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Conservation for Sustainable Development and Human Rights: An Analysis of the Establishment of Inuit Marine Protected Areas and their Impacts on the Rights of Indigenous Peoples

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ABSTRACT

One of the items of the post-ArCS research agenda for legal and policy studies relates to the people and communities of the Arctic and the possibilities of sustainable development attached to the future of the Arctic region as it continues to be developed.¹ It encompasses the study of the effects of these changes occurring in the Arctic on different stake- and rightsholders, such as indigenous peoples. An important consequence of the development of the region is the necessity to protect the environment which is home not only to multiple species but also to diverse communities, including indigenous peoples. The interaction between the environment and human beings is a key item of the ArCS.

This contribution focuses on the crucial role played by indigenous peoples for the conservation of the environment and marine areas. Indigenous peoples make up around five per cent of the global population but occupy, own or manage an estimated twenty-five per cent of the planet's land surface. Their traditional territory also encompasses important marine areas. In this context, the United Nations and its member states recognized that indigenous peoples have an essential role to play in the governance and conservation of biodiversity.

However, the rights of indigenous peoples to land, territories and natural resources are poorly recognized, especially in the marine context. Historically, they have often faced the negative impacts of conservation policy, which are traditionally based on the principle of protecting biodiversity existing on land and seascapes areas, while excluding human beings from these areas, even when they had been living there for millennia. In recent years, international law has nonetheless evolved and increasingly emphasizes the obligation of the state to protect the environment in accordance with the right of indigenous peoples. From the International Labor Organization (ILO) Convention 107 on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries in 1957 to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the understanding of

¹ ArCS theme 7: People and Community in the Arctic: Possibility of Sustainable Development

indigenous peoples and the rights they enjoy have considerably evolved.² The UNDRIP, described by many as the most influential contemporary instrument tackling the rights of indigenous peoples although non legally binding *per se*, formalizes the rights of indigenous to self-determination.³ The right of indigenous peoples to self-determination, which anchors every other right they have also guarantee the rights for indigenous peoples to autonomously govern their lands, territory and resources, including those located in marine areas.

This contribution posits that this legal development has enabled a paradigm shift to occur from an exclusionary to an inclusive approach towards indigenous peoples in the governance and conservation of their traditional lands and resources. The implications of this shift are multifold but have more particularly impacted conservation policy and the development of environmental law as a legal discipline throughout the years. The adoption of international instruments such as the Convention on Biological Diversity (CBD) underlined to some extents the rights of indigenous peoples and the obligations of the state to respect, protect and fulfil the rights of indigenous peoples.⁴ Yet, many questions subsist about the practice. While international law has evolved and confers now important rights for indigenous peoples in the governance and conservation of their traditional lands, it remains questionable whether states practice has confirmed such a shift.

Against this backdrop, this contribution focuses on the case studies of the rights of Inuit people in relation to the conservation of marine areas located within their traditional territory. The Inuit people are among the indigenous peoples living in the Arctic region, which is home for over 500,000 indigenous peoples.⁵ Spread across seven Arctic countries, a commonality between them is their dependency on a rich biodiversity and environment, which enables them to maintain their lifestyles.⁶ Yet, because the Arctic is facing numerous challenges, which threaten its biodiversity, the livelihoods of indigenous peoples are also at risks. As a result, the protection of the Arctic environment is a pressing issue, which raises question about the means to ensure adequate conservation policy while respecting and protecting the rights of indigenous peoples.

In this context, the contribution focuses on the establishment of Marine Protected Areas (MPAs) as a tool to protect the environment and examines the impacts of MPAs on the rights of indigenous peoples. Looking for potential examples of best practices, the contribution more specifically examines the establishment and management of three MPAs which have been created by the government of Canada and Greenland in collaboration with Inuit communities, namely the Tallurutiup Imanga National Marine Conservation Area (NMCA) (Lancaster Sound, Nunavut); the Imappivut Marine Plan (Labrador, Nunatsiavut); and the Management Plan in the

² ILO Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO Convention 107) (adopted 26 June 1957, entered into force 02 June 1959); United Nations Declaration on the Rights of Indigenous Peoples (hereafter UNDRIP) (adopted 13 September 2007) UN Doc A/RES/61/295.

³ Article 3 UNDRIP.

⁴ Convention on Biological Diversity (hereafter CBD) (adopted on 5 June 1992, entered into force on 29 December 1993); see for instance article 8(j) CBD regarding the use and preservation of indigenous and local traditional knowledge.

⁵ United Nations Permanent Forum on Indigenous Issues, 'Indigenous Peoples, Indigenous Voices - Factsheet: Who Are Indigenous Peoples?'; Arctic Centre, 'Arctic Indigenous Peoples' <<https://www.arcticcentre.org/EN/communications/arcticregion/Arctic-Indigenous-Peoples>> accessed 1 March 2019.

⁶ Among Arctic indigenous peoples there are inter alia reindeer herders, hunters and fisherman.

Pikialasorsuaq polynya (shared between Canada and Greenland). It analyses the potential attached to the creation of these MPAs for the protection of the environment, the achievement of sustainable development goals (SDGs) and for the fulfillment of the rights of the Inuit people. In this study, the analysis focuses on the governance structures of each MPA and on the possibilities to create a network of MPAs in the traditional Inuit territory. Indeed, this contribution proposes that the establishment of MPAs in the traditional Inuit territory has the potential to both increase conservation goals and to enable the implementation of indigenous rights.

With this analysis, the purpose of this contribution is to bridge theory and policy with practice in the development of a new paradigm that includes indigenous peoples in the governance of biodiversity and its conservation. The example of these MPAs evidences a shift in conservation practices from methods excluding indigenous peoples to their inclusion in the management of these areas, in accordance with the use of their traditional knowledge. The establishment of MPAs in the traditional Inuit territory has the potential to both increase conservation goals and to enable the implementation of human rights, specifically indigenous rights. However, since these MPAs are still in the making, only the future can tell how efficient this development will become to ensure the protection of biodiversity together with the rights of indigenous peoples.

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