

Arctic Law and Governance

The role of China, Finland
and the EU

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• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON
2017

Hart Publishing

An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd	Bloomsbury Publishing Plc
Kemp House	50 Bedford Square
Chawley Park	London
Cumnor Hill	WC1B 3DP
Oxford OX2 9PH	UK
UK	

www.hartpub.co.uk
www.bloomsbury.com

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

www.isbs.com

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First published 2017

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-84946-702-5
ePDF: 978-1-50991-150-9
ePub: 978-1-50991-149-3

Library of Congress Cataloging-in-Publication Data

Names: Koivurova, Timo.

Title: Arctic law and governance : the role of China, Finland, and the EU / edited by
Timo Koivurova [and three others].

Description: Oxford [UK] ; Portland, Oregon : Hart Publishing, 2017. |
Includes bibliographical references and index.

Identifiers: LCCN 2016045784 (print) | LCCN 2016046049 (ebook) | ISBN 9781849467025
(hardback : alk. paper) | ISBN 9781509911493 (Epub)

Subjects: LCSH: Jurisdiction, Territorial—Arctic regions. | Territorial waters—China. |
China—Relations—Arctic regions. | Arctic regions—Relations—China. |
Arctic regions—International status. | Arctic Council. | Territorial waters--Finland. |
Finland—Relations—Arctic regions. | Arctic regions—Relations—Finland.

Classification: LCC KZ4110.C45 A73 2017 (print) | LCC KZ4110.C45 (ebook) |
DDC 341.4/4091632—dc23

LC record available at <https://lccn.loc.gov/2016045784>

Typeset by Compuscript Ltd, Shannon

Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall

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extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

*Incentives, Practices and
Opportunities for Arctic
External Actors' Engagement with
Indigenous Peoples*

China and the European Union

ADAM STEPIEN

I. INTRODUCTION

THE CHAPTER COMPARES the European Union—an actor that is fairly experienced in engaging with Arctic indigenous peoples—to China, a recent newcomer to Arctic affairs. The chapter also discusses reasons why such engagement is needed and advantageous for both Arctic peoples and external actors.¹ That is particularly important to highlight for China, as comparatively a newcomer to Arctic affairs. The discussion is based on the EU's and China's stances regarding Arctic indigenous peoples, as well as general statements and actions referring to indigenous rights and issues globally. That includes positions on indigenous rights within the UN system, as well as guidelines/policies relevant for development co-operation or overseas activities of European and Chinese state and private actors. This is particularly interesting for this research project due to the lack of comprehensive Chinese Arctic policy statements.

In order to provide background for the discussion, first an overview of the role of the indigenous peoples in Arctic governance is presented. Then, the reasons why external actors should engage with Arctic indigenous peoples are identified: the requirements arising from the observer status in the Arctic Council as well as the relevance of non-Arctic actors for Arctic

¹ The term 'external actors' is used here despite the elements of a more direct presence of the EU and China in the region.

peoples primarily due to their environmental footprint and economic leverage. Building on this background, China's and EU's engagement with Arctic indigenous peoples and their organisations is discussed. That is followed by the analysis of stances towards indigenous rights and problems in general, including relevant standards guiding behaviour of private actors. The chapter concludes with general recommendations, with a particular emphasis on issues relevant for China's future presence in the region.

II. INDIGENOUS PEOPLES: ACTORS NOT TO BE NEGLECTED IN ARCTIC GOVERNANCE

Indigenous peoples constitute about 10 per cent of the population of the Arctic within the boundaries defined by the Arctic Human Development Report² and contribute significantly to Arctic cultural diversity. Different groups vary greatly in terms of their livelihoods, economic situation, legal situation and participation in decision-making.

From the inception of the global indigenous movement in the 1970s, the world's indigenous peoples have achieved much at the international and national level.³ This is clearly visible in the incorporation of indigenous dimensions into international documents, such as the 1992 Convention on Biological Diversity⁴ (CBD, art 8j on traditional knowledge and practices), and especially in the adoption of two international instruments dealing specifically with indigenous rights: the 1989 ILO Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries⁵ (replacing the earlier ILO Convention 107, which displayed an assimilationist approach) and the 2007 UN Declaration on the Rights of Indigenous Peoples.⁶

The Arctic regions have been from the beginning at the forefront of the normative, legal and governance shift towards acknowledgement of indigenous rights and establishment of participatory decision-making mechanisms. That can be attributed to the existence of capable indigenous elites, and comparative vitality of Arctic cultures coupled with the development of major resource extraction projects affecting indigenous lands in the region. At the same time, Nordic and North American states gradually endorsed minority and indigenous rights and started to address indigenous demands.

² Arctic Human Development Report (AHDR) (Akureyri, Stefansson Arctic Institute, 2004).

³ R Niezen, *The Origins of Indigenism* (Oakland, University of California Press, 2003).

⁴ Convention on Biological Diversity, 1760 UNTS 79/31 *International Legal Materials* 818 (1992).

⁵ International Labour Organisation (ILO) Convention no 169 concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 27 June 1989, in force 5 September 1991, 1650 UNTS 383.

⁶ UN Declaration on the Rights of Indigenous Peoples. General Assembly Resolution, 61st Regular Session, New York, 13 September 2007.

Concurrently, the region saw the rise of indigenous movements.⁷ The Arctic indigenous organisations, most notably the Inuit Tapiriit Kanatami (ITK—association of Inuit in Canada), Inuit Circumpolar Council (ICC, earlier Conference established in 1977), the Sámi Council (functioning since 1956) and the Russian Association of the Small Peoples of the North, Siberia and Far East (RAIPON, from the end of the 1980s), have gradually become influential actors both in domestic politics and internationally. The first meeting of indigenous peoples from around the circumpolar North took place in Copenhagen in 1973 and preceded the first global indigenous summit in Port Alberni, Canada in 1975.⁸

As a result, starting from the 1970s the way in which the North is governed has been changing. In 1971, the development of oil and plans to construct a pipeline for the transport of oil from Prudhoe Bay fields resulted in the Alaska Native Claims Settlement Act (ANCSA), giving Alaskan native communities ownership over large areas previously controlled by the federal government, thereby engaging them into the market economy. In Canada, land claims settlements, especially in the Inuit regions (a prominent example being the Inuvialuit Final Agreement in the Western Arctic), introduced co-management structures throughout Arctic Canada. In the case of the Nunavut Land Claims Agreement (covering the Eastern Arctic), the settlement also led to the establishment of a new territory, Nunavut, with an Inuit majority and a number of autonomous policy areas under Inuit-controlled territorial government.⁹ Greenland gained home rule from Denmark in 1979 and self-government in 2009, and thus the government in Nuuk currently has a broad spectrum of powers and competences. In Finland, Norway and Sweden, Sámi parliaments were established as elected representative institutions. Sámi Parliaments are primarily consultative bodies, including in matters relevant for land use planning or extractive industries, but over time have also gained decision-making powers in areas such as education, culture and language. In addition, the 2005 Finnmark Act established an (ongoing) process of defining the rights to land in Norway's northernmost county, with the Sámi Parliament and Sámi reindeer herders playing a vital role in the process.¹⁰ In Russia, the position of the indigenous peoples is comparatively the weakest, especially in the context of oil and gas developments. The main indigenous organisation—RAIPON—had recently experienced a major setback in its relations with the authorities, as its activities had

⁷ See eg AHDR (n 2).

⁸ Niezen, *The Origins of Indigenism* (n 3).

⁹ BS Zellen, *Breaking the Ice: From Land Claims to Tribal Sovereignty in the Arctic* (Plymouth, Lexington Books, 2008).

¹⁰ A Stepien et al, 'Arctic Indigenous Peoples and the Challenge of Climate Change' in E Tedsen, S Cavalieri and RA Kraemer (eds), *Arctic Marine Governance: Opportunities for Transatlantic Cooperation* (Heidelberg, Springer, 2014).

been temporarily suspended. However, also in Russia indigenous actors are present and active at the local and regional governance levels.¹¹

These developments have been reflected in the venues of Arctic co-operation. During the Rovaniemi Process—the early years of the Arctic Environmental Protection Strategy¹²—indigenous organisations (ICC, RAIPON and the Sámi Council) were present as observers or members of state delegations. Following the 1996 Ottawa Declaration,¹³ their status had transformed to that of permanent participants in the Arctic Council. Indigenous organisations gained equal participation in the discussion, although not in decision-making, which means that they have to be consulted before consensus decisions are made by the eight Arctic states and they have a role in agenda-setting.¹⁴ The formal positioning of permanent participants in the Council is thus much stronger than for instance that of observer states, which constitutes one of the unique features of the organisation.¹⁵ The role of indigenous organisations is even more prominent due to the consensual format of decision-making within the Council. If all permanent participants are strongly opposed to certain decisions (eg the content of policy recommendations based on scientific assessments), it is likely that at least one Arctic state supports the indigenous standpoint. Moreover, in order for projects to be accepted by the Council, the support of as many actors as possible is vital and the point of view of permanent participants may constitute a key leverage.¹⁶ This is of particular importance for the observers, who can propose projects either through an Arctic state or a permanent participant, but also need to acquire broad support in the Council in order to see it eventually accepted. Consequently, the relationship with indigenous peoples is relevant for the effectiveness of the EU's and China's participation in the Arctic Council's work.

