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Offshore Renewable Energies and Indigenous Peoples

What are the commitments of coastal States towards coastal Indigenous peoples when planning offshore renewable energy?

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Baltic Sea, Copenhagen, Denmark (author of the thesis' own picture)

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Abbreviations

AC	Arctic Council
EIA	Environmental Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ILO 169	International Labor Organization Indigenous and Tribal Peoples Convention no. 169
LOSC	Law of the Sea Convention
SIA	Strategic Impact Assessment
TK	Traditional Knowledge
UNDRIP	United Nations Declaration on the Right of Indigenous Peoples

1 Chapter 1: Introduction

Climate change is a global issue and is now threatening every single person, entity, and other living being on the planet. Nation States and other actors are therefore searching and implementing technologies to mitigate climate change. Part of these tools are renewable energies, such as windfarms, both onshore and offshore, tidal power plants,[1] or even hydro power plants.[2] Geothermal and biomass are also part of the renewable energies tools used to fight climate change.[3] However, as efficient as these renewable technologies can be to mitigate climate change, concerns among the populations and Indigenous communities are growing, as the installation of such power plants leads to modification of the landscape and encroachments of their territories, both on-lands and marine ones, which they have inhabited for millennia.

1.1 Statement of the problem and purpose of the thesis

The issue raised in this thesis is the installation of offshore renewable energy power plants on Indigenous' territories. The intention to mitigate climate change is growing stronger and stronger. Several legal actions have been brought before national and international courts[4] to oblige States to respect their commitments. For this, States have several possibilities, among them renewable energies. Several States have implemented renewable power plants on Indigenous territories, therefore threatening them, their territories and their way of life. This phenomenon is slowly starting to reach the Arctic States,[5] therefore threatening their local Indigenous populations. For now, offshore renewable energies in the Arctic are not yet a reality. Most of the renewable energy projects above the Arctic circle are located onshore but are already source of tensions between the governments and the local populations.[6] Even though offshore renewable energy projects have not been implemented yet, they are already facing

[1] Frangoul, A. (5 July 2022) The world's most powerful tidal turbine just got a major funding boost. Retrieved from <https://www.cnbc.com/2022/07/05/the-worlds-most-powerful-tidal-turbine-just-got-a-major-funding-boost.html> (last accessed 7 July 2022)
[2] International Energy Agency (7 January 2022) Hydropower. Retrieved from <https://www.iea.org/fuels-and-technologies/hydropower> (last accessed 7 July 2022)
[3] Global Environment Facility (unknown date) Renewable Energy and Energy Access. Retrieved from <https://www.thegef.org/what-we-do/topics/renewable-energy-and-energy-access> (last accessed 31 May 2022)
[4] *People's Climate Case (Armando Carvalho and Others v. European Parliament and Council of the European Union)*, case T-330/18, Court of Justice of the European Union
[5] Supreme Court of Norway, *HR-2021-1975-S, (case no. 20-143891SIV-HRET), (case no. 20-143892SIV-HRET) and (case no. 20-143893SIV-HRET))*, 2021; Oslo County Court, *20-099057TVI-OBYF*, 2020
[6] See, e.g., Berg-Nordlie, M., Tvedt, K. A. (5 August 2019) Alta-saken. Retrieved from <https://snl.no/Alta-saken> (last accessed 7 July 2022)

some opposition.[7] This thesis therefore focuses on the possible future expansion of offshore renewable energies,[8] the possible encroachment on Indigenous peoples' lands and how States will have to conduct these projects, in accordance to their international commitments, at the human right (particularly Indigenous rights) level and at the environmental level. This work will particularly be based on the Arctic States, as all of them, except Iceland, have Indigenous peoples living on their territories, and as their policies can be analyzed at three levels: federated (for some States such as the U.S.A), national, regional (through the Arctic Council), and international.

Indigenous peoples have gained their rights through immemorial usages and are now threatened by decisions taken by the State they live in. Each country, or region, is different regarding Indigenous' right of land. For instance, in Canada, and Alaska (U.S.A.), there is a formal recognition of Indigenous land rights. It should be mentioned that neither Canada nor the U.S.A. have ratified International Labor Organization Convention no. 169 (ILO 169). In addition, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has been voted against by both the U.S.A. and Canada (of which the latter has however changed its position since then and has now integrated UNDRIP in its national legislation). Indigenous peoples have forms of self-government in the two aforementioned countries while in Russia the situation is different. Indigenous peoples (or 'indigenous small communities')[9] 'are accorded to use the land and its resources, [whereas] title of ownership remains with the State. At most, Indigenous peoples participate in guarding the territories, they may use their lands, but they are not allowed to be in full control of the territory.'[10] In addition, the main difference between the Russian, and the Canadian and American Indigenous peoples is that 'there is no […] legally binding contractual evidence supporting Indigenous peoples' rights to land […]. There were never any treaties signed, and the question of native title to land "is not even on the table".'[11] The difficult position of Indigenous peoples within the Russian Federation is further highlighted by the fact that the Constitution of the Russian Federation 'guarantees the rights of the indigenous small peoples according to the universally recognized principles and norms of international law

[7] Adomaitis, N. (19 June 2020) Norway will slow down onshore wind power development. Retrieved from <https://www.arctictoday.com/norway-will-slow-down-onshore-wind-power-developments/?wallit_nosession=1> (last accessed 7 July 2022)
[8] See, e.g., Press release from the Norwegian Government (11 May 2022) Ambitious offshore wind initiative. Retrieved from <https://www.regjeringen.no/en/aktuelt/ambitious-offshore-wind-power-initiative/id2912297/> (last accessed 7 July 2022)
[9] Article 69 of the Constitution of the Russian Federation, adopted in 1993
[10] Suliandziga, L., & Sulyandziga, R. (2020). Russian federation: Indigenous peoples and land rights. *Fourth World Journal - Center for World Indigenous Studies, 20*(1), 1-19, p. 7
[11] *Ibid*, p. 3

international treaties and agreement of the Russian Federation.'[12] The main issue with the previous statement is that 'the Russian Federation is not party to any international treaties for protection of indigenous numerically small peoples' rights […].'[13] As a consequence of this, ILO 169, UNDRIP and other instruments are not recognized within national law and therefore not applicable for Indigenous peoples living in Russia.
In the Nordics, namely Finland, Norway and Sweden, recognition of Indigenous peoples' rights is implemented in their respective Constitutions, however, Indigenous self-governance does not exist. There are only Indigenous parliaments which have competence, according to the legislations, for matters that affect the Indigenous peoples.[14] According to the *Fosen* judgement in Norway, Indigenous peoples' have to be consulted; nonetheless, there participation does not need to have contributed to the decision, even though it 'may be essential in the overall assessment.'[15] There have been numerous scholarly writings on onshore renewable energies on Indigenous lands in Arctic States,[16] while growing concerns surrounding offshore renewable energies have been given less attention as the number of Arctic coastal Indigenous peoples is lesser than the 'land' ones.

