

# Current Developments in Arctic Law

Volume 2, 2014

Edited By

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**UArctic**

Thematic Networks

# **Current Developments in Arctic Law**

**Volume II (2014)**

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**Timo Koivurova**

**Waliul Hasanat**

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## Table of Contents

### Editorial Note

<i>Timo Koivurova and Waliul Hasanat</i> .....	1
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### A. Short Articles

1. Arctic High Seas Fisheries Management - Current Deficits and Recent Developments <i>Lilly Weidemann</i> .....	3
2. New Entity in the Circumpolar North – the Arctic Economic Council <i>Natalia Loukacheva</i> .....	10
3. An Initiative of the Arctic Council to Promote Arctic Sovereignty <i>Waliul Hasanat</i> .....	13
4. The European Union and the Governance of Arctic Offshore Oil and Gas Operations <i>Nengye Liu</i> .....	15
5. Protecting Human Rights in the Arctic through Amendments to the STCW Convention <i>Stefan Kirchner</i> .....	17
6. Notes on the Contemporary Legal-political Situation of the Sami in the Nordic region <i>Dawid Bunikowski</i> .....	20
7. Contemporary Perspectives of Sami Rights Related to Mining Activities <i>Anna Petréttei</i> .....	26
8. Current Development of the Polar Code <i>Nengye Liu</i> .....	28
9. Marine Mammal Regulation in the Arctic: Report for 2014 <i>Richard Caddell</i> .....	30

## B. Projects and Reports

10. Human Security As a Promotional Tool for Societal Security in the Arctic: Addressing Multiple Vulnerability to its Population with Specific Reference to the Barents Region (*HuSArctic*)  
*Kamrul Hossain*.....37
11. Justification for Community Sustainability of Religious Minorities in the Finnish Part of Arctic – an Analytical Approach  
*Nafisa Yeasmin*.....41

## C. Academic Courses on Arctic Law

12. Master's Degree Programme in International and Comparative Law- The MICLaw Master Programme (120 ECTS) with Specializations in Arctic Law and Governance  
*Päivi Martin*.....47

## Editorial Note

Much is happening in the field of Arctic law, as is well shown by this second edition of the *Current Developments in Arctic Law*. Soft-law documents and recommendations of the Arctic Council continue to be important source of “gently” harmonizing the way the Arctic nation-states apply and interpret the national legal provisions in Arctic conditions. In addition to this, hard-law has started to gain ground in the Arctic. The two agreements negotiated under the auspices of the Arctic Council, on search and rescue and oil spills, negotiations to complete the legally binding Polar Code that regulates navigation (also) in the Arctic and tentative discussions of an Arctic fisheries agreement have certainly provoked interest in Arctic legal issues. Moreover, various kinds of national, Arctic-specific legal regulations have also been issued by nation-states, such as the Act on the Northern Sea Route by the Russian Federation.

With the *Current Developments in Arctic Law*, we are striving to provide short updates on issues of legal significance taking place in the Arctic. This is extremely important, given the pace of change in this field of legal regulation in the region. We also hope that these short updates may induce younger generations to become inspired of these issues and join our growing scholarly community, within the Arctic and beyond.

Our Thematic Network on Arctic Law (of the University of the Arctic) is truly a unique association of mostly legal scholars but also other legal professionals. There is no similar Arctic law focused grouping, and our membership is growing exponentially. It is this unique Arctic Law Thematic Network that has put together this second edition of the *Current Developments in Arctic Law* – an electronic publication. We want to thank the whole Network and especially the contributing authors for providing these updates, which are widely disseminated and read throughout the Arctic but also beyond.

Sincerely,

Research professor Timo Koivurova

Dr. Waliul Hasanat

Rovaniemi, 16 December 2014

## **Section A: Short Articles**

## Arctic High Seas Fisheries Management- Current Deficits and Recent Developments

*Lilly Weidemann\**

Some of the world's largest, commercially exploited fish stocks inhabit the Arctic region.<sup>1</sup> The area is the habitat to more than 150 different species, with the key species being Greenland halibut, polar cod, Atlantic and Pacific cod, Greenland cod, walleye Pollock, capelin, long rough dab, yellowfin sole, Atlantic and Pacific herring, and redfish.<sup>2</sup>

Climate change is expected to impact on fish stocks by causing major alterations in their distribution and abundance<sup>3</sup>. In the Arctic – a region particularly sensitive to global warming – these changes have already occurred, including northward range shifts for several subarctic and even temperate species. The range shifts of predators resulted in greater abundance of key organisms and a rearrangement of food webs and communities, whereas the abundance and reproduction of some Arctic species declined.<sup>4</sup>

Since it is difficult to predict the consequences that a further warming of the Arctic will have on species' abundance, composition and distribution in the future<sup>5</sup>, it is also uncertain where and with regard to which species new fishing opportunities will arise.<sup>6</sup>

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\* Ph.D., Administrative Judge, Administrative Court Bremen, alumna of the *International Max Planck Research School for Maritime Affairs*. The views expressed in this paper are those of the author. This paper deals with marine capture fisheries. Therefore, the management of marine mammals, freshwater fisheries and aquaculture are beyond its scope.

<sup>1</sup> WWF-Norway, WWF International Arctic Programme, Factsheet, Effects of Climate Change on Arctic Fish, Oslo, February 2008, at 1. There is no universally accepted geographical definition of the area that comprises the Arctic (Henry Huntington *et al.*, "An Introduction to the Arctic Climate Impact Assessment", in ACIA, *Arctic Climate Impact Assessment*, Cambridge University Press, New York 2005, at 2). For the purpose of this paper, the definition of the Arctic Monitoring and Assessment Programme, one of the Arctic Council's Working Groups, is taken as a basis. For this definition see "Arctic Pollution Issues: A State of the Arctic Environment Report", Oslo: AMAP, 1997, at 6.

<sup>2</sup> "AMAP Assessment Report: Arctic Pollution Issues", Oslo: AMAP, 1998, at 132.

<sup>3</sup> M McBride *et al.*, "Krill, Climate, and Contrasting Future Scenarios for Arctic and Antarctic Fisheries" *ICES Journal of Marine Science*, vol. 71:7 (2014) 1934-1955, at 1934.

<sup>4</sup> P Wassmann *et al.*, "Footprints of Climate Change in the Arctic Marine Ecosystem" *Global Change Biology*, vol. 17 (2011), 1235–1249 at 1238.

<sup>5</sup> Some fish stocks may collapse, others may benefit from the climatic changes and new species could establish themselves in the Arctic, see E J Molenaar, "Arctic Fisheries Management", in E J Molenaar, A G O Elferink and D

However, it seems highly likely that with the receding and thinning sea ice commercial fleets will sooner or later follow the northward migration of Arctic fish stocks, entering previously inaccessible high seas areas of the marine Arctic.<sup>7</sup> As soon as it becomes commercially viable, fishing activities are in particular expected to extend to the high seas area of the central Arctic Ocean,<sup>8</sup> which comprises an area of 2.8 million km<sup>2</sup>.<sup>9</sup>

This prospect raised the question whether the current legal and institutional regime that applies to the Arctic high seas areas is adequate for safeguarding sustainable management of the respective fish stocks.<sup>10</sup>

In addition to the effects that climate change has on the fish stocks themselves, it has also to be taken into consideration that other commercial activities will compete with fishing in a temporal and spatial sense, as with the retreating sea ice also shipping activities and oil and gas exploitation are expected to expand, tentatively causing additional stress to the fish stocks.<sup>11</sup>

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R Rothwell (eds.), *The Law of the Sea and the Polar Regions – Interactions Between Global and Regional Regimes*, Martinus Nijhoff Publishers, Leiden 2013, 243-266 at 244.

<sup>6</sup> E J Molenaar and R Corell, “Arctic Fisheries: Background Paper”, *Arctic Transform*, 9 February 2009, at 10.

<sup>7</sup> In addition to the central Arctic Ocean, there are three pockets of high seas in the seas bordering the Arctic Ocean: the “Banana” hole in the Norwegian Sea, the “Loophole” in the Barents Sea and the “Doughnut” hole in the Bering Sea, see E J Molenaar, “Climate Change and Arctic Fisheries”, in T Koivurova, E C Keskitalo and N Bankes, *Climate governance in the Arctic*, Springer Netherlands, Dordrecht 2009, 145-170 at 150.

<sup>8</sup> However, scientist came to the conclusion that commercial fisheries are not likely to commence in the central Arctic Ocean in the short term, see Report of a Meeting of Scientific Experts on Fish Stocks in the Arctic Ocean, Anchorage, Alaska, 15-17 June 2011, at 3, available at, <https://drive.google.com/file/d/0B7Ms4DWISy9SUFHMMW9TbTZLWs/view?pli=1> (accessed 30 November 2014).

<sup>9</sup> See Report of 2<sup>nd</sup> Scientific Meeting on Arctic Fish Stocks, Tromsø, 28-31 October 2013, at 1, available at <https://docs.google.com/file/d/0B3KmDd5a2QBOV1IIT29aX0RwdLU/edit?pli=1> (accessed 30 November 2014).

<sup>10</sup> See recently e.g., Arne Riedel, “Regulation of Fisheries in the Arctic High Seas – Going Forward with a Sidestep?”, *Current Developments in Arctic Law*, vol. 1 (2013), at 42-44; E J Molenaar, “Arctic Fisheries Management“, *supra* note 7; L Weidemann, *International Governance of the Arctic Marine Environment - With Particular Emphasis on High Seas Fisheries*, Springer International Publishing, Switzerland 2014.

<sup>11</sup> E J Molenaar, “Arctic Fisheries Conservation and Management: Initial Steps of Reform of the International Legal Framework”, *The Yearbook of Polar Law*, Vol. 1 (2009), 427-464 at 433.



However, as the Arctic Climate Impact Assessment (ACIA) Report noted, the consequences of climate change will probably be less important in determining the future of fisheries in the marine Arctic than the effectiveness of resource management regimes.<sup>12</sup>

Future fishing activities in the high seas areas that are not yet the target of commercial fleets would not take place in a legal void, as the global legal instruments concerning fisheries apply to the Arctic as well. The legal framework for high seas fisheries in the Arctic include the United Nations Convention on the Law of the Sea (UNCLOS)<sup>13</sup>, the UN Fish Stocks Agreement (FSA)<sup>14</sup>, the FAO Compliance Agreement and Code of Conduct for Responsible Fisheries<sup>15</sup>, the Agreement on Port State Measures to Prevent IUU Fishing<sup>16</sup>, the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas<sup>17</sup> and the Convention on Biological Diversity (CBD)<sup>18</sup>.

Also, a multitude of organisations has competence over different parts of the Arctic high seas. These comprise global organisations as well as Regional Fisheries Management Organisations or Arrangements (RFMO/As) and bilateral fisheries bodies.

Among the relevant organisations are the United Nations General Assembly (UNGA) and the Food and Agricultural Organization (FAO) as international fora. RFMO/As that implicitly or explicitly apply to parts of the marine Arctic excluding the Arctic Ocean are the Conference of the Parties (COP) to the Central Bering Sea (CBS) Convention<sup>19</sup>, the International Pacific

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<sup>12</sup> Hjalmar Vilhjálmsson *et al.*, “Fisheries and Aquaculture” in ACIA *supra* note 1, at 770.

<sup>13</sup> United Nations Convention on the Law of the Sea of 10 December 1982 (1833 UNTS 396).

<sup>14</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (2167 UNTS 3).

<sup>15</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993, *International Legal Materials* (1994), 33:968.

<sup>16</sup> Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, approved by the FAO Conference on 22 November 2009.

<sup>17</sup> FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas of 29 August 2008.

<sup>18</sup> Convention on Biological Diversity of 5 June 1992, *International Legal Materials* (1992) 31:822.

<sup>19</sup> Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea of 16 June 1994, *International Legal Materials* (1995) 34:67.

Halibut Commission (IPHC)<sup>20</sup>, the North Anadromous Fish Commission (NPAFC)<sup>21</sup>, the Western and Central Pacific Fisheries Commission (WCPFC)<sup>22</sup>, the Northwest Atlantic Fisheries Organization (NAFO)<sup>23</sup> and the Loophole Agreement<sup>24</sup>. RFMO/As that are (potentially) applicable to the central Arctic Ocean are the North-East Atlantic Fisheries Commission (NEAFC)<sup>25</sup>, the North Atlantic Salmon Conservation Organization (NASCO)<sup>26</sup> and the International Commission for the Conservation of Atlantic Tunas (ICCAT)<sup>27</sup>.

Yet, although this overview shows that there is a plethora of applicable legal instruments and competent management bodies, sustainable management of Arctic high seas fish stocks is not guaranteed, since both the legal and the institutional framework suffer from various shortcomings.

First of all, there is an information deficit regarding high seas fisheries. Successful management depends on reliable and accurate data about the states of fish stocks and dependent species. Concerning the Arctic, this knowledge base is still insufficient.<sup>28</sup>

Secondly, the legal regime applicable to high seas fisheries shows several deficits. For example, the FSA falls short of covering all fish stocks in the high seas as it applies only to

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<sup>20</sup> Established by the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and The Bering Sea of 2 March 1953, (222 UNTS 78). Exchange of Notes Constituting an Agreement to Amend the [IPHC Convention] of 29 March 1979 (1168 UNTS 380).

<sup>21</sup> Established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean of 11 February 1992, 22 *Law of the Sea Bulletin* 21 (1993).

<sup>22</sup> Established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean of 5 September 2000 (2275 UNTS 46).

<sup>23</sup> Established by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries of 24 October 1978 (1135 UNTS 369), Amendment of 28 September 2007 (not yet in force).

<sup>24</sup> Established by the Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation Concerning Certain Aspects of Co-operation in the Area of Fisheries of 15 May 1999, 41 *Law of the Sea Bulletin* 53 (1999).

<sup>25</sup> Established by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries of 18 November 1980 (1285 UNTS 129).

<sup>26</sup> Established by the Convention for the Conservation of Salmon in the North Atlantic Ocean of 2 March 1982 (1338 UNTS 33).

<sup>27</sup> Established by the International Convention for the Conservation of Atlantic Tuna of 14 May 1966 (673 UNTS 63), as amended.

<sup>28</sup> Molenaar *supra* note 7, at 165.

straddling and highly migratory fish stocks, thus *inter alia* neglecting discrete high seas fish stocks. Furthermore, the applicable legal instruments lack a universal participation of all states that may become engaged in fisheries in the Arctic high seas. For instance, although all Arctic states are parties to the FSA, important long-distance fishing nations have not become parties so far.<sup>29</sup>

Moreover, the institutional regime also suffers from various inadequacies. Apart from the deficiencies that exist within the different RFMO/A regimes, such as an insufficient appliance of the ecosystem or precautionary approach and the problem of addressing illegal, unreported and unregulated (IUU) fishing in the vast and inhospitable Arctic high seas areas, a major deficit is the incomplete coverage of these areas by RFMO/As competent for managing all relevant fish stocks. Concerning the central Arctic Ocean, NEAFC has a mandate over the “European” wedge, while other sectors in the central Arctic Ocean do not have an RFMO/A at all.<sup>30</sup> This is a reason for concern as these organisations or arrangements are prescribed a key role in fisheries management by the FSA.

The prospect of unregulated fishing especially in the central Arctic Ocean high seas have recently led to several decisions taken by some of the Arctic States.<sup>31</sup> While the Arctic Council in 2007 made it clear that it did not want to become involved in Arctic fisheries management issues,<sup>32</sup> the USA took a proactive approach through Senate Joint Resolution 17 calling for the negotiations of “an agreement or agreements for managing migratory, transboundary, and straddling fish stocks in the Arctic Ocean and establishing a new international fisheries

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<sup>29</sup> M W Lodge and S N Nandan, “Some Suggestions Towards Better Implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995”, *International Journal of Marine and Coastal Law* 20 (2005), 345-379 at 354.

<sup>30</sup> See Molenaar and Corell *supra* note 6, at 25.

<sup>31</sup> The states considered as “Arctic States” depend on the spatial definition of the region. Generally, the Arctic States have been referred to as the “Arctic Eight”, including those states that have either land territory north of the Arctic Circle or that are coastal states bordering the Arctic Ocean (Canada, Denmark with Greenland and the Faroe Islands, Finland, Iceland, Norway, Sweden, Russia and the United States of America), see D. R. Rothwell “The Arctic in International Affairs: Time for a New Regime?” *The Brown Journal of World Affairs* XV, no. 1 (2008): 241-253, at 241 and footnote 4. However, sometimes only the “Arctic Five” or the coastal states are regarded as Arctic States, see e.g., B. van Pay, “National Maritime Claims in the Arctic”, in M H Nordquist, J N Moore and T H Heidar (eds.), *Changes in the Arctic environment and the law of the sea*, Martinus Nijhoff Publishers, Leiden 2010, 61-77 at 65.

<sup>32</sup> Meeting of Senior Arctic Officials of the Arctic Council, Final Report, 28-29 November 2007, Narvik, Norway, at 12.

management organization or organizations for the region”, and seeking halt in the expansion of Arctic commercial fishing activities until this is achieved.<sup>33</sup>

Whereas the Arctic coastal states<sup>34</sup> except for the USA opposed the proposal by the European Union to include a call for regional Arctic fisheries regulations in the 2009 UNGA Sustainable Fisheries Resolution<sup>35</sup>, the “Arctic Five” have held several meetings on fisheries issues at the level of senior officials (one in Oslo in 2010<sup>36</sup> and one in Washington in 2013<sup>37</sup>) in addition to meetings of scientific experts dealing with Arctic Ocean fish stocks (one in Anchorage in 2011<sup>38</sup> and one in Tromsø in 2013<sup>39</sup>). The most recent meeting of the senior Arctic officials took place in Nuuk in February 2014.<sup>40</sup> In that meeting, the senior officials reaffirmed that “commercial fishing in the high seas area of the central Arctic Ocean is unlikely to occur in the near future [...] [and] that there is no need at present to develop any additional regional fisheries management organization (RFMO) or arrangement for this area.” However, the meeting also “agreed on the desirability of developing appropriate interim measures to deter unregulated fishing in the future in the high seas area of the central Arctic Ocean”. Although the development of a Ministerial Declaration based on these affirmations was envisaged for signature or adoption in June 2014, this has not taken place so far and it is unclear whether the finalization of such a declaration is still planned.

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<sup>33</sup> S J Res. from January 3rd, 2008 (11th Congress 2007-2009), available at, <https://www.govtrack.us/congress/bills/110/sjres17/text> (accessed 30 November 2014).

<sup>34</sup> Canada, Denmark (Greenland), Norway, Russia and the USA.

<sup>35</sup> See European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Document, The inventory of activities in the framework of developing a European Union Arctic Policy Brussels, 26 June 2012, SWD (2012) 182 final, at 22.

<sup>36</sup> 22 June 2010 in Oslo, Norway; Chair’s Summary available at, [http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/chair\\_summary100622.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/Folkerett/chair_summary100622.pdf), (accessed 30 November 2014).

<sup>37</sup> 1 May 2013 in Washington, DC; Chairman’s Statement available at, <http://www.state.gov/e/oes/rls/pr/2013/209176.htm>, (accessed 30 November 2014).

<sup>38</sup> See *supra* note 8.

<sup>39</sup> See *supra* note 9.

<sup>40</sup> Nuuk, Greenland, 24-26 February 2014; Chairman’s Statement available at, <http://naalakkersuisut.gl/~media/Nanoq/Images/Nyheder/250214/Chairmans%20Statement%20from%20Nuuk%20Meeting%20February%202014%202.docx>, (accessed 30 November 2014).

Interestingly, although stressing that “it is appropriate for the States whose exclusive economic zones border the high seas area in question to take the initiative on this matter“, the Arctic Five also “reaffirmed that other States may have an interest in this topic and looked forward to a broader process involving additional States beginning before the end of 2014”. Although this has not materialised so far, it shows that the Arctic coastal states acknowledge the importance of the engagement of non-Arctic states for the creation of a legal instrument concerning high seas fisheries in the central Arctic Ocean.

In fact, in light of the freedom of the high seas, broader participation in an agreement on fisheries in that area is paramount for the legitimacy and success of such an instrument. It is desirable that this approach will be pursued by the Arctic coastal states and that the process for the creation of such an agreement will continue, favourably for it to be in force before fishing activities commence in the central Arctic Ocean.

## New Entity in the Circumpolar North – the Arctic Economic Council

*Natalia Loukacheva\**

The growing significance of business in the Arctic has led to the focus of one of the key institutions of Arctic governance – the Arctic Council – on a better dialogue with the business community. The formal creation of the Arctic Economic Council (AEC) on September 2, 2014 – seems like a timely measure to tackle the gap in communication between the business community and the Arctic Council. Although, the AEC is still in its early stages of development, none of its practical activities have started yet and it remains to be seen whether it will become a vehicle for business cooperation across the North. Practically, the initiation of this new entity by the Arctic Council is an important step in fostering Circumpolar and global business collaboration. Arguably, this initiative is a promising opportunity for opening new circumpolar business opportunities, sharing best practices of doing business in the North, business to business dialogue, private and public partnerships in the Arctic, with the ultimate goal of improvement of sustainable economic development and prosperity of Northerners in the region.

The creation of the AEC was motivated by current realities. On the one hand, the promising economic potential of the Arctic is often hampered by many challenges posed by the particularities of Northern geography, climate, demography, socio-economic, environmental, political and legal factors. On the other hand, business activities in the Arctic are becoming more prominent, present growing opportunities and attract attention from far beyond the Arctic region. These many challenges and opportunities pose questions for the operation of this new entity: How the AEC may contribute best to serve the circumpolar business community, Northern and Indigenous stakeholders? What implications the establishment of the AEC may have to the Northerners and sustainable development of their territories? Further evolution and *de facto* activities of the AEC in the North will show how things develop and benefit Arctic communities.

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The initiation of the AEC by the Arctic Council is an interesting shift in the work of the later. The Arctic Council was established in 1996 with the mandate to address two major areas of concern: environmental protection and sustainable development. Since its inception the Arctic Council has been tackling many topics and issued numerous reports that have a practical and scientific interest for business community but, until recently, the Arctic Council would not directly frame questions of business (including trade and investments) as its priority. The focus on economic development and establishment of the AEC is one of the top goals of the current Canadian Chairmanship in the Arctic Council. This shift in the Arctic Council's work is an example of the Council's ability to respond to the most calling issues in the Arctic. The 2013 Kiruna Declaration of the Ministerial Meeting of the Arctic Council, and the Kiruna Vision for the Arctic have both emphasized the vital role of business in Arctic developments and need for further interaction with business community to advance sustainable development of the region for the benefit of people of the North with due respect to the environment and responsible resource activities as one of the priorities of the Arctic Council. Further, the Arctic Council's Task Force on the Circumpolar Business Forum has developed a report on the establishment of the AEC in 2013. In 2014 recommendations on the AEC were further developed by Senior Arctic Officials of the eight Arctic States. As noted, in September 2014 the AEC was formally established in Canada's Iqaluit (Nunavut). The founding meeting produced several documents (i.e., discussion paper, terms of reference, conclusions, AEC working group instructions, etc.).

The AEC is an independent organization that according to the terms of reference is created to: Serve as a primary forum for interaction between the Arctic Council and the circumpolar business community; provide advice and a business perspective on specific areas of cooperation in the circumpolar region and the activities of the Arctic Council; and Facilitate Arctic business-to-business and economic development, as well as sharing of best practices, technological solution, standards, and other pertinent information (Terms 2014).

Importantly, the AEC is an independent from the Arctic Council entity even though in some ways the structure of this new entity follows the Arctic Council's model (e.g., working groups, the participation of Indigenous peoples, etc.). The AEC consists of up to 42 representatives (each Arctic state and Permanent Participant organization of the Arctic Council may name up to three business representatives to the AEC- terms, point 15). Thus, one important feature of the AEC is that Indigenous organizations (Permanent Participants of the Arctic

Council) were involved in the consultation process and shaping of the concept of the AEC and now have direct membership in this entity.

The AEC is an independent body with strong connection to the Arctic Council. Thus, the establishment of this new entity has raised concerns by several stakeholders interested in Arctic development (e.g., the link between business and government is criticized by some environmental NGOs (i.e., Greenpeace). Other critics raise concerns regarding the continuity of this new entity under the 2015 US Chairmanship in the Arctic Council and the benefits of the AEC compared to the existing structures and initiatives dealing with business in the Arctic, etc.). It remains to be seen how efficient the AEC will become. It is clear, however, that the Arctic Council intends to keep the AEC as an independent entity with the status similar (or equal to) an observer in the Arctic Council. Anyway, cooperation of the AEC with the Arctic Council is essential for assuring that interests of economic development of the Arctic territories are consistent with the interests of its inhabitants, Northern communities, including Indigenous peoples. The AEC may bring additional opportunities in helping aboriginal businesses and development of small and medium size Indigenous enterprises including, in simple terms, some money from big business.

Further developments will show whether the AEC is capable of meeting its initial objectives. However, now it is clear that the AEC is deemed to foster sustainable development in the Arctic with respect to environmental protection. It is also expected that businesses among themselves and not governments will coordinate initiatives directed at such development. The AEC is also a new step in the strengthening of the Arctic Council. At the same time, the pattern of relationships between the Arctic Council and the AEC will be shaped and tested in the future.



## An Initiative of the Arctic Council to Promote Arctic Sovereignty

*Waliul Hasanat\**

The Arctic Council is a soft-law form of cooperation established by the Arctic states: the members are Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and the USA. The main objectives of the Arctic Council are to promote sustainable development in the Arctic and protection of Arctic environment. However, due to its soft-law character, the Council cannot create any legally binding obligation to its member states or associated entities applicable under public international law, rather it creates guidelines, principles along with establish conceptual norms in international law. The Council supplies noteworthy information to the policy makers and general public so that they can be well-informed about the concerns of happenings in the region and be decisive on their future actions, although the Council has been taking more responsible stands including playing key role in negotiating international treaties which provisions are legally binding to all Arctic states.

The concept of sovereignty is a core issue in international law. However, due to recent phenomena such as environmental degradation, trans-boundary pollution, consequences of climate change etc. have made the concept somewhat loose compared to the established sovereignty under classical international law. Neither these phenomena respect any territorial boundary of states, nor does the involvement of single state seem sufficient to protect its own territory from the negative consequences of those phenomena. Thus, the concept of 'exclusive sovereignty' of states, a Westphalian character of international law, has become restricted and in many cases transformed into 'limited sovereignty' or 'responsible sovereignty' on one hand; while, the concept of 'common heritage of mankind' has been also connected to 'common concern of humankind' on the other hand. All of these encourage states to be more responsible while exercising their rights allowed by public international law.

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This type of states' accountability generated mainly from environmental viewpoint such as protection of environment, conservation of nature and biodiversity, protection of cultural heritage, and so on. A few examples of the similar kind of concept relating to sovereignty are 'environmental sovereignty', 'polar sovereignty' and 'Arctic sovereignty'.

The Arctic Council has been trying to involve non-Arctic states (along with intergovernmental and inter-parliamentary organizations) in its activity by providing them with observer status; while, the number of interested states to be observer has grown up to a significant level. The Council has recently set a number of criteria in admitting its observers. One of the criteria includes recognizing Arctic states' sovereignty, sovereign rights and jurisdiction in the Arctic. This criterion is applicable to newly accredited states and also to old ones. Twelve states from Europe and Asia (along with the European Union) have agreed to this new criterion in principle. The Arctic States may use this criterion in the future when the Arctic Ocean becomes more open for shipping, fishing and exploiting resources due to melting of sea ice as a consequence of climate change and global warming. It may be a challenge that the observer states will refrain themselves from exercising their rights in an open Arctic Ocean provided by the Law of the Sea, which are in fact much stronger compared to this informal recognition of Arctic states' sovereignty over the Arctic, as set-forth by the Arctic Council. However, this initiative of the Arctic Council could be considered as a turning point of rethinking the concept of sovereignty that would serve for the real Arctic interests other than individual states.

## The European Union and the Governance of Arctic Offshore Oil and Gas Operations

*Nengye Liu\**

Ideally, for the protection of vulnerable Arctic, offshore oil and gas drilling in the Arctic should be completely banned. However, a ban seems to be impossible as long as the world economy still depends on fissile fuels. At the same time, current international and regional regime for the regulation of Arctic offshore oil and gas operations is weak and fragmented. Therefore, the EU, as a major player in global energy politics, is obliged to make contribution to enhance current regime for a sustainable future of the Arctic.

The EU seems to have a marginal role in the Arctic policy making due to the fact that the EU has no coastal line in the Arctic. This is in fact not true. There are a number of potential ways in which the EU may be able to play an influential role. The EU has already taken the initial step by requiring companies registered in the EU to report major accidents outside the EU waters, including the Arctic. This obligation could be strengthened, such as the development of common reporting standards, The EU could set up uniform construction design equipment and manning standards regarding the prevention of operational pollution from offshore oil and gas operations in the EU, which might establish a good example for its neighbouring Arctic waters. The European Maritime Safety Agency could be authorized to supervise EU companies' offshore activities in the Arctic. All these could possibly provide a way for the EU to enhance its regulatory role in offshore oil and gas operations in the Arctic. Apart from internal actions, in case the EU could persuade Norway to implement Directive 2013/30/EU,<sup>41</sup> the regulatory role of the EU on offshore oil and gas operations could be much stronger in the Arctic. Finally, it is suggested that the EU should make utmost effort to promote an Arctic-specific legally binding agreement with highest safety standards on offshore oil and gas operations. Even if an international convention on offshore drilling could be adopted in foreseeable future, it is not that meaningful for the Arctic. An international convention has to compromise interests around the

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<sup>41</sup> Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC (Text with EEA relevance) [2013] OJ L178/66.

world, which may not be able to pay too much attention to the Arctic. As a major consumer, importer and technology provider of Arctic energy and raw materials, why the EU shouldn't have a say on offshore oil and gas operations in its neighbouring Arctic waters.

## Protecting Human Rights in the Arctic through Amendments to the STCW Convention

*Stefan Kirchner\**

Because travel by sea remains inherently dangerous, the protection of human safety has long been an issue in international shipping law, for example through the Safety of Lives at Sea Convention (SOLAS) of 1974. Concern for human safety has been part of the law of the sea for far longer than this is today is also reflected for example in Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), according to which “[e]very State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers[, inter alia,] to render assistance to any person found at sea in danger of being lost[, ] to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him[, ] after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call [and in the case of coastal nations] promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighboring States for this purpose.”

Global warming already today means an increase in shipping in the Arctic. In particular the sea route from East Asia to the ports in the Northrange region will be affected by this, due to the savings in fuel costs and travel time associated with the shorter Arctic-route but also due to the continued risk of piracy in the world’s most important maritime transportation bottlenecks, the Strait of Malacca and the Red Sea. In addition will global warming allow for more economic activities in the far North, which will lead to an increase in maritime traffic.

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Yet the rescue infrastructure in the Arctic is hardly comparable to the existing infrastructure elsewhere. In many cases of medical emergencies at sea, this will require a greater focus on local and on-board activities.

Increased shipping in the Arctic also poses additional risks for crew members and passengers on board. In this context it has to be noted that most seafarers are not yet familiar with Arctic and Antarctic conditions and the particular hazards associated with shipping in these waters. In late October 2014, the International Maritime Organization's Marine Environment Protection Committee (MEPC) adopted the Polar Code, which might enter into force in 2017. While the Polar Code will cover important technical aspects, the human dimension of shipping must not be underestimated, in particular when it comes to preventing loss of human life, and the particular challenges of Arctic shipping require increased training and awareness of seafarers.

Together with SOLAS, the International Convention for the Prevention of Pollution From Ships (MARPOL) and the Maritime Labor Convention (MLC), the Standards on Training, Certification and Watchkeeping Convention (STCW) remains a key element of international shipping law.

STCW requires minimum skills for different functions on board, which already includes special requirements for service on e.g. oil tankers or passenger ships. At a conference in Rovaniemi in late October 2014, it has been suggested that Arctic shipping should also be reflected in STCW through an proposed Arctic Seafarer Training Recommendations Amendment (ASTRA). Such an amendment could be created parallel to the regulatory approach which can already be found in STCW today and accordingly should include provisions for a Polar Safety Data Sheet (PSDS) and a Polar Health Data Sheet (PHDS), continuing the approach already found in the STCW Convention. While the PSDS would be modeled on the Material Safety Data Sheet (MSDS) already provided for in STCW, the PHDS would follow the example set by the STCW's Medical First Aid Guide for Use in Accidents involving Dangerous Goods (MFAG). While formulating the exact details of the ASTRA would require the input of experts from a range of fields, it could contribute to increasing the capabilities of seafarers to prevent accidents and weather and climate related injuries and thereby to protecting the lives of seafarers and passengers alike.

But amending the STCW Convention should not stop there. The Arctic has significant Nickel resources, for example in the Nikel / Kolosjoki area. A number of incidents involving

ships transporting nickel and other forms of dry bulk cargo have raised concern over the transport of such materials by ship. In the last years there have been, on average, around one hundred deaths of seafarers every year due to shifting weight of bulk cargo as a result of dry cargo liquefaction. Dry cargo liquefaction can occur if dry cargo (such as nickel) becomes wet and turns from a sand-like to a solid structure. The resulting weight imbalance has led to the sinking of a number of ships. An insufficiently closed cargo hold door in combination with rain or humidity from the sea can be enough to cause such disasters. By increasing awareness of this particular danger among both staff in port as well as seafarers, the risk for such incidents can be reduced. This would not only benefit seafarers in the Arctic but also e.g. in East and South East Asia. In addition to the aforementioned ASTRA, a similar Dry Cargo Liquefaction Prevention Amendment (DCL) to STCW appears desirable. A specific role in liquefaction prevention could be based on examples for existing functions on board, for example with regard to oil tankers, or parallel to the existing role of Ship Security Officer (SSO). Alternatively it could be modeled on the general security related training requirements which are in place for all seafarers since the beginning of 2014. While a DCL Amendment to STCW would only address the ship-side of the problem, it could provide some impetus to deal with this issue on other levels as well.

While STCW amendments will not prevent all loss of life at sea, the human factor in international shipping should be taken into account. By raising awareness of existing risks and by equipping seafarers with the capability to prevent incidents and to react adequately, international shipping law can be utilized, again, to protect human life and to facilitate the safer use of the Arctic for international shipping.

## Notes on the Contemporary Legal-political Situation of the Sami in the Nordic Region

*Dawid Bunikowski\**

The Sami presence does not exist without the past. The current political-legal situation is deeply rooted in a trauma of the lost culture. Activities to be undertaken to realize cultural-political autonomy are a voice of the victim. Is it not like a slogan to say about the situation of the Sami people in Scandinavia that the closing of borders in the 19<sup>th</sup> century, the educational systems and the property law systems in the 19<sup>th</sup> and the 20<sup>th</sup> centuries destroyed, or at least a little depreciated (saying euphemistically), a traditional way of life, traditional knowledge and indigenous languages? Shortly, these were really destroyed<sup>42</sup> and are still depreciated to some extent: Sami have cultural autonomy (protection of language and culture), but no political autonomy and own natural resources management<sup>43</sup>. If one talks to them, then s/he knows they are not satisfied of their status and the situation.

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<sup>42</sup> See J Pennanen and K Näkkäläjärvi (eds.), *Siiddastallan- from Lapp Communities to Modern Sámi Life, Publications of Inari Sámi Museum no: 3*, Siida Sámi Museum, Enare 2003, in many places there. See also E Niemi, “Sami History and the Frontier Myth: A Perspective on the Northern Sami Spatial and Rights History”, in H Gaski Karasjok ed., *Sami Culture in a New Era. The Norwegian Sami Experience*, 1997, 62-85 at 75-76; G Osherenko, “Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival?” *The Georgetown International Environmental Law*, vol. 13 (2001). Compare about the Finnish settlement of Lapland, M Lähteenmäki, *The Peoples of Lapland. Boundary Demarcations and Interconnection in the North Calotte from 1808 to 1889*, Helsinki 2006, at 143, 239.

<sup>43</sup> Especially this source is interesting in this context: *Concluding observations on the 20th to 22nd periodic reports of Finland adopted by the Committee on the Elimination of Racial Discrimination at its 81st session in 2012. Information provided by the Government of Finland on its follow-up to the recommendations contained in paras 12, 13 and 16, 30 August 2013* (<http://formin.finland.fi/public/download.aspx?ID=119107&GUID=%7B9984DD16-2154-4FEB-9BB6-281AB982EDA8%7D>, (accessed 4 November 2014), where we read in the beginning: *A Working Group, appointed by the Ministry of Justice in June 2012, is preparing a proposal for the revision of the Act on the Sámi Parliament. The Act on the Sámi Parliament (974/1995), which is important for the regulation of the self-determination of the Sámi, was enacted in 1995. Since then, the Act has been amended several times to better meet practical needs. Now the revision is considered necessary.*(...), and then in “The right of the Sámi to their traditional lands” (paragraph 13, points 1-15, among them, we point out points 4-5 and 7), it is established: *4. In accordance with the decision made by the Government on 12 December 2012, the Ministry of Agriculture and Forestry will appoint, in the near future, a working group to prepare legislation for increasing the participation rights of the Sámi people in the decision-making procedure for issues related to the use of land and water areas* [italics-DB].



The Nordic states seeking own national identities in the 19<sup>th</sup> century were based on modern nationalism with ideas of one nation, one language, and one law. One should also focus on how Sami people as indigenous peoples have been depreciated by the Scandinavian states that brought with it Enlightenment ideas to do with the nation state, progress, and Protestantism, and destroyed the traditional way of life of so-called “dark”, “dirty” people. Sami customary laws have not been recognized since the end of the 18<sup>th</sup> century. Sami culture was depreciated and destroyed in Scandinavia in the 19<sup>th</sup> and 20<sup>th</sup> centuries. *I felt that I was being treated as dirt*, says Ole Henrik Magga, a Sami leader from Norway. The words *The Lapp people are childlike people in more than one respect (...)it is the goal of Norwegianization that they are brought to the maturity of man...* (Rector Andreas Gjølme in Sør-Varange, 1886) were applied to the whole society. Missions, religious, educational programme etc. to these ends, were deemed “ethical” from this point of view, and morally justified. The closing of borders from the 19<sup>th</sup> century, the modern education system, language policies, revived Lutheran ethics, and property law regimes from the 19<sup>th</sup> and the 20<sup>th</sup> centuries really destroyed a large part of traditional Sami ways of life, knowledge, property rules, reindeer husbandry, and indigenous languages. Nowadays the feeling of injustice is strong among Sami.

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*Also the participation rights of the rest of the local population will be taken into account in the work of the working group and necessary provisions will be included in the legislation concerning the organisation of the Finnish Forest and Park Service (Metsähallitus; a state enterprise that administers more than 12 million hectares of state-owned land and water areas).<sup>5</sup> In the introductory part of recommendation No. 13, the Committee has stated that **it is concerned that the land rights of the Sámi people have not been satisfactorily settled and that various projects and activities, such as mining and logging, continue to be carried out in the traditional lands of Sámi people without their prior, free and informed consent. The legislation in force is complied with in the practice of forestry in areas, whether state or privately owned, that belong to the Sámi Homeland. The Government stresses that the legislation contains specific requirements for the mentioned areas, inter alia, in Section 2 (2) of the Reindeer Husbandry Act that are specifically intended for reindeer herding. The land in these areas may not be used in a manner that may significantly hinder reindeer herding. On the other hand, the Finnish legislation does not require a permission or prior consent from the Sámi for logging.** 7. In its recommendation No. 11, the Committee has stated that the State party, when revising the Act on the Sámi Parliament, should enhance the decision-making powers of the Sámi Parliament with regard to the cultural autonomy of Sámi, including rights relating to the use of land and resources in areas traditionally inhabited by them. In this regard the Ministry of Agriculture and Forestry notes that the cultural autonomy that the Constitution of Finland guarantees the Sámi people in itself does not constitute a competence for the Sámi Parliament to utilise natural resources, whether in state or private ownership, within the Sámi Homeland. However, the Mining Act (621/2011) contains provisions on obstacles to granting permits in the Sámi Homeland, in the Skolt area and in special reindeer herding areas. According to Section 50 of the Act, an exploration permit, mining permit, or gold panning permit must not be granted if activities under the permit: 1) alone, or together with other corresponding permits and other forms of land use would, in the Sámi Homeland, substantially undermine the preconditions for engaging in traditional Sámi sources of livelihood or otherwise to maintain and develop the Sámi culture; 2) would substantially impair the living conditions of Skolts and the possibilities for pursuing a livelihood in the Skolt area; 3) in a special reindeer herding area, would cause considerable harm to reindeer herding.*

However, any (nation) state ideology must not imply that any state intervention full of paternalistic ideas or badly understood results of conscience pangs in relation to the Northern or Arctic indigenous peoples is the best form of support of development of the indigenous communities, cultures, and so on. Even Grotius recognized the right of the “wild people” to live according their natural or “barbarian” laws, if the laws recognized the minimum of what is universally good and bad.

While in Finland, the government did do nothing about political autonomy or the right of indigenous people to own law. Even cultural autonomy is doubtful in practice<sup>44</sup>. The Act on the Sami parliament of 1995 includes 20 pages, of which only maybe three are really important, flashing on cultural autonomy (the rest is about procedures concerning the elections to the body that has no political power). Finland did not and still does not recognize the customary law (except *jokamiehenoikeus*). There is still a problem with Sami land rights which are the unresolved human rights problem, an issue that was highlighted by the UN Human Rights Committee in 2013<sup>45</sup>.

So even now in democratic Finland based on ideas of human rights, the land rights of Sami people remain the problem. Although last decade it was asserted that the right of the state to the Sami people’s land (Lapland) is doubtful, yet the recognition of the Sami people to

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<sup>44</sup> *Statement by Finnish Saami Parliament on the Realization of Saami People’s Right to Self-determination in Finland Presented by the President of the Saami Parliament of Finland J. Lemet*, at [http://www.galdu.org/govvat/doc/self\\_determination\\_samiparliament\\_finland.pdf](http://www.galdu.org/govvat/doc/self_determination_samiparliament_finland.pdf), (accessed 4 November 2014), where it is said in context of Sami cultural autonomy that “While the statutory status of the Saami is satisfactory in Finland, the law is not adequately enforced” (i.e. neither legal/political power nor financial sources); see also *The Sami Parliament Act, Finland*, at <http://www.finlex.fi/fi/laki/kaannokset/1995/en19950974.pdf>, (accessed 31 October 2014).

<sup>45</sup> See *Concluding observations on the sixth periodic report of Finland*, Human Rights Committee, 22 August 2013 (on International Covenant on Civil and Political Rights). It is clearly said in point 16 that: *While noting that the State party has committed to ratifying the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and established a working group in August 2012 to strengthen the rights of the Sami to participate in decisions on the use of land and waters, the Committee remains concerned that the Sami people lack participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources. The Committee also notes that there may be insufficient understanding or accommodation of the Sami lifestyle by public authorities and that there is a lack of legal clarity on the use of land in areas traditionally inhabited by the Sami people (arts. 1, 26 and 27). The State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament. The State party should increase its efforts to revise its legislation to fully guarantee the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affect them. The State party should also take appropriate measures to facilitate, to the extent possible, education in their own language for all Sami children in the territory of the State party.*

administer forests, hunting grounds and fishing waters remains unclear. The Sami are not lords in their own country. The social and demographical situation is difficult. About half of the Sami population in Finland have been forced to move outside Lapland due to unemployment and the lack of opportunities. The problem is who is the owner of the land in a constitutional sense: the Sami or the state. Only Norway made some law reforms on Finmark in this field. On the other hand, one may realize that it is really difficult to create political autonomy for four thousand Sami, who stayed in the Finnish Lapland. It sounds unreasonable for contemporary thinkers<sup>46</sup>. The idea of legal pluralism and *two* jurisdictions in one social or geographical sphere is completely unknown or unbelievable for lawyers and politicians.

However, some new ideas have come recently. The Nordic Sami Convention (2005)<sup>47</sup> – called by the great Finnish scholar Timo Koivurova “an innovative possibility to grow beyond

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<sup>46</sup> There are many narratives. All depends on one’s side. Officials say: no one is discriminated. Samis add: so are we. More about Sami political struggle for self-determination, culture and style of life: The Samediggi websites below: [http://www.samediggi.fi/index.php?option=com\\_content&task=blogcategory&id=87&Itemid=106](http://www.samediggi.fi/index.php?option=com_content&task=blogcategory&id=87&Itemid=106) (accessed 31 October 2014); *Interview (The Norwegianization of the Samis was religiously motivated)*, <http://www.uio.no/english/research/interfaculty-research-areas/culcom/news/2008/persen.html>; *Scandinavia's Sami Reindeer Herders. Sami The People Who Walk With Reindeer*, by Jessica Benko, <http://ngm.nationalgeographic.com/2011/11/sami-reindeer-herders/benko-text>, (accessed 31 October 2014); *Blog on the assimilation of the Sami*, <http://saamiassimilation.blogspot.fi/>; *The Development of Sami Rights since 1980*, by Carsten Smith, <http://www.sami.uit.no/girji/n02/en/105smith.html> (accessed 31 October 2014); *Land Rights, Linguistic Rights, and Cultural Autonomy for the Finnish Sami People*, by The Finnish Sami Parliament, [Reprinted with permission from *Indigenous Affairs*, No.33/4, July-December, 1997], <http://arcticcircle.uconn.edu/SEEJ/sami1.html>, (accessed 31 October 2014); *The INDIGENOUS WORLD FORUM 2006* (at 45-49, also the Nellim case), available at google books; *Murky Agenda in the Mørketid: Norwegian Policy, Sami Politics and the Tromsø Conference*, by Terje Brantenberg, <http://www.sami.uit.no/girji/n02/en/004brant.html>, (accessed 31 October 2014); and much more state-orientated: *Facts and Myths Regarding the Finnmark Act*, by State Secretary Anders J H Eira, 17 September 2003, <http://www.galdu.org/web/index.php?artihkkal=35&giella1=eng>, (accessed 31 October 2014); *Sami in Finland*, Research Centre for Wales, <http://www.uoc.edu/euromosaic/web/document/sami/an/i1/i1.html>, (accessed 31 October 2014); *Aboriginal Political Representation: A Review of Several Jurisdictions*, by Peter Niemczak, Célia Jutras, Law and Government Division, Revised 27 October 2008, at <http://www.parl.gc.ca/Content/LOP/researchpublications/bp359-e.htm> (accessed 31 October 2014); *A Reindeer Herder in Norway Works to Help Indigenous People*, by Rachel Laskow, at <http://teacher.scholastic.com/scholasticnews/indepth/norway.asp>, (accessed 31 October 2014); *Report, Ihmisoikeuskeskus, February 2014*: [http://www.ihmisoikeuskeskus.fi/@Bin/276628/FINLAND\\_REPLY\\_February%202014.pdf](http://www.ihmisoikeuskeskus.fi/@Bin/276628/FINLAND_REPLY_February%202014.pdf), (accessed 31 October 2014), points 50-59 (The right of the Sámi to their traditional lands, Reindeer herding, Sámi in Finnish policies on sustainable development); *The Dimensions of Sustainability and the Neo-entrepreneurial Adaptation Strategies in Reindeer Herding in Finland*, by Hannu Ilmari Heikkinen, Sami Lakomäki and John Baldrige, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1037&context=jea>, (accessed 31 October 2014).

<sup>47</sup> The text of the *Nordic Saami Convention* (draft) in English is available at the Saami Council website.

the state-centred paradigm in international relations in a realistic way<sup>48</sup> - is also often called the second Lapp Codicil (the Lapp Codicil was of 1751<sup>49</sup>). But it is only a draft, so all the provisions are on the paper. What is important the draft includes the right to self-determination. It refers also to recognition of customary laws and rules of traditional reindeer husbandry or natural resources management. The tools that are proposed there are not very concrete anyway (like in art. 9). There are many slogans (like art. 14, 15) and, obviously, open texture terms (like in art. 29 or 34, 39), what opens up a room for many interpretations. The draft proposes also only a “minimum” standard for the states (Sweden, Norway, and Finland). In fact, it would be the highest possible standard, if the treaty were ratified by the domestic parliaments (the process has little chances now) and really implemented in practice.

Indeed, many problems concerning the Sami in the Nordic region are still unresolved. It seems that we are still on the way of recognition of indigenous (Sami): land rights, customary laws, self-determination, self-government etc., what will take plenty of time, really. Paradoxically, political and ethnic identity and social awareness are growing rapidly among the Sami. Activism of young people Sami is impressive. The debates on the ILO 169 and many seminars and conferences have put on the table some questions the Nordic states must answer, if they want to be still understood as credible as the place of human rights, openness, tolerance and justice. Equality is about the same rights for everybody. Justice is about “the constant and perpetual wish to render everyone his due”, as says the Code of Justinian. Justice is a compensation also. Equality meets *historical* Justice in this region. What wins?<sup>50</sup> Political

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<sup>48</sup> See Timo Koivurova, “The Draft Nordic Saami Convention: Nations Working Together”, *International Community Law Review*, vol. 10 (2008) at 279.

<sup>49</sup> *First Codicil and Supplement to the Frontier Treaty between the Kingdoms of Norway and Sweden concerning the Lapps (done on 21<sup>st</sup> September/2<sup>nd</sup> October 1751)*. See also: *Declaration from the First Sami Parliamentary Conference, Jokkmokk, 24 February 2005*, where it is said in the preamble *expressis verbis*: “Establishing that the Nordic states, through the Lapp Codicil of 1751, have recognized the Sami as a people entitled to their own future, without regard to the national boundaries that were then drawn. This was accomplished by protecting the right of the Sami to use land and water, and extensive internal self-government schemes. These principles closely resemble modern international law”. In fact, the treaty of 1751 was passed to regulate “the customary transfrontier movements of the Lapps” as well as jurisdiction “over the foreign Lapps” during the movement period and tax problems related to that (the preamble). Thus, it was about state taxation (art.1-7), Sami mixed marriages (art. 8), free movement and crossing borders by the Lapps in Scandinavia. (art. 9-21), limited indigenous jurisdiction (art. 22-30; art. 22: “disputes occurring between Lapps from the same side” in the transfrontier movement to be resolved the Lapp lensman). However, it recognized also customary laws on nomadic style.

<sup>50</sup> See D Bunikowski, “Indigenous Peoples, Their Rights and Customary Laws in the North: the Case of the Sámi People”, in M Lähtenmäki and A Colpaert (eds.), *East Meets North - Crossing the Borders of the Arctic, Nordia*

pragmatism and economic interests of the nation states? Or new paradigm of thinking in terms of *two* jurisdictions, recognition of land rights and customary laws?

## Contemporary Perspectives of Sami Rights Related to Mining Activities

*Anna Petrétei\**

The needs of indigenous peoples in general are closely related to land, water and other natural resources. These resources are essential for sustaining indigenous traditional livelihoods. However, these needs typically compete with other interests of the society, creating obvious tension between indigenous and societal interests. The problem is even harsher in the Arctic, where environmental changes seriously affect indigenous territories.

Nevertheless, the continuously growing global demand for minerals, oil and gas has resulted in the significant expansion of extractive industries during the past decades. Territories inhabited by indigenous peoples are generally rich in natural resources, and they have traditionally developed specialized livelihood strategies and occupations based on those resources. As indigenous peoples are highly dependent on rights to natural resources for their subsistence, the extractive industries are posing a real danger to their livelihoods. The problem is internationally recognized, and the topic is widely researched.

One of the research projects addressing the above problem is the project on “Sustainable Mining, Local Communities and Environmental Regulation in the Kolarctic Area”, in short, “SUMILCERE”. This is a two-year long project funded within the Kolarctic ENPI CBC initiative of the European Union, ending in December 2014. One of the main objectives of the project is to analyze how international law developments influence the prospects for conducting mining in Sami territories.

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Therefore, the task of a working group was to conduct comprehensive research on Sami rights related to mining activities in Finland, Sweden, Norway and Russia. The working group examined how Sami people are currently protected against harmful mining impacts in each of the countries. After describing the relevant international legal instruments, researchers analyzed the national laws and regulations that are applicable to the Sami people in each country. The general legal backgrounds governing mining activities are explained, with special focus on the main mining laws in each of the four countries. It was particularly studied how Sami rights and interests are taken into consideration in the mining legislation.

The working group did not only aim at analyzing the theoretical legal background, but also wanted to find out whether the described legislative instruments provide effective protection for the Sami people. In order to measure how effective is the implementation of legal rules, anonymous, semi-structured interviews were conducted with relevant actors, such as mining companies, environmental impact assessment consultants, representatives of respective authorities, Sami representatives and activists. The main goal was to draw a realistic picture about the actual effectiveness of the legislation, based on the first-hand experience of the relevant parties involved in mining processes. Interviews were conducted in all the relevant countries, including Finland, Sweden, Norway and Russia.

By comparing the legislative norms and their practical implementation in different countries, the advantages and disadvantages of the regulations are highlighted. This may benefit the future legislative changes and judicial practice. Although the current legislation is not fully satisfying and there is much room for improvement in all relevant countries, there are cases that give hope for the future development of the situation.

## Current Development of the Polar Code

*Nengye Liu\**

The Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) in November 2014 adopted the International Code for Ships Operating in Polar Waters (Polar Code), and related amendments to the International Convention for the Safety of Life at Sea (SOLAS) to make it mandatory.<sup>51</sup> It is noted that the MSC only adopted the safety part of the Polar Code.<sup>52</sup> IMO's Marine Environment Protection Committee (MEPC) approved the necessary draft amendments to make the environmental provisions in the Polar Code mandatory under MARPOL in Oct 2014. The MEPC is expected to adopt the Code and associated MARPOL amendments at its next session in May 2015. The expected date of entry into force of the Polar Code is 1 January 2017, under the tacit acceptance<sup>53</sup> procedure of the IMO.

The Polar Code was a German initiative in 1991. However, to adopt a mandatory Polar Code was only on the agenda of the IMO from 2009. Since then, rapid progress has been made by international community to address pollution from increased shipping in ice-melting Arctic. The Polar Code, as other IMO conventions, attempts to ensure the objective of the IMO: Safe, secure and efficient shipping on clean oceans. By the adoption of the Polar Code, improved mandatory standards are now established for future shipping in the Arctic, which is good news for the protection of Arctic marine environment. This is also positive for shipping industry. For an industry with international nature, shipping always requires uniform standards at global and regional level.

The adoption of a mandatory Polar Code, however, is only a starting point to regulate Arctic shipping. The mandatory part of the Polar Code only touches construction, design, equipment

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<sup>51</sup> <http://www.imo.org/MediaCentre/HotTopics/polar/Pages/default.aspx>, (accessed 14 November 2014).

<sup>52</sup> The draft Polar Code includes mandatory measures covering safety part (part I-A) and pollution prevention (part II-A) and recommendatory provisions for both (parts I-B and II-B).

<sup>53</sup> It means that the body which adopts the amendment to an annex by a majority vote, at the same time fixes the entry into force and the time period within which the contracting parties will have the opportunity to notify their rejection of the amendment, or to remain silent on the subject. A decision taken by a majority will be binding for states that did not support the decision, unless they explicitly opt out within the time period foreseen. In case of silence, the amendment is considered to have been accepted by the party.



and manning (CDEM) standards of Arctic shipping. Issues such as anti-fouling, prevention of invasive species from ballast water, greenhouse gas emissions from shipping are left for another day. Moreover, thorny issues that had been debated during the negotiation, such as ban of heavy grade fuel oil in the Arctic, are put in recommendatory rather than mandatory part. Furthermore, the Polar Code will not deal with the interpretation of “ice-covered areas” (Art. 234 of the United Nations Convention the Law of the Sea). A reservation was made by Canadian delegation during the MSC meeting in May 2014. Therefore, even if there will be a ice-free Arctic in the foreseeable future, Art.234 might still be a valid legal basis for coastal States, especially Canada and Russia, to impose more stringent rules and standards on ships sailing in Northeast and Northwest Passages.

In any case, the adoption of a mandatory Polar Code is an initial response from the international community to address increased shipping activities in the Arctic. It is up to future developments to achieve a delicate balance between shipping and environmental protection in the changing Arctic.

## Marine Mammal Regulation in the Arctic: Report for 2014

*Richard Caddell\**

The regulation of marine mammals in the Arctic region remains a controversial issue, lying on the faultline of the debate concerning sustainable use of marine resources, the preservation and conservation of charismatic species and the rights and status of indigenous communities. As with the previous year's report, 2014 has yielded a number of significant developments in respect of marine mammals. Perhaps most significantly, the EC Seal Products dispute reached its finale within the various dispute resolution processes of the World Trade Organization. There were also important meetings of the International Whaling Commission (IWC), addressing whaling issues in the High North, as well as the North Atlantic Marine Mammal Commission, addressing pinnipeds and cetaceans in these waters. The Convention on the Conservation of Migratory Species of Wild Animals also convened its triennial Conference of the Parties in 2014, with a series of decisions with implications for Arctic marine mammals.

### **National Developments**

On 31 January 2014, Iceland was formally certified by the USA under section 8 of the Fisherman's Protective Act 1967, a legislative provision best known colloquially as the "Pelly Amendment". The Pelly Amendment remains a controversial mechanism applies where it is considered that the effectiveness of an international fisheries programme has been compromised by nationals of a particular state. The President is then authorised to direct the relevant national agencies to prohibit imports of fish products from the state in question. This remains rather a blunt instrument and one that presents challenges for bilateral relations and indeed world trade considerations.

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Previous presidents have been reluctant to impose this measure, although it was used as an effective weapon in a whaling context with the institution of a moratorium on commercial catches in the mid-1980s.

In September 2011, President Barack Obama threatened the use of the Pelly Amendment on the basis that Icelandic vessels has been conducting whaling in a manner that could undermine the conservation effectiveness of the IWC, the second such endeavour of the current century in relation to whaling in Iceland. The 2014 certification accordingly marks a different tactic and was instead instituted on the basis that “nationals of Iceland are conducting trade in whale meat and products that diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”. Once certification in this manner has occurred, a sixty-day period of reflection automatically commences, following which the President in consultation with the relevant agencies will determine whether to formally impose trade sanctions. On 1 April 2014, President Obama declined to pursue this measure and, as has generally been the case in the recent past, instituted diplomatic efforts towards persuading Iceland to cease and desist its whaling programme.

### **Arctic Whaling and the IWC**

At the 2012 Meeting of the IWC, the working practices of the Commission were reformed so that this body will meet on a two-yearly basis from 2013 onwards. Accordingly, 2014 marks the first meeting of the IWC since 2012. As outlined in last year’s report, this position inadvertently neglected to address Arctic quotas assigned for aboriginal subsistence purposes, which were due to expire in 2013. Indeed, the situation raised great concerns within Denmark which, in 2013, wrote to the IWC threatening to leave the Commission unless a greater degree of coherent attention was accorded to these issues.

The 2014 Meeting was convened in September 2014 at Portorož, Slovenia and involved a typically full agenda, not least given that the International Court of Justice had delivered a judgment highly critical of Japanese scientific whaling practices a few months previously. Arctic issues nonetheless occupied a conspicuous position on the Meeting’s agenda, especially Greenlandic concerns. Of greatest significance from an Arctic standpoint was the adoption of Resolution 2014-1: Resolution on Aboriginal Subsistence Whaling, which ostensibly applies to all subsistence whaling activities but during the debate was centred specifically on the activities

of Greenland. Greenlanders are the only such community explicitly referenced within the Resolution itself, and Resolution 2014-1 was driven predominantly by the European Union, aware of the position that Denmark occupies as a member of an ostensibly anti-whaling bloc but with specific responsibilities to represent Greenland at the Commission.

Considerable discussions occurred over the nature of Greenlandic whaling. A number of delegations expressed sympathy for the Greenlandic requests, while others proved to be rather less amenable, with accusations that the quotas were unnecessarily high (even if considered sustainable by the IWC's Scientific Committee and relevant working groups) and may even constitute a form of commercial activity. The Resolution was accompanied by discussion of the establishment of strike limits, so as to provide a more accurate picture of the impact of subsistence hunting upon the stock by factoring in whales that had been struck but not necessarily caught. Concerted efforts had been made through the Scientific Committee to develop Strike Limit Algorithms (SLAs) for the Greenlandic hunts, which were accordingly factored into the quotas set within the revised Schedule to the International Convention for the Regulation of Whaling. Work had been completed on a humpback whale SLA and it was considered that the SLA for bowhead whales should be completed by 2015 and for fin and common minke whales by 2017/18.

Resolution 2014-1 ultimately passed by 40 votes to 5, with 15 abstentions – a relatively high number that is explained by a number of delegations expressing concerns that the text seemed only to contemplate Greenlandic hunting as opposed to aboriginal activities worldwide. The Resolution itself calls on parties to assist in ensuring a more consistent and long-term approach to aboriginal subsistence activities, primarily through incorporating SLAs into future quota-setting but also improving collective “understanding of the relationship between needs and consumption patterns for ASW hunts, including by collecting data on landings for each category, local consumption and use and the extent of monetary transactions”.

The next IWC Meeting will be convened in 2016, although aboriginal subsistence activities and progress towards the developments of SLAs will be advanced through the annual meetings of the Commission's scientific and aboriginal fora.

## **NAMMCO**

The NAMMCO Council convened its Twenty-Second Meeting in February 2014. Alongside the usual review of economic and management affairs, a number of innovations were also reported under the auspices of this body. The Meeting saw the elaboration of a planning group on Food Security, an initiative that is likely to be of some considerable significance in the light of pressures within the IWC concerning the status of Arctic aboriginal subsistence need. Additional planning was discussed for the on-going T-NASS survey initiatives to map populations of marine mammals, with a view towards extending this programme to Russian waters. Further cooperation with the IWC was also discussed, primarily in the form of official participation within a planned workshop on monodontids. This failed to garner support from the delegations, given the often antagonistic reception received by them in IWC fora. While this initiative was rejected, a more diplomatic note was sounded towards keeping lines of communication open and not ruling out any potential future involvement. A significant new development was the elaboration of a new Manual on Hunting of Marine Mammals, a volume that collected a considerable volume of historic and current data and was warmly welcomed as a helpful management tool. Meanwhile, the Committee on Inspection and Observation reported that no infractions had been reported in the course of marine mammal hunting within the previous year.

## **Arctic Marine Mammals and the CMS**

In November 2014 the CMS convened its eleventh Conference of the Parties. The event was concluded a short time before this report was compiled and a considerable volume of the final documents considered and adopted in this forum were not publically available at the time of writing. Nevertheless, a series of developments can be seen as highly relevant from the standpoint of Arctic marine mammals. Of greatest significance to the region, Polar bears were formally listed on Appendix II of the Convention. This development not only brings such animals within the purview of an instrument designed to address impediments to migration, but also makes them eligible for the conclusion of specific regional agreements, should a collective of range states consider this a necessary outcome. The CMS is also scheduled to participate at the first Arctic Biodiversity Congress, scheduled for early December in Trondheim, Norway.

A strong degree of overlap was also apparent in the work of the CMS with that of IWC. At the 2014 Annual Meeting the IWC adopted Resolution 2014-2: Resolution on Highly Migratory Species, pledging “enhanced collaboration in the conservation of migratory cetaceans with other intergovernmental organisations whose co-operation is essential to secure the lasting protection of these species in the world ocean”. Given the sentiments expressed by NAMMCO, it is unlikely that cooperation in the context of migratory Arctic cetaceans is likely to be especially forthcoming, although the CMS in general – which is likely to form the bedrock of implementation efforts under this provision – does apply generally to a series of such species, even if its Arctic cetacean programme has been decidedly limited.

### **EC-Seal Products Dispute**

Finally, perhaps the most significant development in the course of the past year has been the decisions rendered by the dispute resolution fora of the WTO in the EC seal products dispute. Spatial constraints dictate a degree of brevity in reporting these outcomes that is in marked contrast to the extremely lengthy decisions adopted. The dispute stems from legislation adopted by the EU in 2009 to regulate the trade in seal products, specifically Regulation 1007/2009, which was described in more detail in the 2013 report. In brief, the legislation was introduced primarily due to animal welfare concerns over seal hunting and the need to ensure a more uniform series of restrictions in the light of the unilateral decisions of several Member States to promote a ban on seal products. Lengthy litigation ensued before the Court of Justice of the European Union on the part of several organisations associated with the harvest and processing of seal products, as detail in last year’s contribution. These proved to be unsuccessful, but the central complaint – that the EU rules largely served to protect Greenlandic markets due to a series of exceptions granted to Inuit-derived products – remained valid and was ultimately brought before the WTO.

On 25 November 2013, the report of the Dispute Settlement Body (DSB) was officially released, concluding that while the EU legislation could be considered a technical regulation, it nonetheless violated Article 2.1 of the Agreement on Technical Barriers to Trade. This conclusion was based on a finding that the exceptions granted under EU essentially accorded imported seal products a less favourable treatment than to similar domestic and other foreign products and this treatment was not exclusively attributable to legitimate regulatory distinctions.

Nevertheless, no violation of Article 2.2 of the TBT Agreement was found, and the panel considered that the EU legislation fulfilled the objective of addressing moral concerns on seal welfare and no alternative measure was demonstrated to make an equivalent or greater contribution to the fulfilment of the objective.

The panel further concluded that the Indigenous Communities exception cited by the EU also violated Article I:1 of the GATT 1994 because it accorded an advantage to products originating from Greenland. The exception on Marine Resource Management purposes was also found to violate Article III:4 of the GATT 1994 because its effect was to give a less favourable treatment to imported seal products. Moreover, the restrictions failed to meet the requirements of Article XX of the GATT 1994 and a case was not made out that the restrictions were either “necessary to protect public morals”) or “applied in a manner that would constitute arbitrary or unjustified discrimination where the same conditions prevail or a disguised restriction on international trade”.

Despite a largely successful outcome, in early 2014 Canada sought to appeal the decision, primarily due to concerns over the interpretation of certain issues of law and legal terms. On 22 May 2014 the Appellate Body returned its findings to the parties. The Appellate Body reversed the initial finding that the EU rules constituted a “technical regulation” for the purposes of the TBT Agreement. It also upheld the original finding that the EU rules were inconsistent with the GATT 1994, as Norway and Canada did not receive the same advantages that products derived from Greenland were granted. The Appellate Body did however uphold the finding that the EU legislation was “necessary to protect public morals” for the purposes of Article XX of the GATT 1994. It did, however, endorse the central finding that the EU had failed to justify its restrictions under Article XX.

In July 2014, the EU European Union informed the DSB that it would implement these recommendations, but would require a reasonable period of time to do so. This was agreed in September 2014, with a final deadline established of 18 October 2015 for the necessary amendments and adjustments to the EU seal regime to be made.

## **Section B: Projects and Reports**



## Human Security As a Promotional Tool for Societal Security in the Arctic: Addressing Multiple Vulnerability to Its Population with Specific Reference to the Barents Region (*HuSArctic*)

*Kamrul Hossain\**

The Academy of Finland has recently decided to finance a research project entitled: *Human Security as a promotional tool for societal security in the Arctic: Addressing Multiple Vulnerability to its Population with Specific Reference to the Barents Region* (HuSArctic). The project is connected to NordForsk's initiative of "Nordic Societal Security Research Programme". The initiative has started in the year 2013, which is a multidisciplinary research program designed to generate new knowledge about issues that must be addressed to safeguard societal security in the Nordic countries optimally in different areas, as well as to see how to best promote recovery in the wake of a disturbance. The objective included, among others, to address multidimensional threats present in the Nordic countries that may have effect in a trans-boundary context. In response to the call for applications in the year 2013, NordForsk has granted funding to establish two Centres of Excellence (NCoE). As the follow-up program, in cooperation with NordForsk, the national funding agencies including the Academy of Finland has published open call for application in spring 2014 under the scheme of "Societal Security", through which this particular research project has been funded. The project is granted for four-year time period between 2015 and 2018, which consists of five core members including the Principal Investigator (PI). In addition, a good number of scholars from all three Nordic countries, as well as from across the world, will contribute to the project.

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The main objective of the project is to promote knowledge by using human security tool, as it is understood in the general Arctic context, as well as in the particular context of Barents region, to promote overall societal security. The concept of human security, in recent years, embraces a broad meaning including a range of issues from physical security to mental and psychological well-being. According to Human Development Report of the UNDP (1994), which popularizes the concept, human security includes seven categories of threats: economic, environmental, personal, health, food, community and political security. These are however placed under two narrower classifications, namely, 'freedom from fear' and 'freedom from want'. Human security, unlike human rights, which is universal and applicable everywhere upholding the same normative value, is a choice for policy priorities. The concept may not necessarily be understood in all of the regions of the world in a similar way for each different region being different in their characteristics with different meaning of security threats as well as different challenges facing each of the particular regions. Whether the agenda developed within the concept is applicable to the Arctic, and if yes, then how, has been questioned in recent years. Not all the challenges the concept of human security presents are perhaps prevalent in the Arctic, nor are the challenges prevalent in the Arctic similar to that of the other regions. Yet the Arctic population faces a complex set of human security challenges, mainly due to the changes caused by rapid climate change, and the other changes linked to climate change, such as due to growing industrialization.

Despite the interests and recognition of its relevance, very little research has been conducted upon the possible framework of human security taking into consideration the unique challenges facing the Arctic; as well as upon the impacts (negative and positive) of human security on its population. Indigenous and local communities, the central victims of the prevalent human security challenges, have attracted no remarkable attention from this particular angle, which certainly has potential for greater policy preferences. The complex southern administration of the peripheral Arctic region, in its policy instruments, does not very well reflect the regional concerns of the population within the framework of human security understanding. The promotion of human security naturally ensures promotion of societal security since society as a whole is the referent object of security studies, and considered society as a site where collective identity is maintained.

Against the background of these aspects, this project explores for a balanced way of development to aim for a sustainable mitigation of the challenges in order to enhance greater societal security. The specific focus within this project is on the Barents region (in particular, the Northern parts of Finland, Sweden, Norway and Northwestern Part of Russia), which, beside climate change, is facing impacts from numerous human activities, such as mass scale natural resource exploitation. The project addresses the following questions:

- How and why the concept of human security in response to its philosophical foundation is applicable to the Arctic region, and amongst the Arctic communities? How the concept of human security enhances the understanding of societal security, in particular in the context of the population of Barents region?
- In which way the challenges facing the Arctic population are important to look at from human security perspective? In what sense the application of the concept is differently envisaged in the Arctic context? While security to the maintenance of traditional subsistence and livelihood through activities, such as hunting, fishing, reindeer herding etc., are important for the community identity, particularly in the case of indigenous people; how important it is in the real life Arctic situation, specifically in the context of the indigenous and local communities of the European High North (the Barents region)? How does the impact of globalization, such as impact of tourism or of extractive industrial development (which conceivably ensure economic capability) interplay with the security to the preservation of traditional values and livelihoods? In other words, how is the economic security measured against community security of the Arctic population?
- How does security to enabling people, such as by involving local and indigenous communities in the decision-making, and allowing them to be consulted and to express their free, prior and informed consent, can be enhanced where a right-based approach of human security can be achieved? In what ways the corporate responsibility can be integrated within the right based approach of human security?
- How other social dynamics caused by demographic changes, such as by an increase in incoming population due to industrial development, may contribute to different challenges in an interaction amongst indigenous, local and incoming population?

- How can the other apparent sociocultural challenges pertaining to health and well-being (particularly important in the context of, for example, food safety and security, access to fresh water as well as to health care facility etc.) of the Arctic population be perceived from human security perspective?

In addition to research and knowledge building, the project will conduct a number of other activities, such as conducting scholars-stakeholders dialogues, publishing of periodic newsletters, creating a project website to disseminate project related information and organizing public events at the host institution (the Arctic Centre). The project is expected to publish a significant number of scientific and popular articles, as well as an edited volume both for academic and non-academic usage.

# Justification for Community Sustainability of Religious Minorities in the Finnish Part of Arctic: an Analytical Approach

*Nafisa Yeasmin\**

## **Background**

Religious minorities are facing human rights problem in the Finnish north about practicing their religion activities. Religious integration is one of the important factors for immigrants to be integrated in the host society in the Arctic.

Finnish Arctic region needs immigrants for the future economic development of this region and to fill the shortage in the labor market. North is a developing region that needs man power for the exploration and exploitation of gas and energies in the near future as it is known that “no less than 80% of the world's technology for underground mining is expected to come from the European north (Finnish and Swedish north), Norwegian and Russian North.”<sup>54</sup> Accordingly, religious participation of immigrants in the northern society has potential value for accommodating a new minority in the north, as increasing the population in the north is required for future boosting of economy.

Community viability can be influenced by cultural and religious relativism which is based on different moral codes and customs. Religious relativism is a subjective issue with right, wrong and neutral opinions of people in a particular community. Religious minorities as such need religious cooperation, suitable facilities for worship and more interactions with locals. There is a gap of attachment of locals with other communities inside and outside the region. Northern communities need a kind of mental support and psychological back up that would motivate people to take responsibility for a sustainable future. They need collective engagement with other

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<sup>54</sup> Carl Bildt, “Report of the Swedish Chairmanship of BEAC 2009-2011”, in Barents Euro Arctic Council 13<sup>th</sup> Sessions, Kiruna, Sweden 12 October 2011. Available at, [http://www.barentsinfo.fi/beac/docs/All\\_speeches\\_13th\\_BEAC\\_Ministerial\\_Session\\_Kiruna\\_12\\_October\\_2011\\_upd2011-10-27.pdf](http://www.barentsinfo.fi/beac/docs/All_speeches_13th_BEAC_Ministerial_Session_Kiruna_12_October_2011_upd2011-10-27.pdf), (accessed 12 January 2013).

communities to make scope for sustainable economy.<sup>55</sup> Local communities need knowledge and information about what has to be done at the local and regional levels to preserve and protect the environment, nature, seas and community viability in the Arctic region.<sup>56</sup> Northern and Arctic policies talk about the protection of minorities, and immigrant religious minorities in the region are equally important to protect. If the northern society accepts immigrants and multiculturalism, they should not avoid the culture and religion of immigrants either, as they are a minority in the north and need to survive and integrate as a minor community in the northern society. Religious minorities e.g. Islam, Baha'i, Buddhism are newly growing religious communities trying to find their identity by practicing religious activities in the north. For respecting human rights of religious minorities, likewise ensuring religion freedom and equality, the dominant society should be more tolerant and show positive attitudes towards the welcome minority group.<sup>57</sup> Religious integration of immigrants is one of the debatable issues in Europe, especially about Muslim minorities. There are positive and negative opinions of European people which make Muslim integration and religious integration harder.

Research on religious minority is equally important as research on indigenous minority along with the current development of the Arctic. In this article, my target is to encompass vulnerable immigrant religious minorities in the development project. Influx of immigration and minorities into the north means rising demands, inventions and various new ideas. Social networks and group thinking develop common values, dialogues and comprehensive visions.<sup>58</sup>

As Hanne Peterson stated, “in a world society everybody will belong to a minority, although the size of minorities may vary greatly.” I argued in the view point of north, the small the privileges the higher the risk of minorities loses in the north. Because, the smaller the

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<sup>55</sup> NCM Arctic Co-operation Programme 2012-2014: Sustainable Development in the Arctic, *NORDREGIO*, at <http://www.nordregio.se/en/Metameny/About-Nordregio/NCM-Arctic-Co-operation-Program-Arktiskt-Samarbetsprogram/> (accessed 15 November 2014).

<sup>56</sup> See <https://news.vice.com/article/ritual-slaughter-ban-supposedly-puts-animal-rights-before-> (accessed 10 November 2014).

<sup>57</sup> Maxwell Barna, “Ritual Slaughter Ban Supposedly Puts Animal Rights Before Religion”, *Voice News* 12 March 2014, at <https://news.vice.com/article/ritual-slaughter-ban-supposedly-puts-animal-rights-before-religion> (accessed 12 November 2014).

<sup>58</sup> Tobias Luthé, “Creating a Vision for Sustainable Arctic Communities.” available at, <http://energyblog.nationalgeographic.com/2014/01/10/creating-a-vision-for-sustainable-arctic-communities/> (accessed 15 November 2014).

community, the higher the challenges of surviving in the north. It is the most common reason for declining the number of immigrant youth and refugees from the north.

It is difficult for immigrant religious minorities to integrate without any special ties with any particular community in the north. Minorities in the region have been suffering from identity crisis e.g. privileges, rights and responsibilities for themselves. In the same way as Peterson compared the privileges of Muslims and the indigenous minority in Greenland, I argued in the Finnish case that Muslims minorities are more vulnerable and a very small community compared to Sami group. Most of the Muslims do not have citizenships, the vast majority of Muslims do not have “political lands”<sup>59</sup> and rights, their voices are not recognized and they are scattered across the region and there is no formal interaction of Muslims across the borders. Above all, they are a new minority in the north and there is no availability of participation of Muslim minorities in the public sector and their access to the social and cultural life of the host country is more limited than that of any other citizen of the majority population and the indigenous population as well.

### **Empirical Research Findings<sup>60</sup>**

Religions do an excellent job in favor of the integration of immigrants in the region which is surveyed by the project.<sup>61</sup> There are varieties of integration measures in the Finnish Arctic<sup>62</sup>. However, integration of the immigrants’ spiritual side is to be improved in the region for regional sustainability. In some small town in the north small religious minorities have failed to

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<sup>59</sup> The concept of political lands indicates political involvement, political identities, political opportunities, freedom of political statement of immigrant religious minorities in the host country which to be heard easily.

<sup>60</sup> This is a project report which is one of the tools that can be used to develop religious activities for supporting spiritual integration of immigrants. It is funded by the Finnish Ministry of Interior (The Advisory Board for Ethnic Relations), Lapland Centre for Economic Development, Transport and the Environment and North Ostrobothnia Centre for Economic Development, Transport and the Environment. Author of the report has interviewed various religious communities in Northern region of Finland and put together their religious integration measures and activities in the report. The report is intended to help the local and regional authorities in understanding different religious faith to make the integration process successful for religious minorities with specific properties and priorities.

<sup>61</sup> Nafisa Yeasmin “Maahanmuuttajien kotoutuminen Pohjois-Suomessa (integration of immigrants in Northern Finland”, Report prepared for the Advisory Board for Ethnic Relations, Finnish Ministry of Interior ( 2014).

<sup>62</sup> Project survey area includes 11 territories of the Finnish Arctic region e.g., Rovaniemi, Kemi, Tornio, Oulu, Oulainen, Pudasjärvi, Kalajoki, Ylivieska, Haapavesi, Raahen and Kajaani.

practice their religion activities e.g. religious festivities for not having holiday in working places and in the school, “ritual slaughtering (for Muslim and Jews) has been banned in Sweden, Finland and Norway,<sup>63</sup> which create dilemmas to get permissible food and contradicts with human rights<sup>64</sup>, there is no place for prayers. Above all, there is no equal job distribution among religious minorities especially women with hijab (covering head with scarf) face discrimination in the job market. Accordingly minority groups have failed to cooperate with other religious communities in the same town, as there are desirability biases and prejudices among the religious communities. Some other town may have cooperation plans but they are not always carried out.<sup>65</sup> Some groups are ready to cooperate, others are not. Especially larger religious communities are not eager to collaborate with smaller religious groups.

Religion is one of the measures used to determine the status of immigrants’ religious minorities in the host country. Religious discrimination could not encourage an immigrant to be integrated and devoted to the host society.<sup>66</sup> It is argued that positive attitudes and behavior of the majority influence minority communities to integrate properly in a host country.

A religious integration measure in addition is intended to widen the focus of the common people from different religious background to Finnish Arctic. For many immigrant minorities, religion is the foundation of their life and they want to educate their children’ under their faith of religion relativism which is perceived as significant. Religious practices create a feeling of security for many minorities in the Finnish Arctic region. However, it is difficult to practice religious activities and hard to find facilities in some of the places in the region. Muslims are the one religious minority who are growing in number within the region. This group is trying to cope in the region, and is searching supports for mental adaptation. So every phase of development e.g. economic, societal and advancing cultural knowledge, has potential to safeguard the minorities by providing all kind of securities. There is a significant need to provide knowledge in

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<sup>63</sup>Barna *supra* note 57.

<sup>64</sup> Every person has the freedom to practice their own religion, adopted by the article 18 of the Universal Declaration of Human Rights.

<sup>65</sup> Yeasmin *Supra* note 61.

<sup>66</sup> James Jupp, “ Religion and Integration in a Multifaith Society”, in Michael Clyne and James Jupp (eds.), *Multiculturalism and Integration A Harmonious Relationship*, The Australian National University e-Press, at 135-150, available at <http://press.anu.edu.au/apps/bookworm/view/Multiculturalism+and+Integration:++A+Harmonious+Relationship/5431/ch08.xhtml> (accessed 10 December 2014).



the region about religious minorities in order to making a tie between minorities and majorities in the region.

In the empirical part of the project, I found that some of the religious communities are providing supports to community members to be integrated in the northern society; however those are informal and temporary. Initiative should be taken formally to sustain minorities. There is a need for more community development projects and for pro-active action of communities for good governance and the potential of socio-economic growth of the region; otherwise, there is a risk that some of the small religious communities will be lost from the region.

## **Section C: Academic Courses on Arctic Law**

## Master's Degree Programme in International and Comparative Law - The MICLaw Master Programme (120 ECTS) with Specializations in Arctic Law and Governance

*Päivi Martin\**

The Master's Degree programme in International and Comparative Law specializing in Arctic Law and Governance started at the University of Lapland on 2012 and first student graduating in 2014. The next intake for the programme is for studies starting in September 2015 and application period is from *01 December 2014 to 30 January 2015*. The Master's Degree Programme offers modern expertise and education where students will be in the forefront of legal polar research. The MICLaw master's degree will open a diversity of career paths in legal field, such as: entrepreneurship; management; NGO's and research.

The Arctic Law and Governance specialization studies aims to give a comprehensive knowledge of the key areas related to Arctic governance, such as climate change, ocean governance and the rights of indigenous peoples. The programme provides a general understanding of international environmental law and its application in the Arctic region in particular, as well as knowledge of the various levels of law- and policy-making in the Arctic. Students develop skills for working with international instruments, case law, and literature with a view to writing research and engaging in legal praxis. The specialization studies are taught by the researchers of the Northern Institute for Environmental and Minority Law.

**Arctic Law and Governance** offers a deep knowledge concerning the various levels of law and policy making in the Arctic. The Arctic is a very fragmented area from the viewpoint of governance, given that three federal states as well as the European Union extend their influence in the region. Hence, it is of importance to penetrate into the basic structure of governance starting from national and European Union law, and moving down to sub-national law. An important part is also to deal with the issue of Arctic Ocean governance, which is challenged due to different changes posed by global warming.

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### **Soft Law Forms of Co-operation in the Arctic**

In the Arctic environmental co-operation, as well as in international arenas, there is a growing trend according to which many environmental issues are not dealt with classical means of treaty making, but through so called 'soft law' cooperation. In many cases, international law practitioners are using this term without fully understanding its scope. The programme aims to give students a proper understanding about soft law - including the characteristics, advantages and limitations of soft-law; definitions of soft-law; and reasons of creating soft-law cooperation opposed to traditional means of states' relationships in international law.

### **International Law, Climate Change and the Arctic**

One of the major phenomena that shapes the policies and challenges the governance structures in the Arctic is the global warming that is rapidly changing the natural environment in the area. It is important to consider how the international law addresses climate change and how principles of international environmental law can be applied in the context of climate change. Although the programme has a clear Arctic focus, an important part of the studies is on the UN Framework Convention on Climate Change, which will provide an opportunity to study the creation and development of international legal regimes. Also, it is relevant to look at other fields that are impacted directly by climate change, such as the law of the sea and human rights law.

### **Environmental Rights of Indigenous Peoples in International Law**

The programme focuses on the rights of indigenous peoples in international law, particularly from the viewpoint of environmental rights of Arctic indigenous peoples. The instruments and case law explain, how environmental changes affect the human rights of indigenous peoples, and how international law is responding. One crucial question is the right of indigenous peoples to participate in environmental decision-making. The students should get an understanding about the challenges that the basic structure of international law pose to the participatory rights of

indigenous peoples. The recent developments concerning the legal position of indigenous peoples in international law, including the emerging right to self-determination, will be discussed. One aim is to see what role international environmental law has played in the transformation of the international status of indigenous peoples from mere objects of protection to recognised legal subjects. Since Arctic indigenous peoples have played an active role in the development of the participatory position of indigenous peoples, showing model also to other indigenous peoples, the aim is to look at these developments, including the participation of Arctic indigenous peoples in the work of the Arctic Council and in the UN Permanent Forum on Indigenous Issues.

### **Indigenous Peoples Land rights in Finland, Sweden and Norway**

Land rights of indigenous peoples can be seen as the crux - and perhaps the most controversial issue in both national and international realms. The specialization studies offer a historical perspective of the development of the land rights in one particular Arctic region, namely in Northern Fenno-Scandinavia. Historically, this area has been widely inhabited by an Arctic indigenous people, the Saami. The studies give an understanding about the development of the historical land rights and present governance of Saami home lands, as well as the national legislations of Finland, Sweden and Norway. An interesting and important aspect for students is to get a close insight at the development of this particular Arctic area and legal systems of these three nations in relation to land rights and to get a comprehensive understanding about the theme that causes long lasting political struggles in nation states in relation to the rights of indigenous peoples.

***"The fact that I have studied in the University of Lapland has given me credibility in the field of circumpolar legal development."***

*According to the students the Arctic Law and Governance studies are seen as an opportunity to study at the edge of international Arctic legal development. Students from both an Arctic and non-Arctic background feel that they get credibility in the field of circumpolar legal development. Often they see the potential for comparative study on regional policy making and governance. Students want to see that in the future they can, for example, be involved in the*

*creation and application of social and environmental policies or in discourse surrounding resource exploitation and its effects on northern communities, and the North as a whole. They see various international career opportunities in public institutions or NGOs. For example, NGOs in the field of international human rights and minority protection are very interesting for the students. The knowledge and expertise gained in the Arctic is unique and gives students the confidence to pursue their goals. They might want to work with environmental topics and indigenous peoples rights far away from the Arctic, but with the certainty that they have the relevant knowledge and competence to enhance quality and relevance for any employer. Inspiring research-based education also makes a career in research and education a relevant option.*