¹¹ See eg F Stammer, 'Oil without Conflict? The Anthropology of Industrialisation in Northern Russia' in A Behrends, S P Reyna, and G Schlee (eds), *Crude Domination: An Anthropology of Oil* (Oxford, Berghahn Books 2011) 243–69.

¹² Arctic Environment Protection Strategy (AEPS) 30 *International Legal Materials* 1624 (1991).

¹³ Declaration on the Establishment of the Arctic Council (Ottawa Declaration) and Joint Communiqué of the Governments of the Arctic Countries on the Establishment of the Arctic Council, 19 September 1996, 35 *International Legal Materials* 1385–90 (1996).

¹⁴ T Koivurova and L Heinämäki, 'The Participation of Indigenous Peoples in International Norm-making in the Arctic' (2006) 42 *Polar Record* 101; S Duyck, 'Polar Environmental Governance and Non-state Actors' in R Pincus and SH Ali (eds), *Diplomacy on Ice: Energy and the Environment in the Arctic and Antarctic* (London, Yale University Press, 2015, in press).

¹⁵ An important role here can be attributed to the activities of the Indigenous Peoples' Secretariat, established in 1994 and currently being partly merged with the new Council's permanent secretariat in Tromsø. The secretariat supports logistically the work of permanent participants and facilitates communication between the Council and its working groups and permanent participants.

¹⁶ Koivurova and Heinämäki, 'The Participation of Indigenous Peoples in International Norm-making in the Arctic' (n 14); M Tennberg, *The Arctic Council. A Study in Governmentality* Acta Universitatis Lapponiensis 19 (Rovaniemi, University of Lapland, 1998) 126–29.

Overall, as major non-Arctic or near-Arctic actors have become interested in the regional affairs, the indigenous peoples have gained a non-negligible level of influence on decision-making and governance throughout the Arctic. They are able to influence the ways in which particular development projects are conducted, decision-making at national level and assessment and decision-making processes in the Arctic Council, and are present in many international venues where regulatory frameworks of relevance for the Arctic are shaped. This has been the case for the Stockholm Convention on Persistent Organic Pollutants,¹⁷ where Arctic indigenous organisations—particularly the ICC—played a crucial role in the negotiations and in the earlier assessment work within the Arctic Council.¹⁸ The ICC is still active in the screening process for new substances listed as candidate persistent organic pollutants (POPs).¹⁹

III. CHINA'S AND EU'S IMPACT ON ARCTIC INDIGENOUS PEOPLES' LIVELIHOODS AND INTERESTS

China and the EU can influence the Arctic region and its indigenous communities through: (1) their environmental footprint, primarily connected with climate change and long-range pollution; (2) the economic leverage through which they play a role in shaping development trends in the region; (3) economic activities of companies subject to their jurisdiction, as well as (4) their influence on international legal frameworks of relevance for the Arctic. Furthermore, Arctic research programmes conducted by external actors are of interest for indigenous peoples.

The Arctic is a globalised space and especially changes in demand for resources originating from the Arctic have major influence on the region's economies. Although Arctic indigenous communities are diverse in their livelihoods and have undergone rapid processes of modernisation over the last century, they are in general still intimately connected and dependent on nature. This is primarily due to the relatively high consumption of food originating from harvesting, hunting, gathering or herding as well as the central position of traditional practices in indigenous cultures.²⁰

The most widely discussed challenge for Arctic indigenous peoples is the changing climate, which affects the cryosphere and impacts both the

¹⁷ Stockholm Convention on Persistent Organic Pollutants (adopted 22 May 2001, entered into force 17 May 2004) 2256 UNTS 119 (Stockholm Convention).

¹⁸ DL Downie and T Fenge (eds), *Northern Lights against POPs: Combatting Toxic Threats in the Arctic* (Montreal, McGill-Queen's University Press, 2003).

¹⁹ See 'Persistent Organic Pollutants' at ICC website, www.inuitcircumpolar.com/persistent-organic-pollutants-pops.html.

²⁰ Stepien et al, 'Arctic Indigenous Peoples and the Challenge of Climate Change' (n 10); ACIA 2005, *Arctic Climate Impact Assessment* (Arctic Council, Cambridge University Press, 2005); AHDR (n 2).

terrestrial and maritime environment.²¹ Hunting, fishing and reindeer herding are dependent on the weather as well as ice and snow conditions. In some cases, traditional knowledge relevant for hunting or fishing becomes insufficient to conduct these activities successfully and safely in the light of the changing climate. Community infrastructure—including houses, water and power sources constructed on permafrost—become vulnerable. Coastal communities are exposed to storm surges and coastal erosion.²²

In terms of influence on climate change, the footprints of China and the EU depend primarily on their CO₂ emissions. China is the largest emitter with 29 per cent of global emissions in 2012 (9900 million tonnes of CO₂, 7.1 tonnes of CO₂ per person). The EU is responsible for roughly 11 per cent of global emissions (3700 million tonnes, 7.4 tonnes per person). However, the EU and China bear different historical responsibility for the current levels of CO₂ in the atmosphere,²³ and much of China's emissions are connected with the production consumed, inter alia, in Europe. In addition, the emissions of black carbon from both inside the region and more southerly latitudes (especially north of the 40th parallel north) affect the Arctic through changing the albedo of the snow and ice surfaces, contributing to increased melting and greater absorption of solar energy.²⁴ Both China and the EU are major black carbon emitters. Europe is the largest contributor to surface black carbon in the Arctic (due to high latitude and proximity to the region) while East Asia is the largest contributor to black carbon in the upper troposphere owing to air transport directions.²⁵

Similarly to black carbon, POPs and other long-range pollutants like mercury can be transported by wind or ocean currents into the Arctic, a region which, due to wind and current patterns, may be considered a pollution sink.²⁶ POPs are deposited in the tissue of animals and humans and have noticeable effects on the health of Arctic indigenous communities, especially those highly dependent on traditional sources of food.²⁷ The Inuit

²¹ M Strahlendorff et al, 'Climate Change in the Arctic' in A Stepien, T Koivurova and P Kankaanpää (eds), *Strategic Assessment of Development of the Arctic: Assessment Conducted for the European Union* (Arctic Centre, University of Lapland, 2014).

²² Stepien (n 10).

²³ T Wei et al, 'Developed and Developing World Responsibilities for Historical Climate Change and CO₂ Mitigation' (2012) 109 *Proceedings of the National Academy of Sciences* 32, 12911.

²⁴ Arctic Monitoring and Assessment Programme (AMAP) (PK Quinn et al), *The Impact of Black Carbon on Arctic Climate* (2011).

²⁵ United States Environmental Protection Agency, *Report to Congress on Black Carbon* (2012) ch 3: 'Emissions of Black Carbon', www.epa.gov/blackcarbon/2012report/Chapter4.pdf.

²⁶ AMAP *Arctic Pollution 2009: Persistent Organic Pollutants, Radioactivity, Human Health* (2009) 1.

²⁷ AMAP reports: *AMAP Assessment Report: Arctic Pollution Issues* (1998); *Arctic Pollution 2002: Persistent Organic Pollutants, Heavy Metals, Radioactivity, Human Health, Changing Pathways* (2002); Downie and Fenge (eds), *Northern Lights Against POPs* (n 18).

have therefore emphasised that long-range contamination makes the very bases of their culture literally poisonous.²⁸

While the global emissions of some POPs have decreased significantly, partly due to the adoption of the aforementioned Stockholm POPs Convention,²⁹ other pollutants are still of major concern for Arctic communities.³⁰ To give only a couple of examples, Europe contributed to 35 per cent of HCB (hexachlorobenzene) depositions over the Arctic while South-Eastern Asia is responsible for 12 per cent, and the EU is a source region for 42 per cent of SO₂ deposits while 11 per cent comes from East Asia. PCB-153 emissions from Europe constitute above 50 per cent of the total emissions affecting the Arctic.³¹ Moreover, 'about half the mercury deposition to the Arctic is due to the atmospheric transport from anthropogenic emission sources, of which the greatest contribution is made by Asian (33%) and European sources (22%)'.³² The recently adopted Minamata Mercury Convention³³ gives hope for the gradual decrease in the presence of mercury in the environment, but only in a long-term perspective.

Apart from long-range pollution and climate change, Arctic external actors impact the Arctic environment also locally, via the actions of their extractive, shipping and tourist companies or the economic influence they have on a wide spectrum of Arctic developments. Here, the policies shaping demand on resources or products originating from the region are of key relevance. For example, the EU's final demand for products from SO₂-intensive Arctic industries has been estimated at 38 per cent of the global demand, final demand for products from mercury-intensive Arctic industries at 36 per cent, and the EU's final demand for products from the Arctic oil and gas industry at 24 per cent.³⁴ The demand for oil, gas and minerals is particularly critical for indigenous livelihoods, as it drives hydrocarbon and mineral developments, which are of major concern for indigenous communities and the Arctic environment. This demand is generated primarily by markets outside of the region, such as the EU and China.