The objective of this work is to understand whether a cooperation between coastal Indigenous peoples and the State is possible in order to mitigate climate change and global warming while safeguarding human rights. Indeed, offshore renewable energies could be one of the solutions to mitigate the effects of climate change but can also lead to the disappearance of means of subsistence of coastal Indigenous communities. Coastal Indigenous peoples subsist thanks to fishing and hunting, meaning that if renewable energy power plants are installed in the territorial sea of the State they live in, fish stocks and other hunted animals will migrate in

[12] Zaikov, K., Tamitskiy, A., & Zadorin, M. (2017). Legal and political framework of the federal and regional legislation on national ethnic policy in the Russian Arctic. *Polar Journal, 7*(1), 125-142, p. 136
[13] *Ibid*
[14] For example, §2-1 of The Sámi Act, Act of 12 Junes 1987 No. 56 concerning the Sameting (the Sámi parliament) and other Sámi legal matters (the Sámi Act)
[15] *Supra* 5 (*Fosen* Judgment) and Government of Norway (14 August 2018) Procedures for Consultations between State Authorities and The Sami Parliament. Retrieved from <https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/PROCEDURES-FOR-CONSULTATIONS-BETWEEN-STA/id450743/> (last accessed 7 July 2022)
[16] See, *inter alia* Cambou, D., Sandström, P., Skarin, A., Borg, E. (2021) *Reindeer husbandry vs. wind energy – Analysis of the Pauträsk and Norrbäck court decisions in Sweden* in Tennberg, M., Broderstad, E., & Hernes, H. (2021). *Indigenous Peoples, Natural Resources and Governance* (Routledge Research in Polar Regions). Milton: Taylor and Francis; Koivurova, T., Broderstad, E.G., Cambou, D., Dorough, D., & Stammler, F. (Eds.). (2020). Routledge Handbook of Indigenous Peoples in the Arctic (1st ed.). Routledge. https://doi-org.mime.uit.no/10.4324/9780429270451; and Buhmann, K., Bowles, P., Cambou, D., Hurup Skjervedal, A., Stoddart, M. (2021). *Towards socially sustainable renewable energy projects through involvement of local communities: Normative aspects and practices on the ground* in Natcher, D.C., & Koivurova, T. (2021). Renewable Economies in the Arctic (1st ed.). Routledge. https://doi.org/10.4324/9781003172406

calmer areas, depriving Indigenous communities of their means of sustenance used for millennia.

The installation of renewable energy power plants itself is not the issue as it is part of the available means to mitigate climate change. However, as States do not have sovereign rights on the high seas (where no indigenous peoples live or hunt or fish), they can only use the areas under their national jurisdiction, as mentioned in Articles 2, 56 and 86 LOSC. This need for renewable energies in coastal areas leads to clashes between the interests of coastal States (which try, according to their commitments to different international environmental treaties and agreements, to advocate for a transition towards greener and more sustainable energy) and coastal Indigenous communities (who are advocating for the safeguard of their traditional rights and traditional uses of the coastal waters). Indigenous peoples are relying on international human rights laid down in conventions such as ILO 169, International Covenant on Civil and Political Rights (ICCPR) where their rights, in particular their right to land and resources are mentioned and safeguarded.

1.2 Research question

The research question will be as follows: What are the commitments of coastal States towards coastal Indigenous peoples when planning offshore renewable energy?

This research question will be answered through different sub-questions, such as:

- What are the rights of Indigenous peoples regarding the planning and installation of offshore renewable energy plants?
- How can Indigenous peoples enforce their collective rights, and more specifically, their right to traditional fisheries?
- How can the LOSC and Indigenous peoples' law in e.g., international treaties interact together regarding the development of offshore renewable energies?
- How can Indigenous peoples and the international community collaborate towards a green transition?
- How are Norway and Canada fulfilling their commitments towards coastal Arctic Indigenous peoples and towards international environmental law?

All these questions will be underlying questions, leading the discussion throughout the thesis. They will not be answered one by one but will rather be of a guidance for the research and to answering the main research question.

1.3 Structure and methodology of the thesis

This thesis will be divided into three main chapters, in addition to an introduction and a conclusion. Chapter two will seek to explain the links and interactions between Indigenous peoples' law (and rights); the law of the sea; and international environmental law. Chapter three will conduct an analysis of the Norwegian system with regards to coastal Sámi communities and the Canadian one with regards to the Inuit communities in the context of offshore renewable energies. Chapter four will take a more sociological angle, by analyzing what the impacts of offshore renewable energies may have on coastal Indigenous peoples' culture, although still focusing on the legal challenges and opportunities coastal Indigenous peoples are facing regarding offshore renewable energies. Finally, the conclusion will summarize the findings and answer the research question. It will also give suggestions for considerations for legal policy to enhance the cooperation between the different actors present in this field.

The method used in this thesis will mainly be doctrinal. Treaties, declarations, constitutions, laws, case laws and international law concepts will be analyzed in the context of Indigenous peoples' rights, and offshore renewable energy's claims. Two countries, Norway, and Canada will be analyzed in relation to their implementation of a safeguard for Indigenous peoples' rights in the context of offshore renewable energy. This choice of countries is justified by the fact that they both have Indigenous communities on their territories, but they both differently guarantee their rights when it comes to the installation of renewable energy plants on the territories of these populations. Also, Norway and Canada are among the world leaders in the renewable energy sector, making the research about these countries more relevant. In addition to the doctrinal method, Chapter 4 will also analyze the topic from the sociological angle, and therefore will retrieve some articles and interviews already conducted by previous studies on the topic.

1.4 Treaties, Constitutions, laws, and concepts

International treaties and declarations of great importance regarding human rights, and particularly Indigenous peoples, are as follows: the International Covenant on Civil and

Political Rights (ICCPR),[17] the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),[18] the International Labor Organization Convention no. 169 (ILO 169),[19] the Convention for the Law of the Sea (LOSC),[20] and, at a regional level, the Draft Nordic Sámi Convention.[21] The right to land and to use its resources is safeguarded by Articles 14 and 15 of the ILO 169, in addition to Articles 25, 26 and 28 of the UDRIP. Article 27 of the ICCPR deals with the right to culture of Indigenous peoples, closely linked to their right to land previously mentioned in the different conventions and declarations.
The International Convention on the Elimination of All Forms of Racial Discrimination is also of great importance regarding Indigenous peoples' law, but this thesis mainly focuses on the right to land, which is not treated in the aforementioned convention.

ILO 169 is considered to be the backbone of international Indigenous peoples' law, particularly Articles 14, 15 and 16 with regard to the right to land and access and utilization of its resources. UNDRIP is also of a great importance, even though only a declaration, as it is considered as customary international law, at least for its key provisions.[22]
On its part, the LOSC is a treaty and has also gained great importance in the international legal landscape, as it has 168 parties. UNDRIP and the LOSC are considered by several authors as 'play[ing] vital roles in international law by setting out frameworks and nourishing the larger legal system with respect to the issues they address.'[23]

The LOSC is considered as the Constitution of the oceans and sets rights and obligations for States regarding the regulation of the seas around the world. For the purpose of this thesis, Article 2 will be of a great interest as it deals with the territorial sea where 'coastal States […] possess absolute rights to regulate all resource activity within the territorial sea.'[24] For renewable energies and their installation, they fall within the scope of Article 2 and Article 60 dealing with installation, as 'in general, installed offshore wind-power capacity is located in areas within national jurisdiction (territorial sea and exclusive economic zone), at shallow

[17] International Covenant on Civil and Political Rights, 1966, entered into force March 23, 1976
[18] United Nations Declaration on the Rights of Indigenous Peoples, 2007
[19] Indigenous and Tribal Peoples Convention, 1989, entered into force September 5, 1991
[20] Convention for the Law of the Sea, 1982, entered into force December 10, 1994
[21] An English version of the Draft can be found at <https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf> (last accessed 29 August 2022)
[22] Chircop, A., Koivurova, T., & Singh, K. (2019). Is There a Relationship between UNDRIP and UNCLOS? *Ocean yearbook*, *33*, 90-130. https://doi.org/10.1163/9789004395633_005, p. 102, with reference to the International Law Association, Sofia Conference (2012), Final Report, available online: <http://www.ila-hq.org/index.php/committees> (last accessed 7 June 2022), p. 30
[23] *Ibid*, p. 92
[24] Rothwell, D., & Stephens, T. (2016). *The international law of the sea* (2nd ed.). Oxford: Hart. p. 77

depths up to 60 meters, using fixed installations.'[25] As M. Das Neves rightly pointed out, the installation of offshore renewable energy also leads to clashes with users of the territorial seas, such as Indigenous peoples.

Relevant texts concerning renewable energies (or more broadly environmental law) are the Convention for Biological Diversity (CBD),[26] the Paris Agreement,[27] the United Nations Framework Convention on Climate Change (UNFCCC),[28] the Rio[29] Declaration, and its Agenda 21, and the Stockholm[30] Declaration. Although renewable energies are not explicitly mentioned in any environmental treaty, they are means to achieve countries' carbon neutrality, alongside with other tools to reach a climate neutral policy. However, renewable energies are heavily used by States to reach their environmental commitment targets, mainly onshore, but more and more offshore, on marine areas where they have sovereignty, i.e., the territorial sea, according to Article 2 of the LOSC.

