Promoting inclusive parliaments: The representation of minorities and indigenous peoples in parliament. Inter-Parliamentary Union and United Nations Development Programme.

¹⁶² Ibid.

¹⁶³ Ibid.

Arctic indigenous peoples means of political representation hence appears as more reliant on parallel instruments such as NGOs than on an effective representation at national Parliament level and through influential political parties. An observation shared by Mikkel Berg-Nordlie¹⁶⁴ : “political network may be analytically split into a non-state and a state-based sector. In the former we find a host of more and less formalized networks of people and NGOs. (...) On the other hand, in the phere of pan-Sámi cooperation and project activity based around official structures, one might say that the ‘top level’ is constituted by the Sámi Parliamentary Council (SPC) launched in 2000 to unite the three Sámi Parliaments”. Arctic indigenous peoples participation in governance can then be summarized as “political expression” rather than effective means of “political influence”. In 2005, Sven Rönqvist of Sverige Radio (Sweden) noted that the “Sámi Parliament had no real power”.¹⁶⁵

Five out of seven Arctic states have not ratified ILO Conventions 169, and it is likely that the issue of land rights stands as a major obstacle. Apart from Greenland, whose government is responsible for the inshore and offshore mineral resource area (including oil and gas resources), when land and resource management is concerned, most indigenous peoples have no or only limited power of decision¹⁶⁶. Indeed, while the cultural aspects of the indigenous demands are usually more easily taken into account by the states in which indigenous peoples live, the “hard” part of their demands deals with land ownership, resource management on their territories and self-governance¹⁶⁷.

Among Arctic indigenous cultures, Inuit communities are those with the closest link with the marine environment. While the Labrador Inuit Land Claims Agreement recognizes the right of the Labrador Inuit “to the adjacent ocean zone extending to the limit of Canada’s territorial sea”, Inuit communities don’t have “any measure of direct, meaningful and effective participation” in the preparation of the UN Convention on the Law of the Sea (UNCLOS) content.¹⁶⁸ Another example is the 2008 Ilulissat Declaration related to the governance regime of the Arctic Ocean and which lacked in the representation of indigenous Permanent Participants of the Arctic Council.¹⁶⁹

Still, as Mrs Therrien observed, progress in participation into decision-making, in political representation and in development, doesn’t mean that the concrete situation for individuals and their individual well-being actually makes progress. An important element also revealed for this assessment was the potential gap existing between indigenous leaders claims and local communities needs.

¹⁶⁴ Berg-Nordlie, M. (2013). *The Iron Curtain through Sápmi. Pan-Sámi politics, Nordic cooperation and the Russian Sámi*. Anderson, K. (Ed) L'image du Sápmi II. Humanistica Oerebroensia. Artes et lingua nr 16, pp. 368-391.

<http://iloapp.nibrinternational.no/blog/sapmi-russia?ShowFile&doc=1381312081.pdf>

¹⁶⁵ S. Rönqvist, Sven (May 2005). *Sametinget har ingen egentlig makt*. Sverige Radio.

<http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=610740>

¹⁶⁶ Ibid. : “Article 1 on self-determination on the Convention on Civil and Political Rights also applies to indigenous peoples and their right to decide on the use of natural resources”.

¹⁶⁷ S. Lightfoot, an specialist on Ojibwe, observes that a form of compliance is often concentrated in regard with “soft rights,” such as rights to language and culture, while states systematically deny “hard rights,” such as rights to land (in Charrin et alii, 1995).

¹⁶⁸ D. Sambo-Dorough.

¹⁶⁹ See note 10 Signed by signed by Canada, Denmark, Norway, Russia and the United States, the Declaration asserted a new international legal regime to govern the Arctic Ocean was not needed.

It is suggested that future studies of Arctic indigenous peoples' effective participation in governance concentrates on:

- indigenous peoples' direct representation in municipal, regional and national political institutions where they can have a concrete influence on decision-making and study how effective this influence really is,
- the weight of indigenous peoples' vote in regional and national elections and on national parliaments through national parties,
- comparisons between indigenous peoples demands at community level with the discourse of indigenous leaders. This can be done by developing more contacts and consultations while paying attention to sending research feedback,
- the evolution of indigenous peoples' rights on inshore and offshore resource management,
- the specific aspects of Arctic marine governance, in particular with regard to the participation of a potential international agreement on the Arctic Ocean,
- the role of traditional knowledge in existing governance arrangements in the Arctic.

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ACRONYMS

AAC : Arctic Athabaskan Council
AKS : Association of Kola Sámi
BEAC : Barents Euro-Arctic Council
CITES : Convention on International Trade in Endangered Species
EC : European Commission
ECOSOC : Economic and Social Council of the United Nations
EP : European Parliament
EU : European Union
ICC : Inuit Circumpolar Council
IPCC : International Porcupine Caribou Commission
ILO : International Labor Organization
ITK : Inuit Tapiriit Kanatami
IWGIA : International Work Group for Indigenous Affairs
KMNS : Korennye Malochislennye Narody Severa (*native small-numbered peoples of the North*)

(AKMNSSDV : Korennye Malochislennye Narody Severa, Sibiri i Dalnego Vostoka Rossiyskogo Federatsii" :*native small-numbered peoples of the North, Siberia and the Far East of the Russian Federation*)

NED : National Energy Board

NWT : Northwest Territories

NTI : Nunavut Tunngavik Incorporated

UPR : Universal Periodic Review

OOSMO : Official Organisation of Sámi in Murmansk Oblast

RAIPON : Russian Association of Indigenous Peoples of the North and the Siberia and the Far East.

UN : United Nations

UNDRIP: United Nations Declaration on the Raights of Indigenous Peoples

UPR: United Nations Working Group on the Universal Periodic Review

USA : United States of America