²⁸ Downie and Fenge (n 18).

²⁹ Stockholm Convention (n 17).

³⁰ See eg AMAP, *AMAP Assessment 2009: Human Health in the Arctic* (2009).

³¹ Ecologic Institute et al (S Cavalieri et al) *EU Arctic Footprint and Policy Assessment* (European Commission, 2010) arctic-footprint.eu.

³² O Travnikov, 'Contribution of the Intercontinental Atmospheric Transport to Mercury Pollution in the Northern Hemisphere' (2005) 39 *Atmospheric Environment* 7541.

³³ Minamata Convention on Mercury (adopted 10 October 2013 at Kumamoto). On the status of the Convention, see the UNEP website of the Minamata Convention on Mercury at www.mercuryconvention.org.

³⁴ Ecologic Institute et al, *EU Arctic Footprint and Policy Assessment* (n 31); for methodology and data, see the full report; see also A Neumann and B Rudloff, *Impact of EU Policies on the High North. The Cases of Climate Policy and Fisheries*, Standard Briefing (European Parliament, Directorate-General for External Policies of the Union, 2010); T Koivurova et al, 'The Present and Future Competence of the European Union in the Arctic' (2012) 48 *Polar Record* 361.

The EU has made an attempt to assess its environmental footprint (and associated economic leverage) by commissioning the EU Arctic Footprint and Policy Assessment study,³⁵ allowing for better understanding of the actual role and place of the EU in Arctic change, and consequently, its influence on the Arctic peoples. For instance, EU tourists constitute between 25 per cent and 30 per cent of all tourists visiting the Arctic, the EU's share in fish imports from Arctic countries is at 39 per cent,³⁶ and vessels flying EU member states' flags or owned by EU-based companies can be estimated to constitute between 30 and 50 per cent of Arctic shipping.³⁷

Chinese actors may affect Arctic habitats and peoples more directly through the investments of Chinese companies in places like Greenland, northern Canada or Siberia. Projects such as pipelines, mines, shipping or transport infrastructure have numerous impacts on lands and territories used by indigenous communities and have proven to significantly affect their livelihoods and wellbeing over the last century. A good example is the planned iron ore mine near Nuuk, Greenland. The project is—as of July 2016—run by a Chinese company the General Nice Group, after the previous operator's bankruptcy. The investment would entail a range of environmental impacts as well as flying in a couple of thousand workers during the construction phase (in a country with a population of 56,000), likely from China. However, the project would also contribute to expanding the economic autonomy of Greenland in relation to Denmark and provide work for more than 450 Greenlanders in a country troubled by unemployment and an education gap.³⁸ In any case, the social implications—positive and negative—of the investment are likely to be significant, both in terms of relations between fly-in workers and locals as well as long-term economic and social viability. It is unclear how the prospective Chinese investors and contractors would take these complex issues into account.

Eventually, both China and the EU have influence on international regulatory developments affecting the Arctic and relevant for its indigenous communities. These include the aforementioned POPs Convention, Convention on International Trade in Endangered Species (where recently trade in polar bear products, of importance for Inuit communities, was discussed),³⁹ the Convention on Biological Diversity or the International Whaling Commission.

³⁵ Ecologic Institute et al (n 31).

³⁶ No data for Arctic and sub-Arctic fisheries as such.

³⁷ Ecologic Institute et al (n 31).

³⁸ P Jun, 'China's Arctic Mining Adventure Left Out in the Cold' *CaixinOnline* (26 October 2013) english.caixin.com/2013-11-26/100609861.html; London Mining, Company factsheet (2013) www.londonmining.com/media/48900/2013_02_28_-_london_mining_isua_factsheet.pdf (last accessed in November 2014, no longer available online, on file with the author).

³⁹ See the address of John E Scanlon in Moscow in December 2013 at the CITES website at cites.org/eng/news/sg/2013/20131204_polar-bear.php.

IV. ARCTIC COUNCIL: REQUIREMENTS REGARDING OBSERVERS' ENGAGEMENT WITH INDIGENOUS PEOPLES

In recent years, the Arctic states and indigenous organisations have stressed that engagement with permanent participants is an important element of effective participation in the Council's work. For example, the President of Iceland Ólafur Ragnar Grímsson underlined that 'the respect given to the region's indigenous peoples and their involvement internationally' constitutes one of the 'Arctic house rules' for the newcomers to Arctic regional co-operation.⁴⁰

Even though the Arctic Council is not an organisation making binding decisions,⁴¹ it has established itself as a primary intergovernmental forum for discussing Arctic affairs. In recent years, participation in the Council's work has come to be seen as a symbolic acknowledgement of the actors' interest in and relevance for Arctic matters. Presence in the Council allows external actors to take part in the shaping of common understanding of the Arctic state of affairs and also encourages these actors to share this common understanding. Involvement in the projects conducted within the Council's working groups is particularly important in this context.

Both China and the European Union applied for observer status in the Arctic Council before the 2009 Tromsø ministerial meeting and acted, until 2013, as ad hoc observers.⁴² At the Kiruna ministerial meeting, China was accepted as an observer. The EU's situation is more complex, as the Arctic Council 'received the application of the EU for observer status affirmatively',⁴³ with a final decision on the observer status awaiting 'final decision on implementation', but with the EU being invited to observe Council proceedings on an equal basis to other observers, becoming a so-called 'observer-in-principle' and acting in practice like any other observer. In autumn 2014, after reaching a partial agreement with Canada on the seal ban issue, the EU would be well on its way to acquiring formal observer status (that is, the Kiruna decision to be 'finally implemented'), but for the Ukrainian crisis and tensions with Russia.

⁴⁰ ÓR Grímsson (President of Iceland), 'Preface: The Arctic House Rules' (2013) *Arctic Yearbook*, www.arcticyearbook.com.

⁴¹ Although it has served as a catalyst for 2 binding agreements on search and rescue and oil spills.

⁴² ie given access to Council meetings on a meeting-by-meeting basis. See Ch 8 by Koivurova et al in this volume.

⁴³ 'The Arctic Council receives the application of the EU for observer status affirmatively, but defers a final decision on implementation until the Council ministers are agreed by consensus that the concerns of Council members, addressed by the President of the European Commission in his letter of 8 May are resolved, with the understanding that the EU may observe Council proceedings until such time as the Council acts on the letter's proposal'; Arctic Council, Kiruna Declaration (Eighth ministerial meeting of the Arctic Council, 15 May 2013).

Importantly, observer status in the Council is not permanent and is reviewed by Arctic states every four years, subjecting observers to regular scrutiny regarding their alignment with the requirements Arctic states put on observers.⁴⁴ These requirements were listed in the so-called ‘Nuuk observer rules’ (role and criteria for observers adopted during the 2011 ministerial meeting), of which several refer directly to indigenous peoples and permanent participants:

- Respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants.
- Have demonstrated a political willingness as well as financial ability to contribute to the work of the permanent participants and other Arctic indigenous peoples.
- Have demonstrated a concrete interest and ability to support the work of the Arctic Council, including through partnerships with member states and permanent participants bringing Arctic concerns to global decision-making bodies.⁴⁵

In addition, the Senior Arctic Officials in their report to ministers for the Nuuk meeting emphasised that ‘[t]he involvement of observers should enhance and complement the unique and critical role of Permanent Participants in the Arctic Council’.⁴⁶

The reasons for the inclusion of such strong language safeguarding the position of permanent participants were the concerns of Arctic indigenous organisations regarding their status in the Council in the light of the presence of powerful observer states, as well as expected changes in the way how the Council functions and its rising international significance.⁴⁷ To understand these concerns one has to take into account that circumpolar Arctic co-operation had been shaped in the conditions of relatively limited global attention to the Arctic. Focusing primarily on environmental protection and later also sustainable development and being at the time rather peripheral intergovernmental forums, the Arctic Environmental Protection Strategy and the Arctic Council were open to non-state actors. The extraordinary status indigenous organisations gained in the Council is a result of that initial set-up of Arctic co-operation. The evolution of the Arctic Council towards a more institutionalised, more prominent forum, with much higher international profile than in the 1990s may therefore be a concern

⁴⁴ P Graczyk and T Koivurova, ‘A New Era in the Arctic Council’s External Relations? Broader Consequences of the Nuuk Observer Rules for Arctic Governance’ (2014) 50 *Polar Record* 225.

⁴⁵ Senior Arctic Officials (SAOs), *Report to Ministers* (Nuuk, Greenland, May 2011) 50–51.

⁴⁶ *ibid.*, 50.

⁴⁷ Personal Communication with the staff of Indigenous Peoples Secretariat, April and October 2013. Most likely the particular issue of the EU seal ban played a key role in the wording of the Nuuk observer rules referring to indigenous and local communities.

for indigenous organisations.⁴⁸ In addition, the presence of powerful actors such as China, the EU, India or Japan may be thought to undermine the special position indigenous organisations enjoyed in the Council. The executive director of Gwich'in Council International, Bridget Larocque, provided a good summary of indigenous hopes and concerns in her commentary in the *Arctic Yearbook* 2012:

The Permanent Participants are very cautious about some applications, as it is not enough to say that Observers will be sensitive to the needs and rights of the indigenous peoples; they also need to show their track record. New Observers have to accept the Arctic Council's governance structure, as this is the only international forum that guarantees that the voice of the Arctic People gets heard.⁴⁹

Three years after the Nuuk meeting it is still unclear what the 'respect for the values, interest, culture and traditions' or the 'contribution' and 'support' for permanent participants mean exactly. The indigenous leaders themselves are not sure what they can expect and demand from the observers.⁵⁰

However, the case of the European Union is illustrative in understanding what the observers' *respect* and *support* for indigenous peoples may constitute. The opposition of Canada⁵¹ and the Inuit to the EU observership had been connected with the ban on placing seal products on the EU market owing to concerns over the welfare of animals (humane treatment) during the hunt.⁵² Although traditional harvesting conducted by indigenous groups has been exempted from the regulation, the Inuit argue that the law led to the collapse of the global market for seal products (as Europe was the key market), and that the certification schemes introduced are not feasible. The Inuit are also opposed to the view of seal hunting as being as such an inhumane activity.⁵³ If these arguments are accepted, the case could be made that the EU has failed to 'respect the values [...] and traditions of Arctic

⁴⁸ Moreover, while the position of permanent participants is very strong in the working groups, there is a risk for weakening their overall standing due to increasing use of task forces in the work of the Council. Task forces use their own terms of reference, which leads eg to limiting the involvement of observers. So far, the permanent participants have been engaged in task forces' proceedings, but their inclusion in more sensitive issues in the future is not certain. See Duyck, 'Polar Environmental Governance and Non-state Actors' (n 14).

⁴⁹ B Larocque (2012), 'A Voice from the Arctic' *Arctic Yearbook* (2012) arcticyearbook.com.

⁵⁰ Personal communication with ICC and Sámi Council activists (October 2014). That was also visible during the meeting among Arctic Council observers in Warsaw in April 2013 where a representative of permanent participants was present.

⁵¹ Canada has agreed on the 'final implementation' of the decision of awarding the EU observer status in the Arctic Council in autumn 2014.

⁵² Regulation (EC) No 1007/2009 of 16 September 2009 on trade in seal products, OJ L 286, 31.10.2009, p 36–39.

⁵³ D Cambou, 'The Impact of the Ban on Seal Products on the Rights of Indigenous Peoples: A European Issue' (2013) *5 Yearbook of Polar Law* 389; K Hossain, 'The EU Ban on the Import of Seal Products and the WTO Regulations: Neglected Human Rights of the Arctic Indigenous Peoples?' (2013) *49 Polar Record* 154.

indigenous peoples and other Arctic inhabitants' (including the traditions of non-indigenous, so-called 'commercial sealers'), resulting in Canada's earlier opposition to granting the EU official observer status. The next section discusses how the EU has attempted to address the backlash from the seal ban and the anger of Arctic indigenous communities.

V. CHINA'S AND EU'S ARCTIC-SPECIFIC STATEMENTS AND ACTIONS

Due to the influence of powers like China and the EU on Arctic developments and owing to the position of permanent participants within the Arctic Council, it is in the interest of both state observers and indigenous organisations to establish channels of communication and eventually collaborate. By submitting their applications for observer status in the Arctic Council, China and the EU implicitly agreed to respect indigenous values and interests and to support permanent participants. As discussed in the previous section, it is unclear if and how such respect and support is to materialise. The EU has taken the first steps to respond to this challenge, while China, even though it made contact with permanent participants following its application, has so far shown comparatively limited interest in engaging with the permanent participants.

Chinese activities may be also juxtaposed with the statements referring to indigenous peoples and actions of other Asian state applicants prior to the Kiruna ministerial meeting, for example Japan and Singapore.⁵⁴ A Singaporean representative not only stated that the development of 'human capital' in the Arctic regions is the country's 'Arctic interest',⁵⁵ but indigenous communities have been directly engaged by arranging visits of Singapore's officials to Arctic towns such as Iqaluit or Nuuk, as well as by inviting Arctic indigenous leaders to Singapore to showcase the country's achievements.

Such statements and activities, while in themselves not reality-shaping (and some activities—such as showcasing Singaporean success—have limited usefulness for Arctic indigenous actors), are important for trust-building. That is particularly relevant for China as it has not yet elaborated its Arctic policy and there are few instances of Chinese direct engagement in the region.⁵⁶ Consequently, Arctic actors may lack knowledge and

⁵⁴ See eg China's and Japan's statement at the Stockholm observers' meeting with the AC chair in November 2012, www.arctic-council.org: statement by HE Ambassador Lan Lijun at the meeting between the Swedish chairmanship of the Arctic Council and observers, 6 November 2012, Swedish Ministry of Foreign Affairs. Italy is another example of an observer making strong statements regarding indigenous peoples.

⁵⁵ S Tan (Senior Parliamentary Secretary), 'Singapore in the Arctic', speech at the Arctic Circle General Assembly (12 October 2013) www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2013/201310/press_20131014_01.printable.html?status=1.

⁵⁶ Apart from research activities focused chiefly on earth sciences and climate change. See Ch 3 by Ren in this volume.

understanding of Chinese interests, the role China wants to play in the region and the standards it would follow in asserting that role. This is especially the case as the resource dimension is prominent (particularly in the West)⁵⁷ in the discussion on Chinese Arctic interests. Resource extraction is among the most problematic issues for indigenous communities, so the aforementioned concerns may be exacerbated.

China has thus far made little reference to indigenous peoples in its official international statements and declarations referring to the Arctic or Arctic Council, apart from confirming their important role within Arctic regional co-operation.⁵⁸ However, following the adoption of the 'Nuuk observer rules' Chinese officials (primarily from the embassies in Nordic countries—particularly in Helsinki) have contacted the Sámi Council (one of the participants), the Sámi parliaments and the Indigenous Peoples Secretariat regarding indigenous perspectives and the expectations of permanent participants regarding observers.⁵⁹ Chinese officials also approached indigenous leaders during Arctic Council meetings, especially in the Sustainable Development Working Group.⁶⁰ On the other hand, there was apparently no contact established with the Inuit Circumpolar Council, perhaps the most influential Arctic indigenous organisation,⁶¹ which shows uneven commitment, likely dependent on the particular interest of specific embassies or officials. Moreover, there was no follow-up on these interactions after the 2013 Kiruna ministerial meeting.

Currently, there is ongoing work among Chinese policymakers and scholars to better understand Arctic indigenous perspectives, with the China Institute for Marine Affairs (part of State Ocean Administration) conducting a project on Arctic indigenous peoples following a request from Chinese officials.⁶² Chinese policymakers and scholars argue that before any actions are taken or proposals made, there is a need first to learn more regarding Arctic indigenous affairs.⁶³ That resonates well with the declaration by Feng Gao,

⁵⁷ See eg a commentary by F Perreault, 'Can China Become a Major Arctic Actor' (2012) RSIS Commentary No 073/2012; L Xing and RG Bertelsen 'The Drivers of Chinese Arctic Interests: Political Stability and Energy and Transportation Security' (2013) *Arctic Yearbook* www.arcticyearbook.com; Ch Seidler, 'The Resource Race: China Dips Toes in Arctic Waters' *Spiegel Online* (25 January 2013) www.spiegel.de; 'Polar Bearings: China Pursues Its Interest in the Frozen North' *The Economist* (12 July 2014).

⁵⁸ Statement by HE Ambassador Lan Lijun at the Meeting between the Swedish Chairmanship of the Arctic Council and Observers (n 54).

⁵⁹ Personal communication with IPS staff (April 2013) and Sámi Council staff (October 2014).

⁶⁰ *ibid.*

⁶¹ Personal communication with one of the ICC leaders (October 2014).

⁶² Personal communication, interview by Timo Koivurova with officials from the China's State Oceanic Administration (Haiwen Zhang, Director General of the Department of International Cooperation) and scholars from the China Institute for Marine Affairs (Dr Fu Yu) (Beijing, 15 October 2014).

⁶³ *ibid.*, based also on discussions during the project seminars in Rovaniemi (March 2014) and Wuhan (September 2014).

the head of the Chinese delegation to the Kiruna ministerial meeting, who said that ‘understanding the Arctic’ is one of the priorities in Chinese governments’ current activities within the Arctic Council.⁶⁴ Limited reference in Chinese statements to Arctic indigenous (and other) inhabitants can be also attributed to the focus in Chinese declarations on Arctic climate change and its significance for China, rather than on China’s resource interests and the impacts of China on the region.⁶⁵

In comparison to China, the EU’s direct engagement with Arctic indigenous peoples goes back much further and is more substantial. There are several factors explaining the EU’s more proactive approach. First, the presence of the Sámi population within the EU territory (the only Arctic indigenous people in the EU) means that the Sámi are internal stakeholders in the context of EU policymaking. Second, as the difficult situation of indigenous peoples around the globe is seen as historically a result of European colonisation and its legacies, Europeans are often reminded of their moral responsibility for indigenous groups around the globe.⁶⁶ Third, the EU has always emphasised its principal commitment to human rights and group rights.⁶⁷ Fourth the EU has been faced by a major obstacle in entering the Arctic forums due to the ban on seal products introduced in 2009/2010.⁶⁸ Very strong opposition to the EU’s presence from the side of the Inuit, supported by other Arctic peoples and Canada, forced the EU to seek dialogue with Arctic indigenous leaders and to highlight indigenous issues in its policy documents. In terms of improving the quality of EU Arctic policy, this can be seen as a ‘blessing in disguise’.