At the national level, the rights of Indigenous peoples are guaranteed by the Norwegian and Canadian Constitutions. Article 108 of the Norwegian Constitution states that '[t]he authorities of the state shall create conditions enabling the Sami people to preserve and develop its language, culture and way of life.'[31] In Canada, the rights of Indigenous peoples are safeguarded by Part II (Rights of the Aboriginal Peoples of Canada) of the Constitution Act, 1982.[32]

Among the international environmental law concepts the precautionary principle/approach is endorsed by States. For the purpose of this thesis, the precautionary principle will be considered as a principle, and not an approach. This is justified by the fact that both Norway and Canada, the two countries that will be further analyzed, consider this precautionary principle as a principle, therefore weighting more at the legal level.

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[25] Das Neves, M. (2020). Offshore Renewable Energy and the Law of the Sea. In E. Johansen, S. Busch, & I. Jakobsen (Eds.), *The Law of the Sea and Climate Change: Solutions and Constraints* (pp. 206-233). Cambridge: Cambridge University Press, https://doi.org.10.1017/9781108907118.010

[26] Convention on Biological Diversity, 1993, entered into force December 29, 1993

[27] Paris Agreement, 2016, entered into force November 4, 2016

[28] United Nations Framework Convention on Climate Change, 1992, entry into force March 21, 1994

[29] Rio Declaration, 1992

[30] Stockholm Declaration, 1972

[31] The Constitution of the Kingdom of Norway, LOV-1814-05-17, available at <https://lovdata.no/dokument/NLE/lov/1814-05-17> (last accessed 28 August 2022)

[32] The Constitution Acts, 1867 to 1982, Part II – Rights of the Aboriginal Peoples of Canada, available at <https://laws-lois.justice.gc.ca/eng/const/> (last accessed 31.08.2022)

2 Chapter 2: International environmental law, Indigenous peoples' law, and law of the sea

This chapter will seek to explain the links and interactions between international environmental law, the law of the sea, through the LOSC, and Indigenous peoples' law, through ILO 169 and the ICCPR, as well as UNDRIP. The first part will analyze the obligations States have regarding international environmental law, and particularly in the context of offshore renewable energies. The second part will seek to compare the opportunities and challenges the LOSC present to coastal Indigenous communities with regards to offshore renewable energy.

2.1 International obligations States have regarding environmental law, focus on energy law, and Indigenous peoples' law

States have different obligations regarding environmental law at the national level but are the same at the international level, among which is the precautionary principle. This principle will be analyzed through the prism of energy law, as it is within the scope of this thesis. Indeed, this topic involves different actors, among which Indigenous peoples, as well as a plethora of challenges to conciliate Indigenous peoples' law and international environmental law.

2.1.1 International obligations for States regarding Indigenous peoples' law

States have the duty to protect the Indigenous peoples present on their territories. States can act individually, by implementing laws, or collectively, through international agreements, but also through their participation in international organizations. Not all obligations of the States towards Indigenous peoples will be examined here, but the right to land and the right to participation and consultation will be given particular attention.

As previously mentioned, States have, according to Article 14(1) ILO 169, the duty to recognize the 'rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy […].' This recognition is made both by international law, such as ILO 169, and by Constitutions and different national laws. Among the two countries studied, only Norway has ratified the ILO Convention 169, however, Canada has included Indigenous rights to land in its Constitution[33] and signed land treaties with the different peoples living on its

[33] *Ibid* (The Constitution Acts), Article 35(3)

territory.[34] It should be mentioned that neither the Constitution of Norway, nor the Constitution of Canada go as far as Article 14(1) first sentence in the recognition of Indigenous peoples' property rights. The Constitution of Norway only mentions the language, culture and way of life of Sámi while the Constitution of Canada refers to land agreements the Government signed with different peoples.

The right to land, and natural resources attached to it, is set in the ILO Convention 169, with particular interest for Articles 14, 15 and 16. Article 14 and Article 16 relate to the right to land, while Article 15 relates to the natural resources pertaining to that land. Article 15 makes a reference to the right of participation and consultation of Indigenous peoples in the 'use, management and conservation of these resources.' In the context of this thesis, the right to land applies, as specified by Article 13 ILO 169, applies to all the environment of the areas occupied by Indigenous peoples, including the territorial sea. This leads to the obligation ('shall') set by Article 14 ILO 169 of the coastal State to recognize the territory of coastal Indigenous peoples as their territory where they have access to the resources as means of subsistence. The fact that Article 13(2) explicitly does not mention Article 14 in the definition of 'land' which could raise controversial issues, on whether the rights of ownership and possession of Indigenous peoples apply in maritime areas as well. The fact that Article 13(1) ILO mentions the relationship of Indigenous peoples with their lands or territories they occupy or use, seems to make the point that if Indigenous peoples used maritime areas as places they 'occupy or otherwise use,' and, read in accordance with Article 14 ILO: 'the lands which they traditionally occupy,' then the whole Part II of ILO 169 should logically apply to maritime areas as well. In the Manual to the ILO 169,[35] the definition of a traditional occupation of a land is as follows: 'lands where Indigenous and tribal peoples have lived over centuries, and which they have used and managed according to their traditional practices.'[36] Following this interpretation of Article 14, and the definition of traditional occupation of a land, the rights of ownership and possession of Indigenous peoples over their lands should apply to maritime and coastal areas, as long as they 'have traditionally had access for their subsistence and traditional activities.'[37] It means that a balance should be struck between the rights of ownership and concession from the State and the right of ownership and possession of Indigenous peoples. This has been confirmed by

[34] See, *inter alia,* Nunavut Land Claims Agreement Act, S.C. 1993, c. 29; James Bay and Northern Quebec Native Claims Settlement Act, S.C. 1976-1977, c. 32; Labrador Inuit Land Claims Agreement Act, S.C. 2005, c. 27
[35] ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual
[36] *Ibid*, p. 31
[37] *Supra* 19, Article 14(1)

UNDRIP, Article 25, stating that 'Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.'

States are guarantors of peoples living on their territories, and particularly towards Indigenous peoples, as Article 14(2) ILO 169 states. It will be seen later that this right to land for Indigenous peoples and the sovereignty of the State can lead to some clashes when it comes to the implantation of offshore renewable energy plants in the territorial seas. To balance these rights in the most equal way, the right to participation and consultation becomes a priority.

The rights of consultation and participation are respectively enshrined by Articles 6 and 7 ILO 169. Article 15, on its part, is the application of these rights through the right to land. The right to consultation of Indigenous peoples is mentioned in ILO 169 but it does not set any means nor standards, except 'through appropriate procedures'[38] and 'in good faith.'[39] The standards for consultation have been introduced by UNDRIP and should be done in 'free, prior and informed'[40] consent when it comes to core rights of Indigenous peoples, such as the right to land. These standards are announced in Article 19 UNDRIP, where it is added that 'States shall consult and cooperate in good faith with the Indigenous peoples concerned.' UNDRIP only being a declaration without a legally binding character, means that national laws or other international legal instruments shall include these criteria. It will be seen later that this consultation and cooperation can be made through the Environment Impact Assessment (EIA) States have to conduct when planning the installation of offshore renewable energy plants on Indigenous territories.

A cooperation between the Arctic States and Indigenous peoples is made both at the national level, as will be shown in the analysis of Canada and Norway's laws, at the international level, as shown by the ILO 169, UNDRIP, and the UN, as well as at the regional level, through the Arctic Council (AC).

Indigenous peoples have a status of 'permanent participants' at the AC. This means that it has been 'created to provide for active participation and full consultation with the Arctic Indigenous

[38] *Ibid*, Article 6 (1)(a)
[39] *Ibid*, Article 6 (2)
[40] *Supra* 18, Article 19

representatives within the Arctic Council.'[41] The Council is, however, not a policy-making body, but an inter-governmental forum, allowing for a cooperation between the Arctic States and Indigenous peoples, and gives guidelines to the States in order to achieve a better cooperation above the Arctic Circle. However, the Ukrainian War has led to a suspension of the activities of the AC, as the Russian Federation is involved in the conflict and that the seven other States member of the AC have decided to not conduct activities until the conflict is resolved. This raises issues as Russia has the chairmanship of the Council until 2023, leading to the fact that 'the Russian Council chairmanship has […] focused on domestic Arctic development and conducted scheduled events without western participation.'[42] The Russian Indigenous peoples are at risk to lose their voice through the veto of other countries (see following paragraphs) regarding projects that can impact their territories or way of living. More recently, on June 8, 2022, the seven other AC countries issued a Joint Statement on 'Limited Resumption of Arctic Council Cooperation'[43] which means that the Arctic Council will consist of two blocks, having different views on the treated matters and therefore make the application of decisions more difficult.

As pointed out by several authors, 'from a legal perspective, the status of Permanent Participant is therefore also in accordance with the acceptance of the positionality of Indigenous peoples in the Arctic as distinct peoples with different livelihood systems but with a status that is not equal to sovereign States.'[44] Here, again, the sovereignty of States is valued higher than the rights of Indigenous peoples.

However, as further explained by T. Koivurova *et al.*, the right of participation and consultation is guaranteed by the fact that Indigenous peoples 'can take part in all Arctic Council meetings and voice their views to the eight member States.'[45] Nonetheless, their status as Permanent Participants allows them to have a stronger position than entities with an observer status, but a remain less powerful than the Arctic countries. It has been pointed out by a member of the Sámi

[41] Declaration on the Establishment of the Arctic Council – Joint Communiqué of the Governments of the Arctic Countries on the Establishment of the Arctic Council, 1996, Article 2
[42] Edvardsen, A. (1 June 2022) Russian Chair of the Arctic Council: "The Council's Work Should Be Resumed As Soon As Possible". Retrieved from <https://www.highnorthnews.com/en/russian-chair-arctic-council-councils-work-should-be-resumed-soon-possible> (last accessed 7 July 2022)
[43] Governments of Canada, the Kingdom of Denmark, Finland, Iceland, Norway, Sweden and the United States (8 June 2022) Joint Statement on Limited Resumption of Arctic Council Cooperation. Retrieved from https://www.state.gov/joint-statement-on-limited-resumption-of-arctic-council-cooperation/ (last accessed 7 July 2022)
[44] *Supra* 16 (Koivurova, T., Broderstad, E., Cambou, D., Dorough, D., & Stammler, F.), p. 326
[45] Cambou, D., Koivurova, T., 'Chapter 19: The Participation of Arctic Indigenous Peoples' Organizations in the Arctic Council and Beyond' in Koivurova, T., *et al.* (2020). *Routledge Handbook of Indigenous Peoples in the Arctic* (Routlegde International Handbooks). Milton: Taylor and Francis, p. 326

Council: 'Permanent Participant Status is much better than observer status [which is what we have with the UN]. All the decisions of the Arctic Council have to be reached by consensus. Although we do not have a vote, we can block a vote. […] We can ask Iceland to help or something, to say 'No!''[46] It implies that their rights of consultation and participation can be implemented by different means in the context of the Arctic Council and engage them to decide, or even block, on a decision they disagree on with the State they live in. Therefore, their status allows them to be 'elevated from the level of simple observers to that of partner in the conduct of Arctic affairs within the Arctic Council.'[47]

With regards to offshore renewable energy, the right to consultation and participation within the Arctic Council can be implemented when it comes to decisions and projects taken by several States altogether. States must have the consent, or at least the participation of the Indigenous peoples living on their territories, for any decision encroaching the Indigenous' right to land. Particularly with regard to transboundary projects, Indigenous peoples can have the support of other States if they do not agree with the upcoming projects. Yet, with regards to national projects, the implementation of these rights might be of a greater difficulty as Indigenous peoples will not have the support of other countries, and will only have, as an interlocutor, the State leading the EIA on their territories, as it will be seen later in this thesis.

2.1.2 International environmental law and States obligations regarding energy law

Before going into the in-depth analysis of international energy law, a differentiation needs to be made between the precautionary principle and the precautionary approach. Principle 15 of the Rio Declaration talks about the 'precautionary approach' while several States made it a principle. The most meaningful example is the World Trade Organization (WTO) case *Hormones*[48] where the European Community stated in 1998 that 'the precautionary principle is already, […] a general customary rule of international law or at least a general principle of law, […].'[49] On the other side, the United States advocated to no consider it as a principle but 'rather, it may be characterized as an "approach" – the content of which may vary from context to

[46] Byers, M. (2013). *International Law and the Arctic* (Vol. 103, Cambridge Studies in International and Comparative Law). New York: Cambridge University Press, p. 230
[47] *Supra* 16 (Koivurova, T., Broderstad, E., Cambou, D., Dorough, D., & Stammler, F.), p. 327
[48] *EC Measures concerning Meat and Meat Products (Hormones)*, World Trade Organization Appellate Body, 16 January 1998, AB-1997-4
[49] *Ibid*, para. 16 (*Hormones* case)

context.'[50] It becomes interesting for this thesis that Canada also participated in this *Hormones* case and took the view of the United States by stating that '[t]he "precautionary principle" should be characterized as the "precautionary approach" because it has not yet become part of public international law.'[51] Canada draws its explanation from the Statute of the International Court of Justice, Article 38(1)(c), and considers that 'the precautionary approach or concept is an *emerging* principle of international law, which may in the future crystallize into one of the "general principles of law recognized by civilized nations" […].'[52] However, in its national laws, such as in the Canada Environmental Protection Act (CEPA),[53] the country mentions that 'the Government of Canada is committed to implementing the precautionary principle'[54] and continues to state that the lack of scientific certainty shall not be a barrier in evaluating the cost-measures to preserve the environment. It means that between the *Hormones* case and the vote of the CEPA, Canada reconsidered the precautionary approach and therefore implements it now as a principle. The precautionary approach is understood as having less legal weight than the precautionary principle, which, can lead to a breach of international obligations of a State if the principle is not followed.

Two texts are of interest when it comes to implementing precaution by States with regard to climate change and international environmental law: the UNFCCC and its Kyoto Protocol.[55] The Kyoto Protocol has a better understanding on the means to reach the targets set by the countries in the UNFCCC.

Article 3.3 of the UNFCCC sets that '[t]he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.' This Article continues by stating that the lack of scientific evidence should not be a justification for not applying or postponing such measures. The text recalls that 'measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.'

This formulation about cost-effectiveness and global benefits raises concerns with regards to Indigenous peoples' communities. Indeed, 'global benefits' are to be understood as the benefits for the global population, meaning around 8 billion people will benefit from it. Mitigation of

[50] *Ibid*, para. 43 (*Hormones* case)
[51] *Ibid*, para. 60 (*Hormones* case)
[52] *Ibid* (*Hormones* case)
[53] Canada Environmental Protection Act, 1999 (S.C. 1999, c. 33)
[54] *Ibid*, Preamble
[55] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997, entry into force February 16, 2005

climate change by reaching the targets set by countries in the different treaties and conventions, through renewable energies, would be of the benefit of the whole population. However, the Indigenous population is estimated at 476 million worldwide,[56] meaning 6% of the global population. If offshore renewable energies are installed in the Arctic region, on Indigenous territories, it will mean that only 10% of the Arctic population will be impacted.[57] Recalling that the global population is 8 billion people, the installation of offshore renewable energy plants in the Arctic will impact 0.05% of the global population; leading to a cost-benefit quite advantageous towards the global population, justifying the implantation of such climate change mitigation means. However, if the focus is on Indigenous peoples living in Arctic States, such as Norway or Canada, this will lead to the deprivation of their means of survival (due to migration of fish and other marine mammals traditionally fished and hunted), therefore leading to the disappearance of the traditional way of living of these peoples.

As explained by S. Atapattu, the precautionary principle should help in the decision-making and be a tool in the risk management where proportionality is important. He adds that the principle itself 'will be subject to a proportionality test that includes a balancing of costs and benefits. […] no decision maker wants to impose an undue burden on the proponent of an activity. The idea is to promote industry and development, while at the same time protecting the environment.'[58]

The Kyoto Protocol Article 2 affirms that there should be 'research on, and promotion, development and increased use of, new and renewable forms of energy […].'[59] This Article should, of course, be read in conjunction with its attached Convention, the UNFCCC, and therefore with the precautionary principle. However, as mentioned earlier, the global population would benefit of offshore renewable energies implanted in the Arctic, and the human cost, i.e., the encroachment on Indigenous peoples' land and livelihood would seem to be a smaller burden (towards Indigenous peoples), from a State's point of view. Another benefit for the governments arising from implanting offshore renewable energies in the Arctic would be the meeting of the targets set by States of their environmental commitments.[60]

[56] The World Banks, *Indigenous Peoples.* Available at <https://www.worldbank.org/en/topic/indigenouspeoples> (last accessed 29.08.2022)
[57] Arctic Center – University of Lapland, *Arctic Indigenous Peoples*. available at <https://www.arcticcentre.org/EN/arcticregion/Arctic-Indigenous-Peoples> (last accessed 29.08.2022)
[58] Atapattu, S. (2006). *Emerging Principles of International Environment Law* (Series on International Law and Development). Ardsley, N.Y: Transnational, p. 283
[59] *Supra* 55, Article 2.1.(a).(iv) (Kyoto Protocol)
[60] Annex B of the Kyoto Protocol

Article 14 of ILO 169, insists on the fact that Indigenous lands shall be subject to measures by the State to safeguard 'the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.'[61] By implementing offshore renewable energy plants in their territorial seas, States will fulfill their commitments under international environmental law, meaning their commitments under the Kyoto Protocol and the UNFCCC; but will not comply with their commitments under international Indigenous peoples' law.

In applying the precautionary principle, States can use a tool called the 'environmental impact assessment' (EIA). This tool is understood as 'a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.'[62] It means, as stressed by several authors,[63] that can be seen as introducing a 'philosophy of anticipation in international environmental law, which […] complements the law on liability and responsibility for environmental harm.'[64] B. Sage-Fuller suggests that thanks to the EIA, the precautionary principle can be better implemented because it 'formally introduces a scientific basis to the decision-making process.'[65] Taking this scientific basis into account, it could be rapidly asked, because not within the scope of this thesis, whether Indigenous traditional knowledge can be considered as one of the 'scientific basis' for the EIA.

B. Sage-Fuller criticized the precautionary principle and the EIA by explaining that there is no set threshold, and therefore it makes it difficult, nearly impossible to 'decide what is good for the environment, or what risks are acceptable for society.'[66] In the context of Indigenous peoples' law, it is even more difficult as the standards of harm to the environment are not the same as the government and the rest of the western society, way less connected to their environment and the nature, leading to the EIA 'merely put[ting] decision-makers in a position to make an informed choice, but will not dictate the outcome itself.'[67] This poses problems regarding the Arctic environment, as explained earlier, Arctic Indigenous peoples only

[61] *Supra* 19, Article 14.2
[62] Definition according to the Convention on Biological Diversity, see more at <https://www.cbd.int/impact/whatis.shtml> (last accessed 29.08.2022)
[63] See, *inter alia*, De Sadeleer, N. (2002). *Environmental principles: From political to legal rules.* Oxford: Oxford University Press. and Sage-Fuller, B. (2013). *The precautionary principle in marine environmental law: With special reference to high risk vessels* (Routledge research in international environmental law). London: Routledge.
[64] *Ibid*, Sage-Fuller, B., p. 87
[65] *Ibid*, p. 89
[66] *Ibid*, p. 114
[67] *Ibid*

compose 0.05% of the global population (Arctic coastal Indigenous peoples are even less), implementing offshore renewable energy plants in the Arctic will be a burden to a small minority of the Arctic society, and, as mentioned by B. Sage-Fuller 'the thresholds beyond which risks become unacceptable to society are a matter of political choice, based on what society thinks is good.'[68] Therefore, it could mean that when the Norwegian or Canadian States will conduct EIAs for installing offshore renewable energy plants, there will be consultation of the local population and Arctic coastal Indigenous peoples, but as the latter are the minority and States have climate targets to fulfill, the threshold for socially acceptable environmental harm to install power plants could be quite low.

States indeed have environmental obligations that can be found in different treaties but reaching their environmental targets shall not be done at the detriment of their other obligations regarding international Indigenous peoples' law. The precautionary principle, through the EIA, shall take every element involved into account in order to be as effective as possible and therefore also protect the most vulnerable populations, from both climate change and the aftereffects of climate change mitigating measures.

2.2 Opportunities and challenges the LOSC presents to coastal Indigenous communities.

2.2.1 Opportunities

The use of lands, with respect to culture and traditions, especially now that it contributes to the management of the environment and to its sustainable development, is of great importance for Indigenous peoples. This is particularly stressed by Article 13(2) of the ILO Convention no. 169 which reads as follows 'the use of term lands in Articles 15 and 16 [of the Convention] shall include the concepts of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.' It should be noted that Article 14 of the ILO 169 states that Indigenous peoples have the right of ownership and possession on the lands they traditionally occupy. With the definition of land given by Article 13 applying to the territorial sea as well, coastal Indigenous peoples' territory shall be subject to measures to safeguard their rights but also to safeguard these lands where 'they have traditionally had access for their

[68] *Ibid*, p. 115

subsistence and traditional activities.'[69] For instance, in the context of coastal Sámi and Inuit, it applies to the coastal areas of their respective country where they use to fish and hunt. Within the scope of this thesis, it refers to the coasts of Norway and Canada, where the LOSC applies. According to the previous analysis given in 2.1.1, Article 14 should apply to maritime areas as they are lands that Indigenous peoples have traditionally used, even though not explicitly mentioned by Article 13(2) on the definition of 'land.'

In that context, the LOSC's mission is 'to settle "all issues relating to the law of the sea and […] be an important contribution to the maintenance of peace, justice, and progress *for all peoples* of the world"'[70]

As Article 2 of the LOSC applies to the sovereignty of the coastal State to its territorial sea, meaning that the same rules apply as the sovereignty on land (taking into account innocent passage,[71] established by Articles 17 and following). However, Article 2(3) explicitly states that 'the sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law' which comprise international human rights, and therefore Indigenous peoples' law. This means that coastal Indigenous peoples' rights are safeguarded by the coastal State they live in the same way as non-coastal (meaning land) Indigenous peoples' rights.

Article 192 LOSC poses the obligation for States to protect and preserve the marine environment, both for areas under their jurisdiction but also beyond national jurisdiction. Several cases dealt with this Article. Of particular interest is the case *Philippines v. China*[72] in which the Tribunal stated that the general obligation given by Article 192 'extends both to "protection" of the marine environment from future damage and "preservation" in the sense of maintaining or improving its present condition'[73] and therefore have 'the negative obligation not to degrade the marine environment.'[74]

The notion of marine environment has been further discussed in the *Southern Bluefin Tuna Cases*[75] where the living resources were considered as 'an element in the protection and

[69] *Supra* 19, Article 14(1)
[70] *Supra* 22, p. 92
[71] The definition of 'innocent passage' is given in the LOSC Article 19, as a passage not being prejudicial to 'the peace, good order or security of the coastal State […].'
[72] *In the Matter of the South China Sea Arbitration (Republic of the Philippines v. People's Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016)
[73] *Ibid*, para. 941
[74] *Ibid*
[75] *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280

preservation of the marine environment.'[76] In addition, the Commentary to the LOSC explains that '[t]he spatial application of Art. 192 comprises all maritime zones or areas,'[77] therefore meaning the territorial sea.

Coastal Indigenous peoples heavily rely on living marine resources present in the territorial sea of the State they live in, and the LOSC, particularly Articles 2 and 192, provides a safeguard for the rights Indigenous peoples have. A strong protection of the marine living resources by the coastal States means a strong protection of the resources used by Indigenous peoples, therefore protecting their 'right to lands, territories and resources.'[78]

In addition to Article 192 LOSC, Article 194 offers a set of measures for States to 'prevent, reduce and control pollution of the marine environment.'[79] As explained in the *Chagos Arbitration*, 'Article 194 is […] not limited to measures aimed strictly at controlling pollution, and extends to measures focused primarily on conservation and the preservation of ecosystems.'[80] As pointed out by M. Das Neves, 'Article 194(3)(d) specifically mentions measures concerning "pollution from other installations and devices operating in the marine environment" – clearly significant for offshore renewable energy installations/structures.'[81] It means that Article 194 adds an additional security to the protection of the marine environment. Therefore, it is a strong tool for coastal Indigenous peoples who can rely on this Article, combined with Article 192, to ensure that the State they live in actively protects the marine environment they rely on to sustain themselves and therefore maintain their cultures and traditional way of living.

The main take away from the opportunities offered by the LOSC regarding coastal Indigenous peoples' rights is that the sovereignty of the coastal State, and its duty to protect the environment, are applicable in accordance with other international law rules, including international environmental law and international human rights, which also encompasses Indigenous peoples' rights. This means that Indigenous peoples relying on fishing and the

[76] *Ibid*, para 70
[77] Czybulka, D., (2017) Article 192. In Proelß, A., Maggio, A., Blitza, E., & Daum, O. (2017). *United Nations Convention on the Law of the Sea : A commentary*. München: Beck. p. 1280
[78] *Supra* 22, p. 102
[79] The word 'pollution' is to be read in accordance with Article 1(4) LOSC
[80] *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* (2015) PCA Case No. 2011-03, Award pf 18 March 2015, para. 538
[81] *Supra* 25, p. 227

hunting of marine mammals have the LOSC to assert their rights when it comes to installations, such as offshore renewable energy installations, on the territorial sea of the State they live in.

2.2.2 Challenges

The LOSC, however, also raises challenges with regards to Indigenous peoples' rights. First it should be mentioned the unwillingness from coastal States to consent to sign any legally binding agreement on the regulation of natural resources. This has been pointed out by R. Barnes in the case of fisheries, where he demonstrates that the regulation of natural resources is generally done through non-binding instruments, such as the Food and Agriculture Organization (FAO) Code of Conduct on Responsible Fisheries.[82] The main reasons for that are property rights the coastal State can implement in the areas under its sovereignty. Indeed, on land, where the State has sovereignty, it can carry out property systems. As the sovereignty of the State also extends to its territorial sea, the same system of property can be implemented and therefore split the territorial sea in several private zones, with the view of, for instance, implement concessions for offshore renewable energy power plants. As mentioned by R. Barnes, 'although international law may impose additional restrictions upon the exercise of this sovereignty, these do not significantly affect the competence of the coastal State to introduce property rights within the territorial sea *per se*.'[83] R. Barnes took the example of mollusk farms, which can be compared to offshore renewable energy installation with regard to their infrastructures, as it 'may involve the construction of offshore structures, which in turn may affect […] the rights of other ocean users.'[84]

The sovereignty of the State on natural resources raises challenges in the context of the fight against climate change. Article 2.1(a)(iv) of the Kyoto Protocol[85] reads as follow, '[r]esearch on, and promotion, development and increased use of, new and renewable forms of energy […].' According to their international environmental obligations, States have the duty to implement renewable energy on areas where they exercise sovereignty, including the territorial sea. Implementing renewable energy on the territorial sea means granting concessions to private renewable energy companies, leading, as previously mentioned, to a share of the territorial sea between the coastal State and private actors, operating on behalf of the State, and Indigenous

[82] Barnes, R. (2009). *Property Rights and Natural Resources* (Vol. Vol. 22, Studies in International Law). Oxford: Hart., p. 258
[83] *Ibid*, p. 265
[84] *Ibid*, p. 264
[85] *Supra* 55

peoples relying on the resources present in this zone. The downside is that other ocean users, such as coastal Indigenous peoples, will not have access, as they used to have, to the territorial sea and its resources. Another point worth mentioning is the migration of fish and marine mammals Indigenous peoples rely on for their own consumption and for trade. Indeed, the installation and construction of such power plants produce underwater noises, pollution,[86] leading to migration of fish stocks and modification of the marine habitat, leading to new challenges for the subsistence of coastal Indigenous peoples.

In this regard, it can be said that international environmental law, the law of the sea and human rights law, especially Indigenous peoples', can come to a mismatch, in the sense that the means available to States to fight climate change clash with the rights of users of the oceans: where renewable energy installations are implemented, the means of subsistence of Indigenous peoples are threatened.

In the EIA States have to conduct, the criteria set by the CBD are 'the likely environmental impacts of a proposed project or development, taking into account interrelated socio-economic, cultural and human-health impacts, both beneficial and adverse.' [87] The means of implementation of the EIA are to be set by States at the national level, but they often include public participation. Knowing that in Canada and Norway Indigenous populations have consultation and participation rights[88] in national law as well as in international law, as mentioned above, the assessment regarding the implementation of offshore renewable energy on the territory they have inhabited for millennia has also to take into account the human part in this EIA. The EIA is a developing tool with no set criteria, that States transposed in their national laws. However, by several occasions, the European Court of Human Rights found that 'states neglected to conduct "EIAs" that were prescribed by national law […] the Court appears to require more and more EIAs to fulfil the evaluation requirements set out by it.'[89] This EIA allows for a better protection of 'the right to enjoyment of a healthy and protected environment.'[90]

The fact that States have these environmental obligations tying them to their commitment under several international legally binding texts renders the balance between Indigenous peoples'

[86] As understood by Article 1 LOSC
[87] Convention on Biological Diversity, *What is Impact Assessment*, available at <https://www.cbd.int/impact/whatis.shtml> (last accessed 29.08.2022)
[88] *Supra* 31 and *Supra* 32
[89] Council of Europe. (2012). *Manual on human rights and the environment*. Strasbourg: Council of Europe, p. 91
[90] *Ibid*

rights and the right to a clean environment hard to strike. The protection of the environment and the fulfillment of targets should not be done at the costs of threatening Indigenous peoples' rights and therefore should be balanced between themselves.

This balance can be reached through the full participation and consultation of Indigenous peoples in the process, from the idea of such an offshore renewable energy plant project to the effective implementation of it. It has been seen, throughout this chapter that international law, the law of the sea and Indigenous peoples' law are intricated all together with regards to renewable energy. A balance should be struck between the three in order to reach an harmony on the international legal landscape. The following chapter will analyze the policies of Norway and Canada and seek to understand how these countries implement Indigenous peoples' rights in the context of their national laws and international obligations.

3 Chapter 3: Comprehensive analysis of national laws regulating Indigenous peoples' rights in Norway and Canada

Both Norway and Canada have Indigenous peoples living on their territories. However, their statuses greatly differ. In Norway, Sámi peoples have their rights enshrined in the Constitution and have additional acts, as the Sámi Act[91] and the Reindeer Husbandry Act,[92] protecting their culture, language and way of life. In addition, there is also the Finnmark Act[93] with the 'aim to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the resident of the county and particularly as a basis for Sámi culture, reindeer husbandry, use of non-cultivated areas, commercial activities and social life.'[94]

In Canada, the Constitution contains extensive provisions on the rights of Indigenous peoples, and several land treaties were signed between the Government of Canada and different

[91] Lov om Sametinget og andre samiske rettsforhold (sameloven), LOV-1987-06-12-56. An English version (not updated – without the 2021 – chapter 4 on consultations) is found here: <https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19870612-056-eng.pdf> (last accessed 29.08.2022)
[92] Lov om reindrift (reindriftsloven), LOV-2007-06-15-40. Available in Norwegian at <https://lovdata.no/dokument/NL/lov/2007-06-15-40> and in English at <https://www.pileosapmi.com/wp-content/uploads/2017/11/reindeer-husbandry-act-english.pdf> (last accessed 30.08.2022)
[93] Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark (Finnmarksloven), LOV-2005-06-17-85, English translation available at <https://lovdata.no/dokument/NLE/lov/2005-06-17-85?q=finnmark%20act> (last accessed 29.08.2022)
[94] *Ibid*, Section 1

Indigenous peoples constituting the people of Canada. In 2021, Canada has adopted the United Nations Declaration on the Rights of Indigenous Peoples Act[95] which works hand in hand with Section 35 of the Constitution Act 1982. In addition to the Canadian Constitution, Canada has signed different land treaties with its Indigenous peoples[96] in order for them to fully have access to their ancestors' lands.

For Norway, the laws will be analyzed for Sámi peoples while in Canada the laws regarding Inuit peoples will be analyzed.

3.1 Analysis of the Norwegian Constitution and policy towards rights of coastal Sámi communities with regards to offshore renewable energies

First of all, it needs to be stated that offshore renewable energy projects on coastal Sámi territories are not a reality yet. For now, politics are only evaluating the opening of new power plants, but the planning has not proceeded further than the mapping and investigation of potentially interesting areas, without any legally binding agreements with potential contactors. As the situation stands now, only one offshore renewable energy power plant has been implemented in the south of Norway, the Hywind Tampen,[97] outside of coastal Sámi territories, as it lies 140km off the Norwegian coast (within the EEZ). However, in case that in several decades, due to the ever-growing prevalence of climate change and associated demand for green energies, the Norwegian government decides to open new areas on the northern coasts of Norway for offshore renewable energies, it is very likely that legal issues will be raised by the local populations, including Sámi. This part illuminates possible future legal issues, based upon the likelihood that the Norwegian government will open areas in Northern Norway to offshore renewable energies. The analysis focuses on the potential installation of offshore renewable energy power plants on coastal Sámi territories. It will compare how the installment of onshore renewable has been tackled in Norway and will apply it to offshore renewable energies and their impacts on coastal Sámi people, in case such projects come into existence.

[95] United Nations Declaration on the Rights of Indigenous Peoples Act. S.C. 2021, c. 14
[96] For the different Indigenous peoples recognized by Canada, see Part II, Article 35 (2) of the Canadian Constitution, Supra 32
[97] Equinor, *Hywind Tampen*, available at https://www.equinor.com/energy/hywind-tampen (last accessed 29.08.2022)

To be able to conduct such an analysis, the comparison with the *Fosen* case[98] is of practical value, even though it concerns onshore renewable energies. This is because the *Fosen* case is of great importance as the verdict was rendered at the Grand Chamber, and that the 11 judges constituting it were unanimous, meaning that the entire Supreme Court was standing behind the statement of the first-voting judge, Judge Bergsjø. The conclusion of the *Fosen* case gives indication on the commitments of States when planning renewable energies on Indigenous lands. In addition, and to pay special attention to the encroachment of coastal Sámi territories, the parallel between the planning and installation of fish farms along the coasts of Norway[99] and the possible construction of offshore renewable energies can also be drawn. Indeed, the installation of fish farms, as well as the setting of fishing quotas are raising numerous legal issues, especially on the Sámi right to culture. Fishing has been recognized by the Norwegian Government as 'culture-creating in the sense that they establish knowledge and influence norms, values and other ways of thinking.'[100] Therefore, the installment of fish farms on Sámi territories also lead to encroachment of their lands, therefore on their right to culture, such as offshore renewable energy power plants could do.

Norway has a mixed legal system between civil and common law where statutory provisions are the main source of law. These statutory provisions include the Constitution, as well as national acts and laws, but also international treaties to which Norway is bound. Several international human rights treaties such as the ICCPR, entered into national law through the Human Right Act[101] to strengthen human rights at the national level. However, Supreme Court decisions and case law have a large authoritative and normative effect. This institution is of great importance for the interpretation of laws and treaties, which can also lead to the creation, in a sense, of laws and regulations, especially where the regulations are unclear, do not exist, or may conflict with the Constitution. Preparatory works of national laws are also of a great assistance when interpreting the meaning of an article or a paragraph in these laws.

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[98] *Supra* 5, (*Fosen* case)

[99] For a map of the distribution of Norwegian salmon farms, see Otero, J., Jensen, A., L'Abée-Lund, J., Stenseth, N., Storvik, G., & Vøllestad, L. (2011). Quantifying the ocean, freshwater and human effects on year-to-year variability of one-sea-winter Atlantic salmon angled in multiple Norwegian rivers. *PloS One,6*(8), E24005. p. 3

[100] NOU 2008: 5 Rett til fiske i havet utenfor Finnmark, available at https://www.regjeringen.no/contentassets/ab154e02a2734a24994b5a0b3606a345/no/pdfs/nou200820080005000dddpdfs.pdf (last accessed 30 August 2022), p. 180

[101] Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) LOV-1999-05-21-30. Act relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act). Available in English at <https://lovdata.no/dokument/NLE/lov/1999-05-21-30> (last accessed 30.08.2022)

The issue of offshore renewable energy on Indigenous lands is comparable with the one raised by the implementation of onshore renewable energy power plants. As pointed out by D. Cambou and G. Poelzer,[102] the development of onshore renewable energies has adverse effects on reindeer herding, leading to the migration of the animals and 'increase[s] the workload and cost of activities for reindeer herders.'[103] A parallel between the former and possible changes in migration patterns of fish can easily be drawn.

The Sámi people in Norway is the only Indigenous people in Norway recognized by the State and is thus entitled to the protection ILO 169 gives. As previously mentioned, the rights of Sámi in Norway are safeguarded by the Constitution, Article 108, the Finnmark Act, the Reindeer Husbandry Act,[104] and the Sámi Act of 1987 which amended in 2021 by the addition of a Chapter 4 entitled 'Konsultasjoner' (Consultations), as well as the aforementioned international human rights treaties Norway is part of, such as the ICCPR, among others, and the acceptance of the UNDRIP.

Article 108 of the Constitution of Norway reads as follow '[t]he authorities of the state shall create conditions enabling the Sami people to preserve and develop its language, culture and way of life.'[105] According to Judge Bergsjø[106], this formulation is to be read in conjunction with Article 27 of the ICCPR,[107] stating that the right to culture shall not be denied to minorities. This has been affirmed by Judge Bergsjø in the *Fosen* case, where he stated that 'Article 27 ICCPR must be viewed in context with Article 108 of the Constitution, which imposes a duty on the state authorities "to create conditions enabling the Sami people to preserve and develop its language, culture and way of life".'[108] In the *Fosen* case, Judge Bergsjø considered that 'it is clear that the Sami people is a minority within the meaning of Article 27, and that reindeer husbandry is a form of protected cultural practice.'[109] Coastal Sámi are primarily living on fishing, alongside with agriculture and other industries, and these methods are part of the Sámi culture as well as their traditional way of living.
It has been pointed out that coastal Sámi do not particularly distinguish themselves from other

[102] Cambou, D. & Poelzer, G. (2021) *Enhancing energy justice in the Arctic. An appraisal of the participation of Arctic indigenous peoples in the transition to renewable energy*. In Koivurova, T. & Natcher, D. C. (2021). *Renewable Economies in the Arctic* (Routledge Research in Polar Regions). Taylor and Francis.
[103] *Ibid*, pp. 198-199
[104] *Supra* 92
[105] *Supra* 31
[106] *Supra* 5 (*Fosen* case), para. 99
[107] Entered into the Norwegian legal system by the *Human Rights Act*, Act relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act), entered into force May 21, 1999
[108] *Supra* 5 (*Fosen* case), para. 99
[109] *Supra* 5 (*Fosen* case), para. 101

groups of Sámi. They are part of the same people, the Sámi, the chief difference being that they rely on fishing rather than on reindeer herding, and river fishing or agriculture as a way of sustenance.

Even though the *Fosen* case deals with onshore renewable energy power plants, the result of the case can be paralleled with offshore renewable energy as it creates similar issues of encroachments on Sámi territories when installing the power plants. Judge Bergsjø, regarding the threshold of harm to the way of life, and to the lands of Sámi, stated that a to-be-applied 'measure must be considered in context with other measures affecting the cultural practice, […]. However, […], this gives no indication as to where the threshold should be placed.'[110] The judge continues by mentioning the case *Ángela Poma Poma v. Peru*[111] in which it seems that a threshold for the impact of the measure taken by the government has been set: 'substantive negative impact' [112] and interpreted by Judge Bergsjø as meaning '"considerable" or "significant", which suggest that the threshold is high.'[113] According to Judge Bergsjø, 'there will be a violation of the rights in Article 27 ICCPR if the interference has a substantive, negative impact on the possibility of cultural enjoyment. The measure in itself may be so intrusive that it amounts to a violation.'[114] The threshold does not need to be very high. Indeed, Judge Bergsjø follows by explaining that 'the measure in itself may be so intrusive that it amounts to a violation. However, the effect does not need to be as serious as in *Àngela Poma Poma v. Peru*, […]'[115] it needs to only be a 'substantive, negative impact on the possibility of cultural enjoyment.'[116] Indeed, in the *Poma Poma* case, the Plaintiff lost all her cattle and therefore had to move from her ancestors' land. In the *Fosen* case, the risk was that reindeer herders would need to migrate somewhere winter grazing is available, creating an increased workload and financial burden. In paragraph 134 of the *Fosen* case, Judge Bergsjø gives the definition of the violation: '[t]he economy of the trade is therefore relevant in a discussion of a possible violation.'[117] If the economy affects the cultural practice, it will amount to a violation of Article 27, as explained by the Supreme Court regarding reindeer herding: 'the rights of Article 27 are in any case violated if a reduction of the pasture deprives the herders of the

[110] *Supra* 5 (*Fosen* case), para. 116
[111] *Ángela Poma Poma v. Peru*, Comm. 1457/2006, U.N. Doc. CCPR/C/95/D/1457/2006 (HRC 2009)
[112] *Ibid*, para. 7.5
[113] *Supra* 5 (*Fosen* case), para. 118
[114] *Ibid*, para. 119
[115] *Ibid*
[116] *Ibid*
[117] *Ibid*, para. 134

possibility to carry on a practice that may naturally be characterized as a trade.' [118] In the case of coastal Sámi, the interference of offshore renewable energy power plants would also lead to a changed fish migration pattern and therefore would force Sámi to migrate in order to find better places to fish and live the way they have traditionally lived. It could, according to the *Fosen* judgement and Article 27 also lead to a violation of the latter if the installment of offshore power plants has an impact on their trade and economy, leading therefore to an impact on their cultural practices. In the case of Indigenous peoples, the right to land is a part of and the right to culture and are therefore closely interrelated, as explained in the Commentary of Article 27 ICCPR, and often referred to as the material basis of the culture.[119] It precises that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting […]. The enjoyment of these rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.'[120] The Norwegian State has therefore not only a duty to prevent interventions that have a substantial negative impact on cultural practice, but also a duty to take positive measures in order to protect Sámi lands and Sámi culture. These measures have been, among others, the entry into force of the Sámi Act, the Reindeer Husbandry Act, the Finnmark Act alongside with international treaties, as previously mentioned.

Sámi rights to land and to culture are in opposition with reaching the objectives States have to meet in order to mitigate climate change. This view has been supported by D. Cambou and G. Poelzer in the following words: 'at regional and national levels, utility-scale renewable energy projects often pose a conundrum: large-scale hydro, wind, and solar projects serve to meet national objectives to reduce greenhouse gas emissions; however, the siting of these projects are often on the traditional land and territories of Arctic Indigenous peoples, almost invariably infringing on Indigenous well-being, if not also, Indigenous rights.'[121] The Supreme Court confirmed the fact that the 'green shift' cannot be used as an argument to encroach on Sámi territories and therefore cannot be put in balance with other rights in the proportionality

[118] *Ibid*
[119] NOU 1997: 4 Naturgrunnlaget for samisk kultur (The natural basis for Sámi culture). Available at <https://www.regjeringen.no/contentassets/872b149025974e29b993a8430cf14d1f/no/pdfa/nou199719970004000dddpdfa.pdf> (last accessed 30.08.2022)
[120] UN Human Rights Committee (HRC), *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at: https://www.refworld.org/docid/453883fc0.html [accessed 26 August 2022], para. 7
[121] *Supra* 102, p. 184

assessment States have to conduct for such projects. Indeed, Judge Bergsjø considers that Article 27 'does not allow for a proportionality assessment balancing other interests of society against the minority interests. This is a natural consequence of the reason for the provision, as the protection of the minority population would be ineffective, if the majority population were to be able to limit it based on its legitimate needs.'[122] Therefore, the 'green shift,' which could be beneficial for the majority of the population, both in Norway and around the world, cannot be used to justify an encroachment of Indigenous peoples' right to culture, and therefore right to land.

Judge Bergsjø stated that Article 27 cannot be put at the same level as other rights of the ICCPR, as Article 12 (right to freedom of movement), Article 18 (freedom of thought and religion), Article 19 (freedom of expression) and Article 22 (freedom of association) which are absolute but can be derogated in case of 'public emergency.' Indeed, the formulation of Article 27 'does not allow the States to strike a balance between the rights of indigenous peoples and other legitimate purposes.'[123] On a side note, it can be wondered whether climate change can be viewed as a 'public emergency' and therefore justifies the installation of renewable energy power plants encroaching Indigenous territories. At this stage in 2022, it can be argued that climate change is indeed a public emergency, as both media and government have picked the term 'climate crisis.'[124] To negate this argumentation it can be said that, firstly States have several different modern technologies at their disposal to both mitigate and contain climate change outside of Sámi territories. And secondly, Judge Bergsjø mentioned that '"the green shift" and increased production of renewable energy are crucial consideration' but cannot justify the encroachment of Indigenous peoples' land and right to culture, as Article 27 'does not allow for a balancing of interests.'[125] The conclusion of the *Fosen* judgement on this part that 'the wind power development will have a substantive negative effect on the reindeer herders' possibility to enjoy their culture on Fosen […]'[126] can also be translated into the potential offshore renewable energy projects, in the case they happen in the future. Indeed, coastal Sámi people have the right to enjoy their culture, through fishing and using the resources the coasts of Norway offer.

[122] *Supra* 5 (*Fosen* case), para. 129
[123] *Ibid*, para. 124
[124] António Guterres (23 September 2019) *Remarks at 2019 Climate Action Summit*, available at <https://www.un.org/sg/en/content/sg/speeches/2019-09-23/remarks-2019-climate-action-summit> (last accessed 28.08.2022)
[125] *Supra* 5 (*Fosen* case), para. 143
[126] *Ibid*, para. 144

These rights of land and culture are also very intertwined with the duty of the State to consult and have the participation of Indigenous peoples. Norway is bound by Article 15 ILO 169 to the participation and consultation of Sámi people, especially when it comes to natural resources on Indigenous peoples' lands. Article 15 (1) ILO 169 states that '[t]he right of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.' As outlined by Ø. Ravna, this right is not only the right of being consulted, but it 'means that Indigenous peoples must have a real influence on decisions made […].'[127] In addition to ILO 169, the ICCPR in its Article 27 states that minorities 'shall not be denied the right […] to enjoy their own culture […].' [128]
To get the long-proposed consultation act passed[129] (and to strengthen the duty to consult), the Sámi Act went through an amendment in 2021. This revision led to the introduction of a full new chapter about consultation of Sámi peoples on matters that can affect their interests.[130] The amendment confirms the notion of 'natural basis for Sámi culture' ('naturgrunnlaget for samisk kultur')[131] and applies to measures and decision that are planned to be implemented in traditional Sámi areas, or that may have an impact on Sámi material cultural practice in traditional Sámi areas.[132] This amendment also applies the duty of consultation to the Government, ministries, directorates and other underlying businesses, State enterprises and, most importantly, private legal entities when they exercise authority on behalf of the State.[133] It means that now, in the context of offshore renewable energies, the Government, or private actors acting on behalf of the State, have a duty to consult, and goes slightly further than the general obligation laid down in ILO 169, which will be explained in more details later on.

The case *Poma Poma v. