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# THE GROWTH OF ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL PROTECTION IN INTERNATIONAL LAW:

## IN THE CONTEXT OF REGULATION OF THE ARCTIC'S OFFSHORE OIL INDUSTRY

by E.A. Barry-Pheby\*

### INTRODUCTION

The Arctic Ocean is surrounded by five coastal states (four of which are heavily industrialised).<sup>1</sup> With its short food chain, and low temperatures, the Arctic Ocean is highly vulnerable to pollution.<sup>2</sup> This marine environment is central to Arctic indigenous peoples' existence: providing food, warmth, livelihood and cultural integrity.<sup>4</sup> Yet the offshore hydrocarbon industry is increasingly exploiting the Arctic Ocean: many activities are in deeper, and formerly unexplored, territories.<sup>5</sup> Relevant international law is not keeping pace, leaving this delicate marine environment, and its indigenous coastal populations increasingly vulnerable to oil pollution.<sup>6</sup>

There is greater inclusion of international environmental law principles and concepts in relevant international law yet environmental protection is still severely curtailed by weak application of the precautionary principle, little progression in the creation of marine protected areas ("MPA's"), inadequate protection of identified species at risk from oil pollution, and a sustainable development model weighted heavily towards economic development. Similarly, there has been a substantial growth of international law affording greater rights to indigenous peoples and ground-breaking involvement of indigenous peoples in the law-making process. Yet constraints are imposed by the failure of key states to ratify relevant international law and from limitations of the Arctic Council's soft law. Examples of environmental injustice are found in inadequate public participation for environmental impact assessments identified as tokenistic, ineffective or untimely, and in distributive inequalities of the sustainable development of Arctic coastal states. The tension between state sovereignty and international law has caused an impasse, which needs to be circumvented to sufficiently support environmental protection and environmental justice in regulation of the Arctic's offshore oil industry.

### ENVIRONMENTAL PROTECTION

The Arctic faces ongoing degradation from global warming, ozone depletion, radioactive waste, pollution from persistent organic pollutants, pollution from heavy metals, and oil

development.<sup>7</sup> Oil pollution from the offshore industry has the potential to damage marine animals, change migratory patterns, destroy flora and halt indigenous peoples subsistence lifestyles.<sup>8</sup>

The Arctic marine environment is rendered particularly vulnerable to oil pollution due to the severe limitations that climatological, oceanographic and ecological factors impose on oil biodegradation.<sup>9</sup> Furthermore, industry clean-up methods are rendered difficult, some postulate impossible, due to the Ocean's remoteness, semi-permanent ice cover<sup>10</sup> and climatological extremes.<sup>11</sup> Oil spills in the Arctic marine environment could

remain unweathered, and toxic, for decades.<sup>12</sup>

With some reticence, the offshore industry primarily drills only during summer seasons.<sup>13</sup> During the summer season the climate may be problematic, with "gale force winds, week-long storms, and heavy fog restricting visibility."<sup>14</sup> While the increasing melting of the Arctic summer ice is announced with growing hysteria,<sup>15</sup> icebergs, ice packs and increased 'wave and storm action' could present new problems.<sup>16</sup>

Unfortunately, the heavily anticipated Arctic Council's binding agreement on oil pollution preparedness and response may fail to address the salient needs of the Arctic environment. In February 2013 Greenpeace leaked the draft agreement and heavily criticised the limitations of this piece of draft legislation, describing it as "incredibly vague" and "inadequate."<sup>17</sup>

Numerous academics acknowledge problems with the primarily soft international law regulating the Arctic.<sup>18</sup> The problems identified relate to: a) the nature of international law (and the systemic failures of this particular soft law);<sup>19</sup> b) procedural failures and weaknesses including inadequate implementation procedures, evaluation, outcome targets, follow-up procedures and integration of science into practice and policy;<sup>20</sup> c) a lack

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*The tension between state sovereignty and international law has caused an impasse*

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of integration of recognized and accepted environmental principles and approaches such as ecosystem-based management (“EBM”), biodiversity, creation of Marine Protected Areas (“MPA”s), sustainable development, the precautionary principle and the polluter pays principle;<sup>21</sup> and d) a range of other faults including lack of funding, many years without an Arctic Council permanent secretariat, geopolitical tensions, a resistance by coastal states to develop international law and a lack of real integration of indigenous and other local people’s opinions.<sup>22</sup>

Soft law can provide more detail, and be quicker and less cumbersome to create (as it does not demand domestic ratification), than hard law.<sup>23</sup> Furthermore, it often supports enhanced stakeholder involvement.<sup>24</sup> It is also acknowledged that soft law has the potential to better address politically sensitive issues, allowing for the retention of sovereignty while resulting in the integration of the essence of soft law into domestic legislation.<sup>25</sup> Fitzmaurice identifies that soft law can play a “fundamental” role in environmental protection.<sup>26</sup>

The inclusion of international environmental law principles and concepts provides, *prima facie*, a legal foundation for ecological, cultural and scientific perspectives; promotes discourse; and potentially raises environmental protection standards.<sup>27</sup> Therefore, the next part will analyze the growth of environmental protection in relevant international law by examining the inclusion of international environmental law principles/concepts.<sup>28</sup>

## THE PRECAUTIONARY PRINCIPLE

The precautionary principle is increasingly included in international instruments relevant to the Arctic marine environment, including: the Convention of Biological Diversity,<sup>29</sup> Agenda 21,<sup>30</sup> the Rio Declaration,<sup>31</sup> the Convention for the Protection of the Marine Environment of the North-East Atlantic (the “OSPAR Convention”),<sup>32</sup> the Environmental Impact Assessment (“EIA”) Guidelines<sup>33</sup> and the Offshore Oil and Gas Guidelines.<sup>34</sup> The precautionary principle provides an essential mechanism for considering environmental protection in the face of scientific uncertainty, or more accurately the inability of scientific modelling to predict, with any certainty, the risk of deleterious effects.<sup>35</sup> The precautionary principle is particularly relevant given the identified vulnerability of the Arctic marine environment<sup>36</sup> and the dispute amongst environmentalists, scientists and politicians regarding the risk of oil spills, the ‘response gap,’<sup>37</sup> the effect of oil waste products on the marine environment, and effective clean-up methods in sea-ice clean-up.<sup>38</sup>

The precautionary principle is one of four principles on which the Arctic Offshore Oil and Gas Guidelines are based, and the guidelines require states to ‘widely apply’ it.<sup>39</sup> Yet the Offshore Oil and Gas Guidelines lack evaluation of their implementation, monitoring and follow-up procedures. This has weakened their capability to set and maintain higher standards.<sup>40</sup> While enforcement of soft law<sup>41</sup> is problematic, evaluation, monitoring and follow-up mechanisms are more readily carried out, although these mechanisms are insufficient in Arctic soft law, perhaps partially due to state resistance and funding problems.<sup>42</sup>

The Environmental Impact Assessment (“EIA”) Guidelines identify the need for a precautionary approach in keeping with the Rio Declaration’s definition.<sup>43</sup> The EIA Guidelines, less direct than the Offshore Oil and Gas Guidelines, state only that a precautionary approach is “encouraged” when conducting an EIA.<sup>44</sup> These Guidelines have seemingly had limited influence on practice through a lack of awareness of their existence and a lack of follow-up procedures.<sup>45</sup>

The language of the binding OSPAR Convention<sup>46</sup> is stronger, and its effect is *prima facie* more substantial, driven by the OSPAR Commission (“OSPARCOM”). OSPAR directs Contracting Parties to apply the precautionary principle when there are “reasonable grounds for concern”<sup>47</sup> with regards to inputs that could cause damage to humans or marine flora and fauna.<sup>48</sup> OSPARCOM also “collect(s) and review(s)” data to assess the effects of development on relevant marine environments.<sup>49</sup> This data gathering is key to the success of the OSPAR and OSPARCOM and reportedly lowers oil pollution levels and raises standards of the state parties.<sup>50</sup> A main limitation of OSPAR in relation to the Arctic Ocean is that only two of the Contracting Parties are Arctic coastal states (Denmark<sup>51</sup> and Norway) – therefore the OSPAR Convention only covers 8% of the surface area of the Arctic Ocean.<sup>52</sup> Theoretically the OSPAR boundaries could be widened,<sup>53</sup> but as the Convention was developed to support a set maritime area,<sup>54</sup> this has not happened.

The Convention on Biological Diversity (“CBD”) has been an instrumental framework convention which other international law has followed.<sup>55</sup> The CBD preamble directs<sup>56</sup> parties to adopt a precautionary approach, and this is reiterated by Decision II/10 advocating a “precautionary approach” in the marine environment.<sup>57</sup> As a framework Convention, it has been successful, but it does not have the substantive detail required to address the salient issues of Arctic offshore development.

The inclusion of the precautionary approach into international hard and soft law regulating the Arctic is positive, yet its effect is limited. OSPAR only covers a small proportion of the Arctic Ocean, the framework Convention CBD lacks substantive detail and only contains this approach within its preamble, and the EIA and Arctic Offshore Oil and Gas Guidelines have weak monitoring and follow-up procedures and are soft law. The result being that protection of the Arctic Ocean is curtailed: with a large response gap<sup>58</sup> and questionable clean-up methods little supported in the weak interpretation/application of the precautionary principle.

## BIOLOGICAL DIVERSITY

Marine ecosystems are intricate, and interdependent, so damage to part of the food chain can have a catastrophic effect on the whole ecosystem.<sup>59</sup> In the Arctic Ocean, plankton is a key part of the food chain for birds, fish and marine mammals.<sup>60</sup> The Arctic Ocean, with restricted biodiversity and species with increased longevity is in particular need of conservation of its biological diversity.<sup>61</sup>

MPAs are identified as an effective way of supporting biological diversity yet despite this there are so few MPAs in

the Arctic.<sup>62</sup> Aiding biological diversity does not automatically preclude all offshore development, and MPAs can be designated to restrict or prevent certain activities in vulnerable areas.<sup>63</sup> Such action can support recovery of the wider marine environment.<sup>64</sup> The International Union for Conservation of Nature (“IUCN”) identifies that an “imperfect” MPA, that only limits certain activities, is preferable to no MPA.<sup>65</sup>

The Convention on Biological Diversity<sup>66</sup> seeks to conserve biodiversity and to support the sustainable development of environmental resources. One hundred and ninety-three states are parties to the Convention, and it is ratified by all the Arctic coastal states except the U.S.A. Article 8 directs parties to consider the creation of protected areas, and in 2004 the Conference of Parties identified the need for MPAs as a key way of supporting biological diversity.<sup>67</sup> The CBD as a framework Convention does not provide substantive detail and its requirements are “broad and vague, or carefully qualified.”<sup>68</sup>

The Arctic Council Working Group, Conservation of Arctic Flora and Fauna (“CAFF”),<sup>69</sup> provides for some monitoring and assessment of the Arctic environment and aims to promote biological diversity. In 1998, CAFF set up the Circumpolar Protected Areas Network (“CPAN”) to support the growth of protected areas.<sup>70</sup> Unfortunately CPAN became dormant due to inner-wrangling and state differences regarding MPAs.<sup>71</sup>

Another way to support biodiversity is to protect specific species that are in decline. There are seventeen varieties of cetaceans in the Arctic Ocean including the narwhal, bowheaded and beluga whales. Bowheaded whales are an endangered species and an oil spill within their territory could have a disastrous effect on the species.<sup>72</sup> The Exxon Valdez oil spill caused mortalities and a continuing decline in whale numbers.<sup>73</sup> Polar bears, classified as marine mammals, spend most of their life on Arctic ice floes, or swimming.<sup>74</sup> They have a number of features which make them particularly vulnerable to oil pollution. Firstly, contamination is magnified along each step of the food chain. If a polar bear eats contaminated prey, it also consumes toxic levels of hydrocarbons. The ingestion of these hydrocarbons can lead to a multiplicity of health problems, and ultimately death.<sup>75</sup> Secondly, polar bears are a non-migratory species<sup>76</sup> and they hibernate to cope with food scarcity. When they wake from hibernation, if prey is not readily available, as happens in cases of large-scale oil pollution, they will not get the nutrients they need to survive.<sup>77</sup> Thirdly, if oil penetrates the fur of polar bears it compromises its insulation, leaving the bear at a heightened risk of hypothermia and death.<sup>78</sup>

In 1946, following an increase in commercial whaling, the International Convention for the Regulation of Whaling was established. The Convention’s purpose was to conserve whales, specifically by regulating the whaling industry.<sup>79</sup> In response to declining polar bear numbers due to harvesting, the International Agreement for the Conservation of Polar Bears was created. Article II of the Agreement requires contracting parties to “protect the ecosystems of which polar bears are a part,”<sup>80</sup> paying “special attention” to polar bear habitats.<sup>81</sup> However, it does not preclude exploration.<sup>82</sup> Whilst both the International Convention

for the Regulation of Whaling and The International Agreement for the Conservation of Polar Bears successfully addressed the concerns of whaling and harvesting,<sup>83</sup> the newer threat posed by offshore oil development has not been addressed.

## SUSTAINABLE DEVELOPMENT

There has been increased interest in Arctic offshore hydrocarbon activities with high bidding for leases that previously did not receive bids due to their remote and potentially hazardous locations.<sup>84</sup> The Arctic offshore oil industry is experiencing rapid growth to meet the demands of world hydrocarbon needs, domestic energy security and desired economic growth.<sup>85</sup> The rate of growth of the Arctic offshore oil industry is predicted to rise. The United States Geological Society estimates that ninety-billion barrels of Arctic oil remain untapped.<sup>86</sup>

Sustainable development,<sup>87</sup> identified as a somewhat fluid concept,<sup>88</sup> has a classic definition in the Brundtland report: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>89</sup> Sustainable development, conceived at global conferences and forums, has been extensively incorporated into relevant international legislation.<sup>90</sup>

The Arctic Council, from its inception as the Arctic Environmental Protection Strategy (“AEPS”), identified sustainable development in the Arctic as a key objective.<sup>91</sup> To focus further on sustainable development, the AEPS created the Sustainable Development Program, which later evolved into the more formal Sustainable Development Working Group (“SDWG”).<sup>92</sup> Discord amongst Arctic states over the definitions and boundaries of sustainable development led to substantial delays in devising a programme for the SDWG.<sup>93</sup> Consequently the SDWG’s focus is somewhat ‘disparate’ and has circumvented focusing on several controversial issues.<sup>94</sup>

Since 1998 under the auspice of the SDWG a number of reports have been produced, more recently including the Best Practices in Ecosystems-Based Ocean Management report, the Arctic Energy report and as part of the International Polar Year an energy summit was held (with consequential report), in which the Arctic’s offshore oil industry was part of a wider discussion of many energy sources.<sup>95</sup> Following changes in the Arctic Council chair in 2006 to Norway<sup>96</sup> there was clearly a shift towards further consideration of the impact of the offshore oil industry, however this has had limitations: the SDWG’s Arctic Energy report notes that it is “not intended as a comprehensive assessment of Arctic energy resources, nor of the impacts of Arctic energy development on the natural and human environments in the circumpolar environment” and is instead a strategic report.<sup>97</sup>

The EIA Guidelines identify that sustainable development is the cornerstone principle of the Arctic Council.<sup>98</sup> They also identify that the key to sustainable development is the inclusion of “traditional knowledge.”<sup>99</sup> The Arctic Offshore Oil and Gas Guidelines (created by Protection of the Arctic Marine Environment or “PAME”) identify that offshore oil and gas activities in the Arctic should be predicated on the principle of

sustainable development.<sup>100</sup> The Guidelines direct governments to be “mindful of their commitment to sustainable development” focusing on eight key issues, including: biological diversity, transboundary pollution, and “broad public participation in decision making.”<sup>101</sup> Public participation in EIAs has been criticised for being tokenistic, ineffective or untimely.<sup>102</sup>

The OSPAR Convention identifies in its preamble “that concerted action at national, regional and global levels is essential to prevent and eliminate marine pollution and to achieve sustainable management of the maritime area.”<sup>103</sup> OSPAR also refers to the need for programs and plans to implement sustainability. OSPARCOM identifies “that sustainable development through the application of the Ecosystem Approach” is a key principle for the North-East Atlantic Environment Strategy and requires that “[t]he Contracting parties [ensure][the]involve[ment] of relevant stakeholders in the development of their national approaches to sustainable uses of the seas.”<sup>104</sup>

The more advanced implementation, monitoring and follow-up procedures of OSPAR better support sustainable development. The OSPAR bound countries of Norway and Greenland (via Denmark) could help to coerce the other Arctic states to consider better integration of sustainable development into practice, perhaps via OSPARCOM. The inner-wrangling, inefficiencies and procedural problems experienced by SDWG, and the lack of follow-up procedures of the EIA and Offshore Oil and Gas Guidelines, could be better addressed. They are not *de facto* a problem of all soft law, but rather are problems associated with the Arctic’s international law.<sup>105</sup>

## ENVIRONMENTAL PROTECTION—CONCLUSION

The Arctic Council and working groups have instigated many meetings, reports and legislation, which increasingly considers environmental protection via implementation of international environmental law concepts and principles. Yet, the Arctic Council and its working groups have limited funds, lack enforcement mechanisms, are somewhat thwarted by procedural and structural problems and are restrained by States’ desire to maintain their sovereign rights to freely exploit natural resources.<sup>106</sup>

The environmental protection provided by inclusion of these international environmental law principles/concepts with regards to the offshore oil industry in the Arctic appears insufficient: the precautionary principle is applied in a diluted form, there are still so few MPAs in the Arctic Ocean, species specific legislation remains narrow despite new and potential risks from the offshore oil industry, and sustainable development favours state economic growth providing insufficient consideration to distributive justice.

## ENVIRONMENTAL JUSTICE AND HUMAN RIGHTS

The indigenous, Arctic coastal population maintains a largely symbiotic relationship with the marine environment: some still leading subsistence lifestyles and many others heavily relying on the marine environment for food, warmth and cultural identity.<sup>107</sup> Pollution by the offshore oil industry that damages the marine environment would fundamentally interfere with indigenous peoples’ lives.<sup>108</sup>

The environmental justice movement has arisen in response to racial and social inequalities that have caused ‘disproportionate environmental burdens.’<sup>109</sup> Arctic indigenous peoples have been described as victims of ‘eco-crime’.<sup>110</sup> Dorrough states that ‘indigenous peoples have been and continue to be victims of subjugation, domination and exploitation’.<sup>111</sup> Environmental justice is a multi-dimensional concept identified as incorporating many elements of: distributive,<sup>112</sup> procedural,<sup>113</sup> recognitive,<sup>114</sup> productive<sup>115</sup> and ecological justice.<sup>116</sup>

## INTERNATIONAL LAW

International law increasingly addresses Arctic indigenous peoples’ human rights in an environmental context in: the Indigenous and Tribal Peoples Convention,<sup>117</sup> the UN Declaration on the Rights of Indigenous Peoples<sup>118</sup> the Convention on Biological Diversity, soft law created by the Arctic Council, the inclusion of indigenous peoples in the United Nations Permanent Forum on Indigenous Issues (“UNPFII”), the creation of the Inter-American Commission on Human Rights, and the inclusion of six groups of indigenous peoples as permanent participants in the Arctic Council.<sup>119</sup>

The ILO Convention 169<sup>120</sup> is a legally binding piece of international legislation setting out minimum standards for indigenous rights. It accords distributive and procedural elements of environmental justice to indigenous peoples via: recognition of cultural diversity,<sup>121</sup> “ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population,”<sup>122</sup> and by providing consultation and decision-making rights.<sup>123</sup> Furthermore, indigenous peoples were involved in the creation of this legally binding piece of international law.<sup>124</sup>

Only two of the five Arctic coastal states (Denmark and Norway)<sup>125</sup> are parties to this Convention. Although, Henriksen speculates that “the other Arctic countries cannot ignore the comprehensive set of international minimum standards on indigenous rights.”<sup>126</sup> Unfortunately by failing to ratify this Convention it is presumably what they intend to do.

The United Nations Declaration on the Rights of Indigenous Peoples is a rights-based piece of international legislation that proliferates environmental justice. Article 18 states indigenous peoples’ “right to participate in decision making in matters which would affect their rights,” and Article 32 directs that “(s) tates shall consult and cooperate with the indigenous peoples concerned through their own representative institutions . . . to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with development, utilization or exploitation of mineral, water or other resources.”<sup>127</sup> Both Articles 18 and 32 clearly centralize indigenous peoples’ right to the procedural facet of environmental justice with regard to any offshore oil development.

The Declaration took decades of deliberations with battling over the minutiae of detail, yet minor alterations could have substantially weakened its effect. For example, with regards

to the issue of “free, prior and informed consent” some states wished to substitute “obtain” with “seek.”<sup>128</sup> The strength of the Declaration is greatly attributed to the participatory role of indigenous peoples in its creation.<sup>129</sup> This Declaration is seen as a crucial step in paving the way to the creation of a binding Convention on indigenous rights.<sup>130</sup>

Other international law also provides Arctic indigenous peoples with rights in corollary with their territories and environment, including: the non-binding United Nations Conference on Environment and Development (UNCED) Agenda 21,<sup>131</sup> the Rio Declaration on Environment and Development,<sup>132</sup> and the binding Convention on Biological Diversity.<sup>133</sup> In contrast, indigenous people were not included in the Ilulissat Declaration discussions. Furthermore, the United Nations Convention on the Law of the Sea (UNCLOS)<sup>134</sup> incorporates a traditional view of sovereignty and fails to mention indigenous people’s rights, which Rebecca Bratspies sees as “striking a jarring note of discord with recent developments in international law.”<sup>135</sup>

Other notable inclusions of indigenous people in international law and policy making include: The creation in 2000 of the United Nations Permanent Forum on Indigenous Issues (“UNPFII”),<sup>136</sup> The Inter-American Commission on Human Rights, which is relevant to two of the Arctic coastal states, the USA and Canada, and the role of indigenous peoples as permanent participants in the Arctic Council.

The Arctic Council is the main forum for inter-governmental political discussion of Arctic environmental issues and the driving force behind the creation of many reports and much international soft law.<sup>137</sup> Although the presence of the permanent participants can be influential the decisions are made with the consensus of Arctic Council members states only.<sup>138</sup> The fundamental doctrine of state sovereignty persists.

There has been huge growth of indigenous peoples’ rights in international law via UNDRIP, ILO169, CBD, the soft law of the Arctic Council and the inclusion of indigenous peoples in international forums. Yet, there are limitations on Arctic indigenous peoples’ rights. First, after decades of debate, only Norway and Denmark<sup>139</sup> are parties to ILO169, and Russia is not a party to UNDRIP (which is not a binding instrument). Second, the Arctic Council’s Permanent Participants do not have voting rights. Third, the vulnerable position of the permanent participants can be seen by the Russian government’s immediate decision to suspend the work of the Russian Association of Indigenous Peoples of the North (RAIPON) in November 2012.<sup>140</sup> RAIPON can no longer officially participate in Arctic Council work. Finally, the soft law that the Arctic Council creates faces substantial criticism for its poor compliance rates, lack of implementation and insufficient monitoring standards.<sup>141</sup>

The exclusion of indigenous peoples from the Ilulissat Declaration’s discussions suggests both reluctance by the five coastal states to identify indigenous peoples as on an equal footing, and their intention not to accede state sovereign rights to restraints imposed by international law. There is clearly a gap between rhetoric and reality and a reluctance to go beyond this impasse.

## ENVIRONMENTAL IMPACT ASSESSMENTS (“EIA”s) AND ENVIRONMENTAL JUSTICE

EIAs are a key way of allowing analysis, consultation, research<sup>142</sup> and public participation. Public participation is, *prima facie*, able to fulfil a critical part of according environmental justice to indigenous peoples by providing procedural rights.<sup>143</sup> EIAs are defined by the Espoo Convention as a “national procedure for evaluating the likely impact of a proposed activity on the environment.”<sup>144</sup> The CBD Guidelines, Arctic Offshore Oil and Gas Guidelines and EIA Guidelines all include broad boundaries of what the EIA process should involve: including impact on “human-health” and the importance of incorporating traditional (and other local) knowledge.<sup>145</sup>

International legislation regulating the Arctic has embraced the EIA concept. The Espoo Convention (addressing trans-boundary EIAs for offshore hydrocarbon activities)<sup>146</sup> has forty-five Contracting Parties, of which only Canada, Denmark and Norway are Arctic coastal states.<sup>147</sup> The EIA Guidelines and the Offshore Oil and Gas Guidelines provide Arctic-specific guidance: identifying features of the Arctic’s cryosphere and eco-system that demand consideration.<sup>148</sup> The Offshore Oil and Gas Guidelines attempt more stringent regulation of transboundary impacts than the standards set by the Espoo Convention.<sup>149</sup> UNCLOS requires states to conduct an assessment for hydrocarbon activities although as a framework the Convention does not provide substantive detail.<sup>150</sup>

The Espoo Convention requires adherence to public participation procedures although it does not elaborate on the form that this participation should take, or the stage at which it should be instigated.<sup>151</sup> Koivurova states that the lack of detail regarding the form and timing of public participation makes this Convention “considerably weakened.”<sup>152</sup> The Espoo Convention’s<sup>153</sup> strong institutional arrangements provide a forum for effective follow-up procedures, prescribing that there should be regular reviews for implementation;<sup>154</sup> the last such meeting was in Geneva in June 2011.<sup>155</sup> The Espoo Convention is praised for setting detailed procedural standards and for creating what “seems to have become a global standard for how to conduct TEA.”<sup>156</sup> Yet it is criticized for not having harmonized standards of EIAs across contracting states in practice and therefore potentially causing problems of reciprocity.<sup>157</sup> As only three of the five coastal states are parties to this Convention, its ability to harmonize legislation governing the Arctic Ocean is limited.<sup>158</sup>

PAME’s Offshore Oil and Gas Guidelines identify the importance of “full and meaningful” public participation,<sup>159</sup> but do not provide substantive detail on this issue. The EIA Guidelines, although more detailed, identify the importance of incorporation of traditional knowledge into the EIA process from initial exploration stages and throughout the exploitation process.<sup>160</sup> However, they are often criticized for lacking implementation, having poor follow-up evaluation procedures,<sup>161</sup> and a study identified that key parties were not even aware of the existence of these Guidelines.<sup>162</sup>

In practice there are examples of Arctic public participation falling far short of standards international legislation aspires

to achieve. In the United States, the villagers of Kaktouik (the nearest community to prospective development in the US sector of the Beaufort Sea) felt that their views were sought so late in the process that they did not actually influence or alter practice and that it was a tokenistic process.<sup>163</sup> These villagers wished to raise technical concerns but instead Shell provided public relation employees to answer these technical concerns.<sup>164</sup> Similarly Canadian Inuits have criticised public participation in the region as insufficient and untimely.<sup>165</sup> Steiner also commented that “the general public is asked to review and comment on an overwhelming stream of technically complex documents, but is outmatched by well-paid industry advocates.”<sup>166</sup> The offshore industry presents a different picture – one where they seek “consent” rather than mere consultation and where they, in response to indigenous people’s requests, stopped operations for a two-week period “to enable locals to carry out their subsistence hunting during the whaling season.”<sup>167</sup>

The indigenous peoples of the Arctic are not of only one opinion with regards to offshore activities but they are united in supporting the need for continued, and ongoing, involvement of indigenous peoples in the international debates, and at a local level, their involvement in each and every planned development.<sup>168</sup> Examples of inadequate involvement in decision-making and insufficient information provisions are examples of environmental injustice.

### ENVIRONMENTAL PROTECTION AND ENVIRONMENTAL JUSTICE – CONFLICTING CONCEPTS?

The environmental movement in the Arctic has historically alienated the indigenous population.<sup>169</sup> In the 1970s and 80s, Greenpeace launched a campaign against seal hunting that Greenland’s indigenous peoples found offensive, inaccurate and damaging.<sup>170</sup> There were later objections to Greenpeace’s attack on indigenous peoples whaling.<sup>171</sup> While Arctic indigenous peoples are described as victims of “eco-crime(s),” environmentalists are perceived as having done little to pursue this injustice.<sup>172</sup> In turn, Indigenous peoples often appear keen to maintain their distance from the environmental movement.<sup>173</sup>

To consider whether environmental protection and environmental justice mutually drive up standards or conflict, this paper focuses on sustainable development and EIAs. Sustainable development, in balancing economic growth with environmental protection, is potentially at odds with environmental justice.<sup>174</sup> The indigenous coastal communities risk environmental costs yet share little of the economic benefits.<sup>175</sup> Often large proportions of high paid offshore oil industry jobs do not go to local people<sup>176</sup> but instead to skilled, experienced workers outsourced from other areas.<sup>177</sup> Also, complex revenue systems for offshore

industries can mean minimal local benefits; for example, in Alaska beyond six miles offshore the revenues gained go entirely to the federal government with no share going to the state of Alaska.<sup>178</sup> The Deepwater Horizon and Exxon Valdez disasters illustrate the level of damage that oil pollution can cause to local fishing and tourism industries, sustainable lifestyles and the environment.<sup>179</sup> Despite a \$2.5 billion clean-up operation, less than 10% of the spilled Exxon Valdez oil was recovered from the water and shore.<sup>180</sup> Twenty years later, the damage to organisms and their marine environment is still apparent.<sup>181</sup> Immediate sizeable effects from the Exxon Valdez spill were obvious, with estimated mortalities of 2,800-5,000 sea otters, 250,000-700,000 seabirds, 300 harbour seals, 250 bald eagles, 22 killer whales and billions of herring and salmon eggs.<sup>182</sup>

Indigenous peoples state that both the offshore industry and central governments do not adequately consider their lack of economic benefits, or the potentially devastating risks they face: This is at odds with the distributive element of environmental justice.<sup>183</sup> Sustainable development is identified as an “unabashedly anthropocentric concept,”<sup>184</sup> yet this does not provide the full picture, for it can conceivably fail to duly consider certain groups of people. It is not

however automatically a concept that excludes distributive elements; it has only been deconstructed and interpreted in this way in the Arctic region.<sup>185</sup> The concept of sustainable development demands consideration of future generations and can therefore be viewed as potentially distributive, and not at odds with environmental justice. Careful reframing of sustainable development in the Arctic context is needed to allow due consideration of indigenous peoples and to provide environmental justice.

The second issue is whether EIAs potentially cause conflict between environmental justice and environmental protection. If the EIAs of offshore oil projects provide sufficient procedural mechanisms for indigenous peoples’ involvement and decision-making, they could be seen as complying with principles of environmental justice. Given that environmental protection does not *ipso facto* demand restriction on all development, it is not necessarily at odds with environmental justice.<sup>186</sup> EIAs can potentially drive up standards of environmental protection and comply with the procedural requirements of environmental justice.

### CONCLUSION

There has been substantial growth in international law according rights to indigenous peoples, illustrating that indigenous peoples are no longer “passive observers to fundamental decisions being made about [their] homeland.”<sup>187</sup> Yet they are now somewhat locked into the rhetoric of international politics

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*The environmental movement in the Arctic has historically alienated the indigenous population.*

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and law-making. Increasingly there has been inclusion of key international environmental law principles and concepts into relevant international law. Yet the ability of the inclusion of these principles and concepts to drive up standards of environmental protection has been limited. There is a deadlock created by the tension between state sovereign rights to utilise natural resources, environmental protection, and the rights of indigenous peoples.

The five coastal states, undeterred by the soft law created and unfettered by international hard law they have not ratified,<sup>188</sup>

delineate themselves with traditional ideas of sovereign rights in order to utilise natural resources unabated. The exponential growth in recognition of indigenous rights regarding their environments and the growing recognition of environmental protection in international law certainly provides a beacon of hope for the future, but at the present the offshore oil industry continues to grow far beyond the capacity of international law. 

## Endnotes: The Growth of Environmental Justice and Environmental Protection in International Law: In the Context of Regulation of the Arctic's Offshore Oil Industry

<sup>1</sup> Tavis Potts, *The Management of Living Marine Resources in the Polar Region* (2010); M.H. NORDQUIST ET AL., CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA 4, 404 (listing the USA, Canada, Norway and Russia as the four heavily industrialised coastal states (coastal industries include fishing, mineral extraction and the hydrocarbon industry), the fifth coastal state is Greenland); Intl. Arctic Sci. Comm., *An Introduction to the Arctic Climate Impact Assessment* (Feb 2010); N. E. Flanders & R.V. Brown, *Justifying Public Decisions in Arctic Oil and Gas Development: American and Russian Approaches*, 51 *Arctic* 264 (September 1998).

<sup>2</sup> Timo Koivurova, *The Importance of International Environment Law in the Arctic*, The Arctic Centre (November 2011), [www.arcticcentre.org/?DepID=5484](http://www.arcticcentre.org/?DepID=5484) [hereinafter Koivurova, *Environment Law*]; Timo Koivurova, *Governance of protected areas in the Arctic*, 5 *Utrecht Law Rev.* 44 (2009) [hereinafter Koivurova, *Governance*]; WWF, *Oil Spill Response Challenges in Arctic Waters* (October 2011); *An Introduction to the Arctic Climate Impact Assessment*, *supra* note 1.

<sup>3</sup> In keeping with the preferred plural usage of indigenous peoples found throughout relevant international law, this paper adopts the same pluralisation. Definitions of indigenous peoples are disputed but for the purposes of this paper the definition of indigenous peoples is taken from the working definition used by the United Nations Permanent Forum on Indigenous Issues. See UN Permanent Forum on Indigenous Issues, *Who Are Indigenous Peoples?* [www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) [hereinafter *Who Are Indigenous Peoples*].

<sup>4</sup> See ASLAUG MIKKELSEN & OLUF LANGHELLE, ARCTIC OIL AND GAS – SUSTAINABILITY AT RISK, (2011) (A large part of indigenous Arctic diets consist of marine mammals. Some indigenous peoples maintain totally subsistence lifestyles); see also D. Cavanagh, *Marine Mammals and the Inuit*, *Journal of the Vancouver Aquarium* 10 (1987); J. HOLDER & M. LEE, ENVIRONMENTAL PROTECTION LAW AND POLICY (Cambridge Univ. Press 2010).

<sup>5</sup> WWF, *Oil Spill Response Challenges in Arctic Waters*, *supra* note 2, at 6 (listing the newly explored offshore Arctic areas which includes: West Greenland, the Russian Barents Sea, the Canadian Beaufort Sea territory and in the USA Chukchi Sea territory, some involving deep-water drilling.)

<sup>6</sup> See generally ALLEN MILNE, OIL, ICE AND CLIMATE CHANGE: THE BEAUFORT SEA AND THE SEARCH FOR OIL (R.J. Childerhose ed., 1977) (noting that The Arctic Ocean is particularly vulnerable to the effects of oil pollution due to its short food chain and environmental factors limiting biodegradation); see also G.P. GLASBY, ANTARCTIC SECTOR OF THE PACIFIC, 312-3 (Elsevier Science Publishing Co. 1990).

<sup>7</sup> Sarah R. Hamilton, *Toxic Contamination of the Arctic: Thinking Globally and Acting Locally to Protect Arctic Ecosystems and People*, 15 *Colo. J. Int'l Envtl L. & Pol'y* 71, 71 (2004); LAURA WESTRA, ENVIRONMENTAL JUSTICE AND THE RIGHTS OF INDIGENOUS PEOPLES 208 (Routledge 2012).

<sup>8</sup> Mary Simon, *Canadian Inuit*, 66 *INT'L J.* 879 (2010-11); Rebecca M. Bratspies, *Human Rights and Arctic Resources*, 15 *Sw. J. Int'l L.* 250, 260 (2008-9).

<sup>9</sup> R. Rayfuse, *Protecting Marine Biodiversity in Polar Areas Beyond National Jurisdiction* 17(1) *REICEL*, 4 (2008) (highlighting that furthermore freezing water can trap oil and prevent waves from dispersing and allowing evaporation).

<sup>10</sup> See PAME, *The Arctic Ocean Review – Phase 1 Report*, at 10 (2009-11) (noting the Arctic Ocean has previously been in the main a frozen ocean with seasonal and perennial sea ice, although this is altering due to global warming); Peter Wadhams, *Arctic Ice Cover, Ice Thickness and Tipping Points* AMBRIO 9 (23/24) and NSIDC [nsidc.org](http://nsidc.org), accessed 30 January 2012.

<sup>11</sup> See generally PAME, *supra* note 10; TIMO KOIVUROVA, OFFSHORE HYDROCARBON: CURRENT POLICY CONTEXT IN THE MARINE ENVIRONMENT (Arctic Transform 2010) [Hereinafter, Koivurova, *Maine Environment*] (noting the period of time in which the climatology/cryosphere make clean-up operations impossible is called a 'response gap'. There is much debate amongst scientists, environmentalists and the oil industry as to how large the 'response gap' is and how adequately it is addressed).

<sup>12</sup> Arctic Environmental Protection Strategy, *Report on Recent Lingering Oil Studies* at 3.2 (June 1991); see also The Exxon Valdez Oil Spill Trustee Council, *Long Term Effects of Initial Exposure to Oil* (2010), available at [www.evostc.state.ak.us/recovery/longTerm.cfm](http://www.evostc.state.ak.us/recovery/longTerm.cfm).

<sup>13</sup> See Offshore Technology 26-7 (October 2012) (Statoil carry out one of the few all year offshore Arctic drilling activities in the Norwegian Barents Sea area). See The House of Commons (Environmental Audit Committee), *Protecting the Arctic*, at 5 (September 2012) (explaining that Shell did not wish to adhere to the summer only drilling requirement and challenged the decision for summer only drilling in offshore Alaska).

<sup>14</sup> Environment Group, *Offshore exploration in the Arctic*, [www.pewtrusts.org/news\\_room\\_detail.aspx?id=58806](http://www.pewtrusts.org/news_room_detail.aspx?id=58806).

<sup>15</sup> Wadhams, *supra* note 10; cf. National Snow and Ice Data Center, (October 2012) available at <http://nsidc.org/arcticseaicenews> (melting sea ice could be viewed as advantageous to industries such as oil, fishing and shipping, and to states to wish to exploit this Ocean). But cf. M Bravo & G. Rees, *Cryo-Politics: Environmental Security and the future of Arctic Navigation*, 13 *Brown J. World Aff.* 205 (2006-7) (supporting the argument that the full complexity of the measurements is not accounted for and that the large mass of an entire ocean is being labeled with what is not a consistent trend for the many seas and waters it includes).

<sup>16</sup> See generally *Arctic Changes*, Postnote, Number 334 (Parliamentary Office of Science and Technology, London, UK) June 2009, at 4.

<sup>17</sup> See Greenpeace Press Release, 'Leaked Arctic Council oil spill response agreement 'vague and inadequate'', February 4 2013 at [www.greenpeace.org/international/en/press/releases/Leaked-Arctic-Council-oil-spill-response-agreement-vague-and-inadequate---Greenpeace/?accept=aa29a15f9873f37b520e73bc7551178f](http://www.greenpeace.org/international/en/press/releases/Leaked-Arctic-Council-oil-spill-response-agreement-vague-and-inadequate---Greenpeace/?accept=aa29a15f9873f37b520e73bc7551178f)

<sup>18</sup> See Koivurova, *Marine Environment*, *supra* note 11, at 37; see generally T. Koivurova, E.J. Molenaar & D.L. Vanderzwaag, *Canada, the EU, and Arctic Ocean Governance: A Tangled and Shifting Seascape and Future Directions*, 18 *J Transnat'l L. & Pol'y* 247 (2008-9) [hereinafter Koivurova, *Shifting Seascape*].

<sup>19</sup> L.A Fayette, *Ocean Governance in the Arctic* 23 *INT'L J. MARINE & COASTAL L.* 531 (2008), 559; Koivurova & Molenaar, *International Governance and Regulation of the Marine Arctic*, WWF (2009) available at <http://www.wwf.se/source.php/1223579/International%20Governance%20and%20Regulation%20of%20the%20Marine%20Arctic.pdf>.

continued on page 71

- <sup>20</sup> Nordquist et al., *supra* note 1; Koivurova & Molenaar, *supra* note 18.
- <sup>21</sup> See J.L. Pagnan, *Arctic Marine Protection* 53(4) *Arctic* 469 (December 2000); see also F. Cava, D. Monsma & O.R. Young, *Workshop on Arctic Governance: Drawing Lessons from the Antarctic Experience* (2009).
- <sup>22</sup> A permanent secretariat is currently being set up and will begin work by May 2013—Nuuk Declaration—On the Occasion of the Seventh Ministerial Meeting of the Arctic Council, 12 May 2011. D. Rothwell, *The Arctic in International Affairs: Time for a New Regime?*, 15 *BROWN J. WORLD AFF.* 241 (2008-9).
- <sup>23</sup> H. Hillgenberg, *A Fresh Look at Soft Law*, 10 *EJIL* 499 (1999). See also A. Boyle, *Soft Law in International Law Making* in M.D. Evans, *International Law*, 140-156 (Oxford University Press 2006).
- <sup>24</sup> The Rio Declaration and Agenda 21 identify this wide inclusion as an important feature of international environmental law.
- <sup>25</sup> K. KABBOT & D. SNIDAL, *HARD AND SOFT LAW IN INTERNATIONAL GOVERNANCE* (MIT Press 2000); SALE & E. POTAPOV, *SCRAMBLE FOR THE ARCTIC*, 141 (Francis Lincoln Publishers 2010).
- <sup>26</sup> M. Fitzmaurice, *RECUEIL DES COURS* 132 (Hague Academy of International Law 2001).
- <sup>27</sup> See generally A. Boyle, *INTERNATIONAL LAW AND THE ENVIRONMENT* (Clarendon Press 1992); see also Bell & McGillivray, *ENVIRONMENTAL LAW*, 52-54 (Oxford University Press 2008).
- <sup>28</sup> This article utilizes three of these international environmental law principles/concepts as an example, other relevant ones include: the polluter pays principle, the principle of prevention and the concept of ecobased management.
- <sup>29</sup> The Convention on Biological Diversity 1992, <http://www.cbd.int/convention/>, last accessed Feb. 9, 2013.
- <sup>30</sup> United Nations Agenda 21 1992, available at [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_00.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml).
- <sup>31</sup> Rio Declaration on Environment and Development 1992, Principle 15, available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>.
- <sup>32</sup> Convention for the Protection of the Marine Environment of the North-East Atlantic (the OSPAR Convention) 1992 [hereinafter OSPAR].
- <sup>33</sup> *Environmental Impact Assessment Guidelines*, 9 (Finnish Ministry of the Environment 1997) available at <http://ceq.hss.doe.gov/nepa/eiaguide.pdf>.
- <sup>34</sup> *Arctic Offshore Oil and Gas Guidelines 2009*, PAME, 6 available at <http://www.pame.is/images/stories/FrontPage/Arctic-Guidelines-2009-13th-Mar2009.pdf>.
- <sup>35</sup> T. O'RIORDAN ET AL., *REINTERPRETING THE PRECAUTIONARY PRINCIPLE* (Cameron & May 2002); K. BASTMEIJER, *THE ANTARCTIC ENVIRONMENTAL PROTOCOL AND ITS DOMESTIC LEGAL IMPLEMENTATION*, (Kluwer Law International 2003); R. Cooney, *The Precautionary Principle in Biodiversity Conservation and Natural Resource Management*, IUCN Policy & Global Change Series No. 2 (2004).
- <sup>36</sup> See *supra* notes 7-15.
- <sup>37</sup> See Koivurova, *Maine Environment*, *supra* note 11 (explaining that a response gap is the time when climatological or cryosphere extremes preclude, or severely restrict, the ability to carry out a response to any oil spillages).
- <sup>38</sup> Greenpeace, *Arctic Oil: A Very Crude Idea*, available at <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/arctic-oil-a-very-crude-idea/blog/12544/> (2010) (advocating that in adherence to a strictly precautionary approach offshore oil activities in the Arctic should have far greater control or entirely cease); see also Friends of the Earth, *Act for the Arctic*, (May 2011), available at [http://www.foe.co.uk/news/act\\_for\\_arctic\\_30746.html](http://www.foe.co.uk/news/act_for_arctic_30746.html).
- <sup>39</sup> The Arctic Offshore Oil and Gas Guidelines 2009, Paragraph 1.3. (adopting the definition of the precautionary principle found in the Rio Declaration on Environment and Development, Principle 15).
- <sup>40</sup> T. Koivurova in N. Craik, *THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT: PROCESS SUBSTANCE*, 107 (Cambridge University Press 2008); see generally NATALIA LOUKACHEVA, *POLAR LAW* (National Council of Ministers 2010) [hereinafter *POLAR LAW*].
- <sup>41</sup> Cava et al., *supra* note 21; D. VIDAS, *PROTECTING THE POLAR MARINE ENVIRONMENT: LAW AND POLICY FOR POLLUTION PREVENTION* 111 (Cambridge University Press, 2000).
- <sup>42</sup> Rothwell, *supra* note 22; C. de Roo et al., (Arctic Transform), *Environmental Governance in the Marine Arctic* (2008).
- <sup>43</sup> Environmental Impact Assessment Guidelines 1997, *supra* note 33.
- <sup>44</sup> *Id.* at 5.1.
- <sup>45</sup> Koivurova in Craik, *supra* note 40, at 107; LOUKACHEVA, *supra* note 40, at 39.
- <sup>46</sup> See generally OSPAR, *supra* note 32.
- <sup>47</sup> OSPAR, *supra* note 32, Article 2(2)(a).  
<sup>48</sup> OSPAR, *supra* note 32, Article 2(2)(a).  
<sup>49</sup> OSPAR, *supra* note 32, Annex V.  
<sup>50</sup> Koivurova & Molenaar, *supra* note 18; E. Hey, *The International Regime for the Protection of the North Sea: From Functional Approaches to a More Integrated Approach*, 17 *Int'l J. Marine & Coastal L.* 325 (2002). See also Fayette, *supra* note 18, at 557-8; De Roo et al., *supra* note 41, at 26.  
<sup>51</sup> Greenland is party to OSPAR via Denmark's ratification.  
<sup>52</sup> OSPAR Commission, Quality Status Report, *Geography, Hydrography and Climate* (2000).  
<sup>53</sup> OSPAR, *supra* note 32, Articles 25, 27(2).  
<sup>54</sup> OSPAR, *supra* note 32, Article 1(a) (defining the Maritime Area).  
<sup>55</sup> OSPAR, *supra* note 32, Annex V, Article 2 (providing the example of OSPAR, which specifically refers to CBD).  
<sup>56</sup> Although this is non-binding as it's within the preamble the contents should be interpreted in keeping with this approach.  
<sup>57</sup> Conservation and Sustainable Use of Marine and Coastal Biological Diversity, COP 2, Decision II/10, Part xi, available at <http://www.cbd.int/decision/cop/?id=7083>.  
<sup>58</sup> See *supra* notes 37-38 (environmentalists, scientists and the offshore industry debate whether or not in application of the precautionary principle offshore drilling should cease).  
<sup>59</sup> R. SONI, *CONTROL OF MARINE POLLUTION IN INTERNATIONAL LAW* 39 (Juta & Co. 1985).  
<sup>60</sup> B. STONEHOUSE, *ANIMALS OF THE ARCTIC* 52-54 (Ward Lock Ltd. 1971); PAME, *supra* note 10.  
<sup>61</sup> *An Introduction to the Arctic Climate Impact Assessment*, *supra* note 1.  
<sup>62</sup> Identified by the CBD Conference of the Parties (2004).  
<sup>63</sup> B. Lausche, *Guidelines for protected areas legislation*, IUCN (June 2011) (highlighting that areas with hydrothermal vents or polar bear habitats are considered vulnerable areas). S. GUBBAY, *MARINE PROTECTED AREAS – PRINCIPLES AND TECHNIQUES FOR MANAGEMENT* (Chapman & Hall, 1995).  
<sup>64</sup> Conservation of Arctic Flora and Fauna, CPAN (Feb 2012), [www.caff.is/about\\_cpan](http://www.caff.is/about_cpan) [hereinafter CAFF]; UNEP, *National and Regional Networks of Marine Protected Areas: A Review of Progress* (2008).  
<sup>65</sup> Lausche, *supra* note 63.  
<sup>66</sup> The Convention on Biological Diversity 1992, <http://www.cbd.int/convention/>, last accessed Feb. 9, 2013.  
<sup>67</sup> *Id.*  
<sup>68</sup> ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW* 338 (Cambridge University Press 2005).  
<sup>69</sup> CAFF is one of the Arctic Council's six working groups.  
<sup>70</sup> CAFF, CPAN, *supra* note 64.  
<sup>71</sup> CAFF, CPAN, *supra* note 64; UNEP, *National and Regional Networks of Marine Protected Areas: A Review of Progress* (2008).  
<sup>72</sup> A. Hidayarad, *ENDANGERED WILDLIFE AND PLANTS OF THE WORLD* 1636 (Marshall Cavendish Corporation 2001). See also Greenpeace, *Black on White: The Threat of Arctic Oil to Whales* (July 2011).  
<sup>73</sup> S.D. Rice, *Persistence, Toxicity and long-term environmental impact of the Exxon Valdez Oil Spill*, 7 *U. St. Thomas L.J.* 55, 57 (2009-10); see The Exxon Valdez Oil Spill Trustee Council (Rodgers et al.), *supra* note 12 (the estimated ranges are large as there is debate over how many species actually died as carcasses sink uncounted but this is the general range, with over 35,000 seabird and 1,000 sea otters carcasses actually retrieved).  
<sup>74</sup> STONEHOUSE, *supra* note 60.  
<sup>75</sup> Koivurova and K. Hossain, *Offshore Hydrocarbon: Current Policy Context in the Marine Arctic*, *Arctic Transform*, 18/19; W.N. ROM, *ENVIRONMENTAL POLICY AND PUBLIC HEALTH: AIR POLLUTION, GLOBAL CLIMATE CHANGE* (John Wiley & Sons Inc. 2012).  
<sup>76</sup> The Wilderness Society, *Broken Promises, The Reality of Oil Development in America's Arctic*, 10 and 2 (September 2009).  
<sup>77</sup> Hamilton, *supra* note 7.  
<sup>78</sup> Alaska Center for Climate Assessment Policy, *Arctic Marine Shipping Assessment*, 2; WWF, *Polar Bears at Risk* (2002), available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Arctic%20Working%20Paper.pdf>.  
<sup>79</sup> Greenpeace, *Black on White: The Threat of Arctic Oil to Whales* (July 2011); Koivurova, *supra* note 9, at 55. The International Agreement for the Conservation of Polar Bears 1973,

<sup>80</sup> Art. II, Nov. 15, 1973, 27 U.S.T. 3918, 13 ILM 13(1974), available at <http://sedac.ciesin.org/entri/texts/polar.bears.1973.html>.

<sup>81</sup> *Id.* at Art.II.

<sup>82</sup> Matt Irwin, Note, *Polar Bears, Oil and the Chukchi Sea: The Federal Government Sells Mineral Rights in Polar Bear Habitat*, 8 SUSTAINABLE DEV. L. & POL'Y 40, 40 (2008) (noting that in the U.S. sector of the Chukchi Sea, oil exploration has been allowed within polar bear habitats. There was an ominous delay in considering the status of polar bears with regards to the US endangered Species Act meaning the US MMS Department could auction off these licenses with relatively few encumbrances. This area is home to 10% of the polar bear population). See also LOUKACHEVA, *supra* note 40.

<sup>83</sup> De Roo et al., *supra* note 42 at 20-22; WWF, POLAR BEARS AT RISK (2002), available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Arctic%20Working%20Paper.pdf>.

<sup>84</sup> Thurston, *Offshore Oil and Gas Activities in the Arctic* (PAME October 2003); National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *The Challenges of Oil Spill Response in the Arctic* (Staff Working Paper Number 5, January 11 2011). <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Arctic%20Working%20Paper.pdf>.

<sup>85</sup> K. Casper, *Oil & Gas Development in the Arctic: Softening of Ice Demands Hardening of International Law* 49 Nat. Resources J. 825, 839 (2009); Fayette, *supra* note 19 at 543; Smith, WWF, *Environmental Impacts of Offshore Oil and Gas Development in the Arctic* (2003).

<sup>86</sup> United States Geographical Soc'y, *Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle* (2008), available at <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>. (noting that 84% of this is predicted to be offshore oil, within states Exclusive Economic Zones (EEZs). This figure although reduced from the prior USGS pronouncement, has led to scientific queries about the level of accuracy).

<sup>87</sup> Experts generally accept that sustainable development is now an established principle of environmental law. Although some academics dispute this—for purposes of this article, sustainable development is an accepted opinion.

Unfortunately there is no scope for a further discussion in this paper. See generally R.R. CHURCHILL & A.V. LOWE, *THE LAW OF THE SEA* (1988); DIRE TLADI, *SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW* (PULP 2007).

<sup>88</sup> M. Jacobs, *Sustainable Development as a Contested Concept in Fairness and Futurity: Essays on Environmental Sustainability and Social Justice*, 218 (Oxford University Press 1999).

<sup>89</sup> *Our Common Future: Report of the World Commission on Environment and Development. Towards Sustainable Development* (The Brundtland Report)—Chapter 2 U.N. A/42/427 (1987), available at <http://www.un-documents.net/wced-ocf.htm>.

<sup>90</sup> See UN Environment Program (“UNEP”), *Nairobi Declaration on the State of the Worldwide Environment from the UN Conference on the Human Environment in Stockholm (1972)*, UNEP/GC.10/ INF.S of May 19, 1982 UNEP Regional Seas Programme, IUCN World Conservation Congress (resulting in many of recommendations and resolutions including many on sustainable development). See also United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 13-14, 1992, *Rio Declaration on Environment and Development*, A/CONF. 151/26 (Vol. 1), Principle 22 (Aug. 12, 1992); UN World Summit on Sustainable Development (Earth Summit), Johannesburg, S. Afr. (Aug. 26-Sept. 4, 2002); OSPAR, *supra* note 31.

<sup>91</sup> MIKKELSEN, *supra* note 4 at 5; Preamble, Guidelines for Environmental Impact Assessment (EIA) in the Arctic, Preamble (2007).

<sup>92</sup> *Arctic Council*, U.S. DEPARTMENT OF STATE, available at <http://www.state.gov/e/oes/ocns/opa/arc/ac/index.htm>, last accessed Jan.15, 2013.

<sup>93</sup> L. Nowlan, IUCN Environmental Law Programme, *Arctic Legal Regime for Environmental Protection*, 12 (2001); Timo Koivurova & David L Vanderzwaag, *The Arctic Council at 10 Years: Retrospective and Prospects* 40 UBCL Rev. 121, 150 (2007); see also MIKKELSEN, *supra* note 4 at 30.

<sup>94</sup> Focusing on issues such as sustainable reindeer husbandry and telemedicine. MIKKELSEN, *supra* note 4; David Vanderzwaag, *The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering while the Arctic Marine Environment Totters*, 30 Denv. J. Int'l L. & Pol'y 131, 152-4 (2001-2); Paula Kaankaanpää and Oran R Young, *The Effectiveness of the Arctic Council*, Polar Research 31, 17176 (2012) (noting that until 2006 there was little focus on the offshore oil industry). For a full list of projects/activities relating to SDWG see: [www.sdwg.org/content.php?doc=86](http://www.sdwg.org/content.php?doc=86).

<sup>95</sup> International Polar Year Project, *Arctic Energy Summit – The Arctic as an Emerging Energy Province* (February 2010) (including coal, gas and many renewables and rural energy sources).

<sup>96</sup> See Koivurova & Vanderzwaag, *supra* note 93 at 160 (discussing the altering visions that the change in chair has upon the Arctic Council. See also [www.sdwg.org/content.php?doc=75](http://www.sdwg.org/content.php?doc=75) for details of the Best Practices in Ecosystem-based Ocean Management report).

<sup>97</sup> Sustainable Development Working Group, *Report on Arctic Energy* (2006).

<sup>98</sup> Guidelines for EIA, *supra* note 33, at Preamble (1997).

<sup>99</sup> Guidelines for EIA, *supra* note 33, at Preamble, Part 1 (Pages 6,7, 8 and 9), Table 1, Part 4, Part 7, Part 8, Part 9 and Part 10.

<sup>100</sup> Arctic Council, *Arctic Offshore Oil and Gas Guidelines*, ¶ 1.3 (2009), [http://www.pame.is/images/PAME\\_NEW/Oil%20and%20Gas/Arctic-Guidelines-2009-13th-Mar2009.pdf](http://www.pame.is/images/PAME_NEW/Oil%20and%20Gas/Arctic-Guidelines-2009-13th-Mar2009.pdf).

<sup>101</sup> Arctic Offshore Oil and Gas Guidelines, *supra* note 34.

<sup>102</sup> See text relating to notes 135-161 regarding public participation in EIAs.

<sup>103</sup> OSPAR Convention 1992, Preamble, Sept. 22, 1992. Positive examples of OSPAR's regulation of the offshore industry include: OSPARCOM Decision 2000/3 prohibited oil-based muds and allowed discharge of synthetic fluids only in 'exceptional circumstances' and subsequent OSPARCOM monitoring and reporting requirements. OSPAR Recommendation 2001/1 regulates the management of produced water discharge and again provides for monitoring and follow-up procedures.

<sup>104</sup> OSPAR Commission, *The North-East Atlantic Environment Strategy – OSPAR Agreement* (2010-3).

<sup>105</sup> See text relating to notes 18-22.

<sup>106</sup> Casper, *supra* note 85, at 839; Koivurova, Molenaar, & Vanderzwaag, *supra* note 17 at 260. Huebert, in NORDQUIST ET AL., *supra* note 1; SALE & POTAPOV, *supra* note 25, at 141-2.

<sup>107</sup> STONEHOUSE, *supra* note 60 at 55; Snyder, *International Legal Regimes to Manage Indigenous Rights & Arctic Dispute from Climate Change*, 22 COLO. J. INT'L ENVTL L. & POL'Y, 6 (2011) (providing a detailed discussion of use of different flora fauna and cultural importance of marine environment in which he acknowledges that most Arctic indigenous people live by and rely on the coast); S.J. Dresser, *Safeguarding the Arctic from Accidental Oil Pollution* 16 SW. J. INT'L LAW 507, 512 (2010) (utilizing a large number of marine mammals: fish, whales, seals, polar bears and walrus).

<sup>108</sup> See *supra* note 8 and see section on sustainable development.

<sup>109</sup> JOHN BYRNE, LEIGH GLOVER & CECILIA MARTINEZ, ENVIRONMENTAL JUSTICE: DISCOURSES IN INTERNATIONAL POLITICAL ECONOMY, 3 (2002); BRYANT, ENVIRONMENTAL JUSTICE ISSUES, POLITICS AND SOLUTIONS 6-7 (1995).

<sup>110</sup> WESTRA, *supra* note 7, at 208-9; S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW (2004).

<sup>111</sup> Dalee Sambo Dorough, *Inuit of Alaska: Current Issues in POLAR LAW*, *supra*, note 40 at 200.

<sup>112</sup> O.W. Pedersen, *Environmental Principles and Environmental Justice*, 12 ENVT. L. Rev. 26, 27-8 (2010); RONALD SANDLER, ENVIRONMENTAL JUSTICE AND ENVIRONMENTALISM: THE SOCIAL JUSTICE CHALLENGE TO THE ENVIRONMENTAL MOVEMENT 88-9 (2007) (acknowledging that distributive justice was recognized by Aristotle as key part of justice).

<sup>113</sup> Pedersen, *supra* note 112; SANDLER, *supra* note 112; BYRNE, GLOVER & MARTINEZ, *supra* note 109.

<sup>114</sup> Pedersen, *supra* note 112; SANDLER, *supra* note 112; BRYANT, *supra* note 109.

<sup>115</sup> Pedersen, *supra* note 112; BYRNE, GLOVER & MARTINEZ, *supra* note 109.

<sup>116</sup> Pedersen, *supra* note 112 at 28; NICHOLAS LOW & BRENDAN GLEESON, JUSTICE, SOCIETY AND NATURE – AN EXPLORATION OF POLITICAL ECOLOGY (1998).

<sup>117</sup> Int'l Labor Org. (“ILO”), *The Indigenous and Tribal Peoples Convention*, ILO169 (June 27, 1989), available at <http://www.unhcr.org/refworld/pdfid/3ddb6d514.pdf>

<sup>118</sup> United Nations Declaration on the Rights of Indigenous Peoples 2007 A/ RES/61/295(Sept. 13, 2007). Despite initial opposition Canada and USA in 2010 showed their support for UNDRIP. Leaving Russia as the sole Arctic state opposing UNDRIP.

<sup>119</sup> The Arctic Council, *Member States*, <http://www.arctic-council.org/index.php/en/about-us/members>.

<sup>120</sup> Indigenous and Tribal Peoples Convention, *supra* note 117.

<sup>121</sup> *Id.* at Preamble.

<sup>122</sup> *Id.* at Art. 2(2)(a).

<sup>123</sup> *Id.* at Art.6 and 15(2).

<sup>124</sup> Lillian Aponte Miranda, *Indigenous Peoples as International Lawmakers*, 32 U. PA. J. INT'L L. 203, 236 (2010-11).

<sup>125</sup> Greenland and the Faroe Isles are also parties to this Convention via Denmark.

<sup>126</sup> John B. Henriksen, *Oil & Gas Operations In Indigenous Peoples Lands And Territories In The Arctic: A Human Perspective*, 4 Galdu Cala – Journal of Indigenous Peoples Rights 24, 30 (2005).

- <sup>127</sup> United Nations Declaration on the Rights of Indigenous Peoples, *supra* 117 at Art. 32(2).
- <sup>128</sup> Erica-Irene A. Daes, *The Contribution of the Working Group on Indigenous Populations to the Genesis and Evolution of the UN Declaration on the Rights of Indigenous Peoples in Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* 87-8 (IWGA, Copenhagen 2009).
- <sup>129</sup> Aponte Miranda, *supra* note 124.
- <sup>130</sup> Snyder, *supra* note 107, at 15; Dorough in POLAR LAW, *supra* note 40; Bratspies, *supra* note 8, at 276-7.
- <sup>131</sup> United Nations Conference on Environmental and Development (UNCED, June 3-14, 1992) *Agenda 21*, Chapter 26 (June 14, 1992).
- <sup>132</sup> *Id.*
- <sup>133</sup> United Nations Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.
- <sup>134</sup> United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 3.
- <sup>135</sup> Bratspies, *supra* note 8, at 269.
- <sup>136</sup> *Id.*
- <sup>137</sup> Koivurova, *Shifting Seascape* *supra* note 18; *see also* Koivurova & Molenaar, *supra* note 19.
- <sup>138</sup> MIKKELSEN & LANGHELLE, *supra* note 4.
- <sup>139</sup> Denmark's 1996 ratification of ILO169, and 2007 voting in favor of the UN Declaration on Rights of Indigenous Peoples applies to Greenland and the Faroe Isles.
- <sup>140</sup> See RAIPON's submission to the Human Rights Council Universal Periodic Review Mechanism, 9 October 2012 at <<http://www.raipon.info/en/component/content/article/8-news/91-ngo-submission-to-the-human-rights-council-universal-periodic-review-mechanism>>; <[http://www.nunatsiaqonline.ca/stories/article/65674-russian-indigenous\\_org\\_calls\\_for\\_arctic\\_council\\_support\\_to\\_fight\\_shut-](http://www.nunatsiaqonline.ca/stories/article/65674-russian-indigenous_org_calls_for_arctic_council_support_to_fight_shut-)>
- <sup>141</sup> *See* text relating to notes 18-26 for a discussion of the criticisms of the soft law created by the Arctic Council.
- <sup>142</sup> IUCN and E&P Forum, *Oil And Gas Exploration And Production In Arctic And Subarctic Onshore Regions: Guidelines For Environmental Protection* (1993); Koivurova, *supra* note 40; PHILIPPE SANDS & JACQUELINE PEEL, INTERNATIONAL ENVIRONMENTAL LAW 141-3 (Cambridge University Press, 2012).
- <sup>143</sup> *See* Pedersen, *supra* note 112; WESTRA, *supra* note 7.
- <sup>144</sup> UN Convention on Environmental Impact Assessment in a Transboundary Context ("the Espoo Convention") art. 1 (vi), Feb. 25, 1991.
- <sup>145</sup> The Espoo Convention, *supra* note 144, at art. 1 (viii).
- <sup>146</sup> Along with other activities, the Espoo Convention, *supra* note 143, at Appendix I (15).
- <sup>147</sup> *See* United Nations Treaty Collection (April 2012) [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4&chapter=27&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&lang=en) (noting in 1997, Denmark declared that the ESPOO Convention applies to Greenland and the Faroe Islands. In 1998 Canada made a reservation for all proposed activities that fall outside the remit of the Canadian federal jurisdiction. This reservation has been objected to by a number of States (including Norway for its lack of clarity with regards to applicability)).
- <sup>148</sup> Arctic Offshore Oil and Gas Guidelines ¶ 2 and 3.1 (2007); 1 Arctic Offshore Oil and Gas Guidelines *supra* note 34; Linda Nowlan, IUCN Environmental Law Programme, *Arctic Legal Regime for Environmental Protection* (2001); Koivurova, *supra* note 40, at 107.
- <sup>149</sup> Nowlan, *supra* note 148; Koivurova, *supra* note 41, at 107.
- <sup>150</sup> United Nations Convention on the Law of the Sea, *supra* note 134.
- <sup>151</sup> The Espoo Convention, *supra* note 144 at art. 5 and 2(6).
- <sup>152</sup> Koivurova, *The Transnational Eia Procedure Of The Espoo Convention in The FINNISH YEARBOOK OF INTERNATIONAL LAW* 173-4 (Brill 1997).
- <sup>153</sup> The ESPOO Convention is a Convention adopted by the United Nations Economic Commission for Europe (UNECE) and has 45 parties to the Convention (*see* [www.treaties.un.org](http://www.treaties.un.org)).
- <sup>154</sup> The Espoo Convention, *supra* note 144 at art. 11.
- <sup>155</sup> United Nations Economic Commission for Europe, [http://www.unece.org/env/eia/meetings/mop\\_5](http://www.unece.org/env/eia/meetings/mop_5), last viewed Jan. 13, 2013.
- <sup>156</sup> BASTMEIJER, *supra* note 35 at 347-389; SANDS, *supra* note 142 at 589-591.
- <sup>157</sup> KOIVUROVA, *supra* note 40 at 184.
- <sup>158</sup> A further restriction on its effectiveness is in the reservation made by Canada, *see* note 140.
- <sup>159</sup> The Arctic Offshore Oil and Gas Guidelines ¶¶ 1.3 and 2.4 (2009).
- <sup>160</sup> Guidelines for (EIA), ¶ 7, 15, 17 and 24-36 (1997) (stating that "one of the most important features in Arctic assessment is the early and full involvement of indigenous people and other local communities").
- <sup>161</sup> Koivurova in CRAIK, *supra* note 40, at 107; Koivurova, Molenaar & Vanderzwaag, *supra* note 18, at 157-8.
- <sup>162</sup> LOUKACHEVA, *supra* note 40.
- <sup>163</sup> MIKKELSEN & LANGHELLE, *supra* note 4, at 166.
- <sup>164</sup> *Id.* at 163-4.
- <sup>165</sup> Louie Porta and Nicholas Banks, *Becoming Arctic Ready: Policy Recommendations For Reforming Canada's Approach To Licensing And Regulating Offshore Oil And Gas In The Arctic* at 15-16 (Sept. 2012).
- <sup>166</sup> Environmental Audit Comm., *Protecting The Arctic*, H.C. 7/24, at 7 note 376. (September 2012).
- <sup>167</sup> *Id.* at note 165.
- <sup>168</sup> Dorough, in POLAR LAW, *supra* note 40.
- <sup>169</sup> CONTESTED ARCTIC: INDIGENOUS PEOPLES, INDUSTRIAL STATES AND THE CIRCUMPOLAR ENVIRONMENT 15 (Eric Smith & Joan Mccarter Eds. 1997) [hereinafter CONTESTED ARCTIC]; MILTON M.R. FREEMAN et al., INUIT, WHALING AND SUSTAINABILITY (Altamira Press 1998)
- <sup>170</sup> CONTESTED ARCTIC, *supra* note 167; FREEMAN, *supra* note 169.
- <sup>171</sup> CONTESTED ARCTIC, *supra* note 167; FREEMAN, *supra* note 169.
- <sup>172</sup> WESTRA, *supra* note 4; ANAYA, *supra* note 109.
- <sup>173</sup> Chief Joe Linklater, *The Arctic and Energy: Exploration and Exploitation Issues; Indigenous Peoples; Industry*, 30 CAN-U.S. L.J. 301, 304 (2004).
- <sup>174</sup> *See* MIKKELSEN & LANGHELLE, *supra* note 4; *see also* Pedersen, *supra* note 112; M JACOBS IN ANDREW DOBSON, JUSTICE AND THE ENVIRONMENT: CONCEPTIONS OF ENVIRONMENTAL SUSTAINABILITY AND SOCIAL JUSTICE (Oxford Univ. Press 2004); D. PEARCE AND E.B. BARBIER, *Blueprint for a Sustainable Economy* in HOLDER & LEE, *supra* note 4 (discussing the breadth of meanings. Early inclusion of the concept is found in the Bruntland Report, *supra* note 89).
- <sup>175</sup> MIKKELSEN & LANGHELLE, *supra* note 4; *see also* Shell in the Arctic (October 2012) [www.shell.com/home/content/future\\_energy/meeting\\_demand/arctic/](http://www.shell.com/home/content/future_energy/meeting_demand/arctic/).
- <sup>176</sup> *See* MIKKELSEN & LANGHELLE, *supra* note 4 (noting that in many Arctic coastal areas there are high levels of socio-economic deprivation and unemployment, and low education levels).
- <sup>177</sup> *Id.* at 323-5.
- <sup>178</sup> *Id.* at 147 (The revenue system is very different with near shore or onshore sites); Nicholas E. Flanders and Rex V. Brown, *Justifying Public Decisions in Arctic Oil and Gas Development: American and Russian Approaches* ARCTIC Vol. 51, No. 3, 262, 264 (Sept. 1998).
- <sup>179</sup> Julie Porter, *Regional Economic Resilience and the Deepwater Horizon Oil Spill: The case of New Orleans Tourism on Fishing Clusters* (November 2011), available at [www.cieo.ualg.pt/discussionpapers/8/article5.pdf](http://www.cieo.ualg.pt/discussionpapers/8/article5.pdf); Hugo Pinto, et al., *Spatial and organization Dynamics* – Discussion Papers Number 8, 72 (CIEO Nov. 2011), available at [www.cieo.ualg.pt/discussionpapers/discussionpapers8.pdf](http://www.cieo.ualg.pt/discussionpapers/discussionpapers8.pdf) (scientists, environmentalists and politicians debate the level of risk offshore oil development poses on accidental spills with many stating that both the level of pollution and the ability to clean-up are severely curtailed by conditions in the Arctic Ocean). *See also* text relating to notes 35-37.
- <sup>180</sup> S.D. Rice, *Persistence, Toxicity and long-term environmental impact of the Exxon Valdez Oil Spill*, 7 U. ST. THOMAS L.J. 55, 56 (2009-10).
- <sup>181</sup> Fayette, *supra* note 19, at 548.
- <sup>182</sup> Rice, *supra* note 180, at 57. (The Exxon Valdez Oil Spill Trustee Council *Questions and Answers*, <http://www.evostc.state.ak.us/facts/qanda.cfm> (accessed 6 February 2012) – The estimated ranges are rather large as there is disagreement as to how many species actually died as carcasses sink uncounted but this is the general range, with over 35,000 seabird and 1,000 sea otters carcasses actually retrieved).
- <sup>183</sup> *See* James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples – Extracting Industries Operating Within or Near Indigenous Territories*, A/HRC/18/35 (July 11, 2011); Pedersen, *supra* note 111; DOBSON, *supra* note 172.
- <sup>184</sup> HOLDER & LEE, *supra* note 4 at 217.
- <sup>185</sup> H.J. STEINER, P. ALSTON & R. GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT (Oxford Univ. Press 2000) (quoting Mary Robinson, UN High Commission Human Rights stated "we now recognise that respect for human rights is at the core of sustainable development" and acknowledged that the poor and rich imbalance can be redressed").
- <sup>186</sup> *See* MIKKELSEN & LANGHELLE, *supra* note 4 (developments that are carried out in a way that is compatible with international environmental law principles and concepts could not automatically be viewed as contrary to environmental protection); Roel Slootweg et al., *Biodiversity in Environmental Assessment: Enhancing Ecosystem Services for Human Well-being* 2010.
- <sup>187</sup> Simon, *supra* note 8.
- <sup>188</sup> For example, UNCLOS with regards to the USA, ILO169 with regards to Canada, Russia and USA, CBD with regards to the USA, USA and Russia with regards to the Espoo Convention and OSPAR with regards to Canada, Russia and the USA.