Since 2007, when Arctic issues entered the EU agenda and simultaneously the debate on the ban on seal products entered into a decisive phase, European Commission officials have attended various indigenous meetings (eg Barents Indigenous Peoples’ Congress)⁶⁹ and visited northern communities (eg in Nunavut).⁷⁰ Primarily, the European Commission organised meetings in the format of Arctic Dialogue (in 2010, 2013, 2014, and 2016 in Brussels and, in addition, a side-event during a conference in Tromsø in

⁶⁴ A Tonami (2014), ‘The Arctic Policy of China and Japan: Multilayered Economic and Strategic Motivations’ (2014) 4 *The Polar Journal* 105.

⁶⁵ See other chapters in this volume.

⁶⁶ See eg M Lister, *The European Union and the South: Relations with Developing Countries* (New York, Routledge, 1997).

⁶⁷ eg the Charter on Fundamental Rights of the European Union (OJ C 364/1, 2000/C, 18 December 2000). Art 21 of the Charter prohibits discrimination on the grounds of race, ethnic or social origin, genetic features, religion or belief, language and membership of a national minority, which are all applicable to indigenous persons.

⁶⁸ Regulation (EC) No 1007/2009 (n 52).

⁶⁹ The Norwegian Barents Secretariat, Indigenous Peoples in the Barents Euro-Arctic Region, www.beac.st/en/Working-Groups/Working-Group-of-Indigenous-Peoples.

⁷⁰ Personal communication with the European Commission DG Mare officer (Brussels, May 2011).

January 2011). A gesture showing the commitment of the EU to dialogue with the Arctic indigenous peoples was the presence of Maria Damanaki—a commissioner responsible for maritime affairs and fisheries, one of the key units of the European Commission involved in shaping the EU Arctic policy—at the 2013 meeting. The downside of the meetings was that the participation of the indigenous representatives was rather incidental and lacking continuity. As a result, the 2010 meeting lacked proper follow-up and the discussions in 2013 were largely disconnected from the results of earlier meetings. The meetings were focused more on the format of dialogue than specific EU policies and consisted to a great extent of the presentation of various EU projects relevant for Arctic indigenous peoples. During the 2011 meeting, a number of possible ways to make the contacts between the EU and Arctic indigenous peoples more effective were proposed, including the possibility of creating an indigenous office in Brussels. However, there was no tangible follow-up on this discussion.

These discrepancies are currently being addressed. That reflects a larger learning process taking place in the EU institutions starting from the inception of the Union's Arctic policy in 2008.⁷¹ The 2013 meeting was fairly well followed-up. With the October 2014 meeting, the Arctic Dialogue format is becoming regular and more focused. As there is greater continuity in indigenous participation, it becomes possible to have a more in-depth discussion on the issues critical for the Sámi, for example mining developments in Fennoscandia where the EU is among the key regulators.⁷²

The EU representatives also try to involve Nordic Sámi parliaments on a more systematic basis.⁷³ A separate meeting between the European Commission officers, several Members of the European Parliament and the Sámi leaders took place in October 2014. One of the issues discussed was a more permanent representation of the Sámi in Brussels. This has been a long-standing postulate of Arctic indigenous peoples and the Commission has put forward a number of ideas. These entailed for instance including Sámi representation in already functioning offices of Nordic northern regions.⁷⁴ The Sámi Council responded with a comprehensive and advanced proposal to establish a representative office as a project under one of the EU's

⁷¹ See T Koivurova and A Stepien, 'The EU and the Arctic: An Ongoing Learning Process' in Stepien, Koivurova and Kankaanpää (eds), *Strategic Assessment of Development of the Arctic* (n 71).

⁷² Personal communication with the European Commission staff (September 2014) and indigenous leaders (Sámi Council) (Brussels, 14 October 2014).

⁷³ European Commission, 'Summary of "Arctic Dialogue" Workshop—9 March 2010—Brussels' MARE.C1/EH/ZB/2010; Personal communication with the European Commission DG Mare officer (Brussels, May 2013); Observations from Arctic Dialogue meeting in October 2013 (Brussels; Personal communication with a Sámi and Inuit leaders attending the October 2013 meeting, October–December 2013).

⁷⁴ This is a problematic issue as the relationship between indigenous peoples and regional authorities is not always unproblematic.

territorial co-operation programmes.⁷⁵ At the moment of submission of this volume the future of this proposal remains uncertain. Inputs of other Arctic indigenous organisations will likely remain limited to Arctic dialogue meetings and incidental participation in specific consultation processes.

The rights and interests of Arctic indigenous peoples are also emphasised in the EU Arctic policy documents. From the beginning of the official EU Arctic policy formulation—marked by the European Commission’s Communication on the Arctic region⁷⁶—the indigenous peoples’ issues have been emphasised and the ‘protecti[on] and preserv[ation of] the Arctic in unison with its population’ defined as one of the main policy objectives. The issues of marine mammals, primarily due to debates about the welfare of seals and the management of whaling, have been taken up particularly broadly. Proposed actions included: engaging Arctic peoples in regular dialogue, supporting Sámi organisations and providing opportunities for development and protection of traditional lifestyle. These aims were supported by the Council in its 2009 Conclusions on Arctic issues, which positioned indigenous rights more clearly as the foundation of EU interactions with indigenous peoples.⁷⁷ The European Parliament in its 2011 Resolution, in turn, had a stronger emphasis on the coexistence of indigenous and non-indigenous populations in the region and the need for protection of the bases of indigenous livelihoods, primarily by safeguarding the Arctic environment.⁷⁸

In the later series of EU documents—2012 Joint Communication from the European Commission and the High Representative⁷⁹ and 2014 European Parliament Resolution and Council Conclusions⁸⁰—a ‘constructive engagement and dialogue’ with indigenous peoples is to be intensified and the EU is to identify ‘appropriate ways of ensuring that the representatives of Arctic indigenous peoples are informed and consulted on the EU policies that affect them, and are given appropriate platforms to present their particular

⁷⁵ Personal communication with a Sámi Council staff member (October 2014).

⁷⁶ European Commission, ‘The European Union and the Arctic Region’ Communication COM(2008)763 final (2008).

⁷⁷ Council of the European Union. Council Conclusions on Arctic Issues (2985th Foreign Affairs Council meeting, Brussels, 8 December 2009).

⁷⁸ European Parliament, Resolution of 20 January 2011 on a sustainable EU policy for the high North, A7-0377/2010. See also the earlier resolution of the Parliament, European Parliament Resolution of 9 October 2008 on Arctic governance, 2010/C 9 E/07.

⁷⁹ European Commission (with High Representative), ‘Developing a European Union Policy towards the Arctic Region: Progress Since 2008 and Next Steps’. Joint Communication of the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament and the Council (Brussels, 26 June 2012, JOIN(2012) 19 final).

⁸⁰ European Parliament, ‘Joint Motion for a Resolution on the EU Strategy for the Arctic’ (2013/2595(RSP)) (2014) www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0229+0+DOC+XML+V0//EN; Council of the European Union, ‘Council Conclusions on Developing a European Union Policy towards the Arctic Region’ (Foreign Affairs Council meeting, Brussels, 12 May 2014).

concerns to EU institutions and audiences'. The organisation of the 2013 and 2014 Arctic Dialogue meetings and the plans for further engagement can be seen as results of this objective. However, a clear shortcoming in the EU policy documents is that apart from the issue of Arctic marine mammals,⁸¹ there are no specific policy areas or matters identified as themes for the future intensified dialogue.

Apart from the general policies towards the Arctic region, the EU has also a more direct role in influencing indigenous affairs, both in its own territory (northern Finland and Sweden) and in the states and territories where various EU programmes are implemented, including Greenland, Norway and Russia.⁸² EU-funded programmes (including, until 2013, a separate Sápmi sub-programme) acknowledge the dynamic nature of indigenous cultures and many projects aim to develop creative industries and culture-based entrepreneurship as well as facilitate cultural co-operation, events and network-building. That is highly commendable considering the often naïve and simplistic approach to indigenous cultures.⁸³ A special EU-Greenland agreement provides resources for supporting education, vocational training and the enhancement of human resources, in line with the expectations of the Greenlandic government.⁸⁴

It has been a longstanding postulate of indigenous peoples that any research taking place on their territories or concerning themselves and the environment they inhabit should have a participatory character and at least partly address their needs and problems.⁸⁵ Neither the EU nor China has so far established mechanisms to integrate and address the views and needs of Arctic communities in their research strategies and activities in the region. However, 'taking account of the needs of indigenous communities' in EU contributions to Arctic issues⁸⁶ could be interpreted as meaning the readiness to make such an effort in the long-term perspective. In turn, the Chinese draft (not yet adopted) Arctic Research Management Regulation includes

⁸¹ eg the EU position regarding the aboriginal quota within the International Whaling Commission is of relevance to Greenlandic whaling.

⁸² Many EU regulations are applicable to Norway and Iceland due to the existence of the European Economic Area Agreement (EEA Agreement 1994) and a number of EU-funded programmes extend both to these countries as well as to northwest Russia and Greenland.

⁸³ InterregIVA/North, 'Goals and Strategies', www.interregnord.com/en/about-the-programme/goals-and-strategies.aspx; Interreg IVA North 2014-2020 Document (in Finnish) www.interregnord.com/wp-content/uploads/Interreg-Pohjoinen-FIN-web.pdf.

⁸⁴ European Commission, 'Mid-term Review of the EU/Greenland Partnership 2007–2013' (8 May 2012) (on file with the author).

⁸⁵ T Søvendahl Pedersen (Head of Greenland Representation in Copenhagen), 'The Relevance of EU Policies on Indigenous Peoples in EC Cooperation with Greenland and the Arctic' (n/d), eu.nanoq.gl/Emner/EuGI/~media/8E788A8FB50E486CA9CE602AB162B666.ashx.

⁸⁶ European Commission, 'Developing a European Union Policy towards the Arctic Region: Progress since 2008 and Next Steps' (n 79) 5.

respect for rights and customs of Arctic indigenous groups.⁸⁷ Moreover, comparing to China, the EU puts greater attention on Arctic social sciences, which is of key importance for studies relevant for indigenous peoples.⁸⁸

VI. GENERAL APPROACHES TOWARDS INDIGENOUS RIGHTS AND ISSUES

As there is very little information on China's approach to indigenous peoples in the Arctic and the EU's actions are to a great extent preliminary, it is instructive to discuss the stances of China and the EU towards indigenous peoples and their rights in the global context. Especially in the case of China this could shed light on the format the future engagement could take.

A. Development of International Indigenous Norms

The People's Republic of China officially does not recognise the existence of an indigenous population within its territory,⁸⁹ as it considers the international legal emergence of the indigeneity and the distinguishing of the legal category of indigenous peoples as arising solely from European conquest and colonisation. As this perspective is taken, there cannot be any special indigenous rights in any other contexts than colonial or post-colonial.⁹⁰ Although China officially identifies 55 ethnic minority groups, none of these minorities is considered to have indigenous status. Interestingly, that includes the Evenki, who number over 30,000 and primarily inhabit the north of the Inner Mongolia province. The Evenki are recognised in the Russian Federation as a small-numbered indigenous people of the North. Groups from both sides of the border share cultural and livelihood features such as reindeer husbandry (around 230 Chinese Evenki are engaged in herding).⁹¹

⁸⁷ Legislative draft of 'Arctic Expedition Management Regulation' in preparation by the State Oceanic Administration since 2006. See Chs 2 and 3 by Qin et al and Ren respectively in this volume.

⁸⁸ That is visible, eg, from the content of the Arctic programme within the EU's Horizon 2020 research programme, partly due to the EU's direct presence in Fennoscandia. See European Commission, 'Horizon 2020—The Framework Programme for Research and Innovation' Communication COM(2011) 808 final) (Brussels, 30 November 2011) eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0808&from=EN.

⁸⁹ That is different in Taiwan and adjacent islands, where Austronesian tribes are acknowledged as indigenous by the government of the Republic of China and enjoy certain rights arising from that status.

⁹⁰ T Lixiao, statement at the Third Committee of the 56th UNGA, on the Issue of Indigenous People (item 116) (29 October 2001) www.china-un.ch/eng/rqrd/xgwt/t85100.htm.

⁹¹ The Evenki herders in China are members of the Association of World Reindeer Herders, which connects 20 indigenous reindeer herding peoples and 100,000 reindeer herders and has observer status in the Arctic Council (see the website of the International Centre for Reindeer

In the eight Arctic states, all Arctic groups considered currently indigenous have been subject to European colonisation and conquest and they are, moreover, recognised as indigenous by their respective states. That means that formally China recognises the indigenous status and rights of Arctic peoples.

Looking at the global context, China has often proven supportive of international developments within the indigenous rights framework. It has promoted the establishment of the UN Permanent Forum for Indigenous Issues (UNPFII),⁹² voted in favour of adopting the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and expressed support for the World Conference on Indigenous Peoples. For instance,⁹³ a Chinese representative during the meeting of the Third Committee of the UN General Assembly stated that:

countries concerned and the international community are duty bound to promote and protect the basic human rights and freedom of indigenous peoples, to secure the natural environment and resources they rely on for survival, and to cherish and safeguard their traditional cultures.

the United Nations Declaration on the Rights of Indigenous Peoples [...] is a milestone on the road to justice, equality and development for indigenous peoples.[...]

Although there are neither indigenous people nor indigenous issues in China, *we steadfastly support the promotion and protection of basic human rights and freedom of the world's indigenous peoples.* [...] In the future, the Chinese government will continue to work with others and play a proactive and constructive part in safeguarding the rights and interests of indigenous peoples, promoting their full participation in economic and social development, and pushing for the comprehensive implementation of the Declaration.⁹⁴ (emphasis added)

During the UN Permanent Forum for Indigenous Issues, the Chinese representative emphasised:

efforts to promote and protect the rights of indigenous peoples and strengthen their comprehensive development still face serious challenges, *including the failure of some developed countries to earnestly implement the Declaration on the Rights of Indigenous Peoples.*⁹⁵ (emphasis added)

Husbandry at reindeerherding.org). The 2013 World Reindeer Herders Congress was organised in Genhe/Alogoya in northwest China.

⁹² Z Xing, statement at the Third Committee of the 57th session of the General Assembly on Issues of Indigenous People (21 October 2002) www.china-un.ch/eng/rqrd/xgwt/t85186.htm.

⁹³ Similar statements have been uttered by Chinese representatives in various contexts. eg in the UN Permanent Forum for Indigenous Issues, see the Statement by Counsellor Shaojun Yao of the Chinese Delegation at the Interactive Dialogue on the Asian Region at the 13th Session of the Permanent Forum on Indigenous Issues, www.china-un.org/eng/chinaandun/socialhr/rqwt/t1164597.htm.

⁹⁴ H Qing, statement at the Third Committee of the 67th Session of the General Assembly on Agenda Item 66: Rights of Indigenous Peoples, www.china-un.org/eng/hyyfy/t982303.htm.

⁹⁵ Yao, statement (n 93).

The last statement could be interpreted as referring, although not openly, also to some of the Arctic states. Markedly, in its statements China pays special attention to the ‘development of indigenous women, children, elderly persons and persons with disabilities’.⁹⁶

On the other hand, a more direct engagement with indigenous organisations (that is, eg, entering into dialogue with indigenous representatives) appears to be limited. A prominent exception was hosting a pre-session meeting of the UN Permanent Forum on Indigenous Issues in Beijing in March 2007.⁹⁷

The EU’s engagement with indigenous actors goes back to the 1990s when the EU was designing its approach to indigenous peoples within the development policy.⁹⁸ EU development aid efforts include support for indigenous organisations and their participation in policymaking processes, support for indigenous rights advocacy including land rights in several countries, as well as typical development projects.⁹⁹ The EU has also developed standards for its activities in areas of key relevance to indigenous peoples around the globe, such as within the forest sector.¹⁰⁰ Interestingly, in the 1990s the Sámi had been involved in the formulation of the EU indigenous policy within development co-operation and the EU financed several projects supporting co-operation between the Sámi Council (Sámi umbrella NGO) and indigenous organisations in the Global South.¹⁰¹ Currently, the attention to indigenous rights is highlighted in the European Consensus on Development, although without details on practical implementation.¹⁰²

⁹⁶ Qing, statement (n 94); L Heng, statement at the Third Committee of the 68th Session of the General Assembly on Agenda Item 66: Rights of Indigenous Peoples (21 October 2013) www.china-un.org/eng/hyyfy/t1091938.htm.

⁹⁷ Informal pre-session meeting for Sixth Session of Forum, Beijing, China, 19–21 March 2007, undesadspd.org/IndigenousPeoples/MeetingsandWorkshops.aspx.

⁹⁸ See eg Council Resolution of 30 November 1998 on Indigenous Peoples within the Framework of the Development Co-operation of the Union and the Member States.

⁹⁹ See eg European Commission, ‘Annual Report on the European Union’s Development and External Assistance Policies and Their Implementation in 2012’ (Directorate General Development and Cooperation—EuropeAid, 2013). However, a clear shortcoming is the lack of distinguishing projects that have an indigenous dimension in the report, as is the case eg in Norway.

¹⁰⁰ Ministry for Foreign Affairs of Finland, ‘Development Policy Guidelines for Forest Sector’ formin.finland.fi/public/default.aspx?contentid=288213&nodeid=15457&contentlan=2&culture=en-US.

¹⁰¹ See eg European Commission, ‘Project Report—Indigenous Peoples: International Human Rights Standards and the Policy Process, Ref No. B7-7020/MTR/VN/155/98’ (2002); the website of the Sámi Council at www.saamicouncil.net; Personal communications with Sámi Council leaders (past and present) in Tromsø, Norway, Rovaniemi, Finland and Arusha, Tanzania (June 2011–March 2012).

¹⁰² Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: ‘The European Consensus’, OJ C46/2, 2006/C 46/01, 24 February 2006.

Similarly to China, the EU's overall strong commitment to human and indigenous rights is reflected in its strong support for international developments, such as the UNDRIP, UNPFII and currently the UN World Conference on Indigenous Peoples. The EU is also fairly active in such forums as the Expert Mechanism on the Rights of Indigenous Peoples under the Human Rights Council.¹⁰³ Participation of indigenous peoples in these and other international processes has been occasionally supported.¹⁰⁴ As a result, and despite the existence of a number of problematic issues, even some indigenous representatives called the EU a 'front-runner when it comes to establishing policies on the rights of indigenous peoples'.¹⁰⁵ Currently, the European Commission is considering how to implement the UNDRIP within the EU's development co-operation, human rights activities as well as within its Arctic policies, with a view to moving from declarations and general principles to practical action. So far, the EU's new Strategic Framework and Action Plan on Human Rights and Democracy reiterated the EU's 'commitment to the protection of the rights of indigenous peoples, particularly to combat discrimination'.¹⁰⁶ That is potentially important not only within the sphere of development co-operation but also in the EU's projects in Arctic Russia. However, it is clear that the implementation of the general indigenous rights principles is challenging for the EU.¹⁰⁷ It is, for example, undefined how, if at all, the principle of free, prior and informed consent is acknowledged and taken into account in specific projects or actions. The EU has been, for instance, criticised for allegedly undermining the status of UNDRIP as a human rights document within climate negotiations.¹⁰⁸

B. Activities of Corporate Actors: Standards and Guidelines

The Chinese or European economic presence in the Arctic means that the actions of Chinese or European-controlled companies affect indigenous communities. Currently, companies are expected not only to abide by the

¹⁰³ Author participated in the EMRIP meeting in Geneva in July 2012.

¹⁰⁴ See eg the list of projects financed under the European Initiative for Democracy and Human Rights, http://ec.europa.eu/europeaid/sectors/human-rights-and-governance_en (last accessed November 2014); Annual Work Programme For Grants of the European Instrument for Democracy and Human rights (EIDHR) (2013).

¹⁰⁵ Søvndahl Pedersen, 'The Relevance of EU Policies on Indigenous Peoples in EC Cooperation with Greenland and the Arctic' (n 85).

¹⁰⁶ See Notes from the Third Committee (Social, Humanitarian and Cultural) of the Sixty-seventh General Assembly (GA/SHC/4045, New York, 22 October 2012) www.un.org/News/Press/docs/2012/gashc4045.doc.htm.

¹⁰⁷ Discussion during the Arctic Dialogue meeting, Brussels, 18 October 2013 (notes with the author).

¹⁰⁸ esp regarding reducing emissions from deforestation and forest degradation (REDD), RC Rýser, 'Climate Talks Resume, Bolivia, China and Indigenous Peoples' (CWIS, 5 April 2011) cwis.org/FWE/2011/04/05/climate-talks-resume-bolivia-china-and-indigenous-peoples/.

laws and regulations of the state in which they operate, but to go beyond them by adopting codes of corporate social responsibility and guidelines for their employees. These cover not only environmental performance but also the interaction with local communities. Does the discussed official support for indigenous rights worldwide have therefore a practical reflection in the standard-setting regarding enterprises operating abroad? In the case of China, government-imposed standards and guidelines are particularly important as many companies are fully or partly owned and controlled by the state.

The issue is highly topical, as Chinese companies are increasingly active internationally. Inevitably, Chinese companies' or banks' activities are likely to also result in some adverse impacts on indigenous communities. The most illustrative—as usually connected with significant social and economic impacts—are examples of major hydropower and irrigation projects in Ethiopia, Gabon, Sudan, Cambodia or Myanmar, where some projects had to be suspended after resistance from local communities and NGOs.¹⁰⁹ A good example is the construction of dams in Ethiopia, financed by Chinese lenders and supported by China's export credit agency. The project is expected to have major social and environmental impacts, including on agriculture, grazing lands and fisheries, affecting 500,000 indigenous people and likely leading to ethnic conflicts over water and disappearing grazing lands.¹¹⁰ In 2011, the UN World Heritage Committee asked the Industrial and Commercial Bank of China (ICBC) to put on hold the financial support for the project.¹¹¹ Also the presence of Chinese extractive companies in other African countries¹¹² is associated with controversies. For instance, in 2013, the Zambian government revoked a number of mining permits for Chinese companies after the latter had been criticised for poor worker safety and environmental performance. African governments are thought to allow for lowering standards in order to attract investors and Chinese companies

¹⁰⁹ International Rivers, 'The New Great Walls: A Guide to China's Overseas Dam Industry' (November 2012). It is important to highlight that most actors engaged in dam building experience major challenges, esp in areas affected by water scarcity. That is true also, eg, for Nordic companies and development agencies; see AD Usger (ed), *Dams as Aid: A Political Anatomy of Nordic Development Thinking* (London and New York, Routledge, 1997).

¹¹⁰ For discussion, see P Bosshard, 'Chinese Loans Could Fuel Regional Conflict in East Africa' (blog entry, 14 January 2013) www.chinadialogue.net/article/show/single/en/5601-Chinese-loans-could-fuel-regional-conflict-in-East-Africa.

¹¹¹ World Heritage Committee, Decision 35COM 7B.3, whc.unesco.org/en/soc/313/?mode=doc, due to effects on heritage sites, primarily Lake Turkana. Moreover, the African Development Bank has indicated in its study that the project will result in major adverse environmental impacts.

¹¹² See eg H Wenbin and A Wilkes, 'Analysis of Approvals for Chinese Companies to Invest in Africa's Mining, Agriculture and Forestry Sectors' (2011) Centre for International Forestry Research Working Paper 81.

are blamed for making use of such poor regulatory frameworks.¹¹³ In general, problematic issues in developing countries include the practice of Chinese companies of bringing own workers or reports of poor treatment of local workers, lack of social integration or proper mechanisms for consultations. These problems are coupled with limited domestic accountability for companies' actions abroad compared to the West, where companies are still more likely to be subject to various forms of public scrutiny.¹¹⁴ These issues may be problematic also for Arctic communities.

A broad requirement to respect local laws appears to be the key binding principle regarding local context applicable within Chinese overseas foreign investment laws. Chinese governmental guidelines for foreign investments, including 'Nine Principles of the State Council on Encouraging and Regulating China's Outbound Investment' and the 2008 'Administrative Regulations on Contracting Foreign Projects' require enterprises to, inter alia, consider their social responsibility in their activities abroad.¹¹⁵ In 2013, the Ministries of Commerce and Environmental Protection issued 'Guidelines on Environmental Protection in Foreign Investment and Co-operation'.¹¹⁶ They focus on environmental problems and do not deal with indigenous issues directly. However, these documents take up potentially relevant matters: developing environmental strategies, management plans, proper conduct of the environmental impact assessments, or disclosure of environmental information to the interested public, including within the supply chain. In September 2014, the Ministry of Commerce produced also a revised document 'Measures for Foreign Investment Management', which calls for strengthened guidelines and regulations for overseas activities of Chinese companies.¹¹⁷ Similar guidelines, although with more emphasis on social issues, have been developed by the China Banking Regulatory Commission. The so-called Green Credit Guidelines¹¹⁸ highlight, among others, issues such as resettlement and land—issues of major concern for indigenous peoples. Some commentators highlight that because 'for Chinese

¹¹³ M Noland, 'Comment on "Changing China, Changing Africa: Future Contours of an Emerging Relationship"' (2014) 9 *Asian Economic Policy Review* 198.

¹¹⁴ See comment by T Levitt, 'China's Elitist Approach to Overseas Investments' (25 February 2013) www.chinadialogue.net/article/show/single/en/5736-China-s-elitist-approach-to-overseas-investments.

¹¹⁵ International Rivers, 'The New Great Walls' (n 109).

¹¹⁶ Guidelines on Environmental Protection in Foreign Investment and Cooperation, PRC Ministry of Commerce, english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml.

¹¹⁷ Ministry of Commerce (PRC), 'Ministry of Commerce Introduces Newly Revised Measures for Foreign Investment Management', english.mofcom.gov.cn/article/newsrelease/significantnews/201409/20140900729955.shtml.

¹¹⁸ China Banking Regulatory Commission, 'Green Credit Guidelines' (unofficial translation for internal use) pfbcbf.org/docs/news/avril-mai-13/RDP12-Mars-2013/DCC-China%20Banking%20Regulation%20-%20Green%20Credit%20Guidelines.pdf.

companies, environmental risks have become business risks', the governmental guidelines are relevant and helpful.¹¹⁹

Some Chinese companies themselves also attempt to elaborate internal standards and guidelines. For example, the China International Contractors Association has issued a 'Guide on Social Responsibility for Chinese International Contractors',¹²⁰ including fairly high standards for community involvement and local development, although indigenous rights and issues are not mentioned. More progressive standards can be seen in the case of companies that have already encountered problems connected with their interaction with indigenous and local communities. This is the case with Sinohydro, which is engaged in a number of difficult hydropower projects in Africa.¹²¹ The company has committed to: conducting proper environmental and social impact assessments; carrying out sufficient consultations with relevant stakeholders, including local communities; developing long-term relationships with communities and maintaining open communication, as well as establishing culturally appropriate grievance mechanisms. Moreover, the management is to ensure that the company's actions are consistent with the UNDRIP and that free, prior and informed consent is obtained from affected indigenous peoples as well as that access to cultural heritage sites is secured. While these latter standards go beyond industry average, their implementation would have to be scrutinised against actual conduct in the case of each project.

The EU is in a different position than China regarding its influence on industry's behaviour outside of Europe. The EU does not control any companies and standard-setting is largely the responsibility of EU member states, not all of which have drafted their own policy documents. Nevertheless, the European Commission has attempted to co-ordinate and encourage companies to develop and implement corporate social responsibility standards, for example via the European Alliance on Corporate Social Responsibility (CSR),¹²² and has elaborated the EU CSR strategy.¹²³ Recently, increased attention has been given to human rights, including labour and employment practices or non-discrimination. The aim is to involve local civil society, human rights organisations and defenders in order to allow the companies to understand the challenges of operating in states that fail to protect their citizens' human rights. As in the case of China, EU actions are parallel

¹¹⁹ P Bosshard, 'New Rules will Help Hold Chinese Overseas Investors to Account' (blog entry, 22 April 2013) www.chinadialogue.net/blog/5931-New-rules-will-help-hold-Chinese-overseas-investors-to-account-/en.

¹²⁰ 'Guide on Social Responsibility for Chinese International Contractors', China CSR Map website, www.chinacsrmap.org/.

¹²¹ International Rivers (n 109).

¹²² European Commission, 'Better Self- and Co- Regulation', ec.europa.eu/digital-agenda/en/communities/better-self-and-co-regulation.

¹²³ European Commission, 'A Renewed EU Strategy 2011–14 for Corporate Social Responsibility' Communication (COM(2011)681final (Brussels, 25 October 2011).

to those undertaken by European business actors, for example within the European Hub on Business and Human Rights.¹²⁴

At the 2010 Arctic Dialogue meeting, it was indicated that corporate social responsibility could be one of the themes for EU-indigenous dialogue.¹²⁵ However, there has so far been no CSR discussion within the Arctic Dialogue format, nor has the issue of the performance of European companies been taken up in EU Arctic policy documents.

VII. CONCLUSION AND RECOMMENDATIONS

The discussion in this chapter allows for the formulation of some recommendations. These refer especially to China as a newcomer to Arctic affairs, and as an actor that does not have direct engagement with Arctic communities arising from a geographical presence in the region, as is the case for the EU due to its interaction with the Sámi. If China becomes a more active observer in the Arctic Council, its interaction or even co-operation with permanent participants at the level of working groups may be inevitable, unless the fears of indigenous leaders that the presence of powerful observers would undermine special indigenous status in the Council materialise.

Without an ongoing dialogue, even at a very superficial level, it is not possible to understand the problems and perspectives specific for indigenous communities. An Indian researcher, Sanjay Chaturvedi, commented in 2012 that:

as the rising Asian powers prepare and push their cases for observer status in the Arctic Council, it is vitally important that they give due space and attention to the human dimension of Arctic governance. In most reasoning advanced so far, what is missing by and large is the engagement with indigenous peoples of the circumpolar North; their knowledge systems, world-views and aspirations. It is useful to be reminded that Arctic (both on land and at sea) is not a strategic void and it is the lived in geographies of the circumpolar North that are in the front line of adverse climate change consequences. What might appear as opportunities offered by climate change may in some cases pose serious threats to the livelihoods of Arctic communities; especially the indigenous peoples. It is vital in other words that the Asian efforts at confidence-building and alliance-making go beyond the state actors in the Arctic Council.¹²⁶

¹²⁴ 'CSR Europe, Business and Human Rights', CSR Europe website, <http://www.csreurope.org/business-and-human-rights/european-hub-business-human-rights>.

¹²⁵ European Commission, *Summary of 'Arctic Dialogue' Workshop* (Brussels, 9 March 2010, MARE.C1/EH/ZB/2010).

¹²⁶ S Chaturvedi, 'Geopolitical Transformation: "Rising" Asia and the Future of the Arctic Council' in T Axworthy, T Koivurova and W Hasanat (eds), *The Arctic Council: Its Place in the Future of the Arctic Governance* (Munk-Gordon Arctic Security Program, 2012) gordonfoundation.ca, 251.

China and the EU, if they want to play a constructive role in the region as well as secure their political and economic interests, have to take into account the role of the indigenous peoples in the Arctic and their status at various levels of governance, from local and national to circumpolar. As a state supporting indigenous rights in a post-colonial context, China can be expected to engage in dialogue with indigenous organisations and support their activities. The Arctic Council appears to be a perfect venue for such a dialogue. There appears to be a shift from perceiving the presence of powerful external actors in the Arctic Council as a threat towards seeing it as an opportunity. This is especially true for actors with limited capacities, such as permanent participants, which can use the Arctic Council as a space where these major powers can be approached. Bridget Larocque from the Gwich'in Council International—quoted earlier in this chapter—stated that:

The indigenous peoples appreciate the support offered by Observers of the Arctic Council and recognise that cooperation and collaboration not only advances their work but their indigenous agenda as well. However, as new applications have been submitted, the Permanent Participants' unwavering message is that prospective Observers clearly demonstrate how their presence will enhance the role and increase the participation of the Permanent Participants in the Arctic Council.

Furthermore, it would be highly valuable for the development of Chinese Arctic policy to assess the Chinese environmental footprint and economic imprint in the Arctic, similarly to what the EU has done by commissioning the EU Arctic Footprint and Policy Assessment study. The impacts related to indigenous and local communities should be part of such an assessment. Even though such studies are necessarily burdened with major approximations and may be speculative in character, they provide the policymakers with a general overview of the country's connection to the Arctic and show both to their own constituency (eg companies) and to Arctic actors their willingness to act responsibly in the region.

So far, Chinese companies planning on operating in the Arctic have not received a clear signal on how to deal with indigenous issues. This may cause problems both for Arctic communities and Chinese investors or contractors, despite the existence of general standards for overseas activities. Various levels of Arctic governance are interconnected, as exemplified by the case of the EU seal ban. Therefore, any problems occurring at the level of particular developments may affect the attitudes and behaviour of indigenous actors at the national or circumpolar level. While the influence of indigenous actors on Arctic governance is far from decisive, it is certainly not negligible. Thus, China may consider developing specific standards for companies which operate in the Arctic and which conduct activities potentially affecting livelihoods and interests of Arctic indigenous communities.

Due to the difficult relations with the Inuit in the aftermath of the seal products ban, resulting in resistance to acknowledgement of its Arctic

actorness,¹²⁷ the EU has made major efforts in engaging with indigenous peoples. Consequently, the forms of engagement developed by the EU, such as Arctic dialogues or including indigenous issues and perspectives in assessment activities and policy considerations, are good examples of how external actors can, despite challenges, involve Arctic indigenous peoples.

The issues of limited resources and capacities of indigenous organisations need to be taken into account. Indigenous organisations often experience so-called participation overload, where various forms of engagement impose a financial and human resources burden that they increasingly cannot carry.¹²⁸ Therefore, the Arctic Council could be an appropriate venue for dialogue and a space where the indigenous peoples could turn to the European Commission or the Chinese government with any problematic issues. This may also include EU regulatory developments or challenges of working with Chinese companies operating in indigenous lands, not only the questions under discussion within the Council.

The European Union, as an actor much more experienced in engaging with Arctic stakeholders, should build on its experience and enhance already existing frameworks. This refers in particular to the Arctic dialogue format, by continuing the path taken in the 2013 and 2014 meetings and making the dialogue more regular, including continuous long-term participation of indigenous leaders. The discussions should be more focused and specific, including down-to-earth matters. Following China's example, the EU could be more open about European economic and strategic interests in the Arctic (for example, by discussing the EU's strategic interest in developing EU domestic resource extraction),¹²⁹ and incorporate the discussion on these interests within dialogues with Arctic indigenous peoples. Eventually, the idea of establishing a more visible and permanent Arctic indigenous presence in Brussels should be further explored, either for the Sámi or much more broadly for indigenous peoples in general, also including groups affected by EU development co-operation policy. Such representation has to be independent from state and regional authorities and would need to address the constraints of indigenous organisations' human and financial capacities.

¹²⁷ The question of EU actorness within international relations and in the Arctic in particular is broadly discussed in the literature and in the political debates. See eg A Niemann and Ch Bretherton (2013), 'EU External Policy at the Crossroads: The Challenge of Actorness and Effectiveness' (2013) 27 *International Relations* 261.

¹²⁸ See eg, H Huntington et al, 'Less Ice, More Talk: The Benefits and Burdens for Arctic Communities of Consultations Concerning Development Activities' (2012) 1 *Carbon and Climate Law Review* 33.

¹²⁹ Based on the discussion during the stakeholder workshop dedicated to social and cultural changes within the Strategic Assessment of Development of the Arctic (n 21) study, www.arcticinfo.eu.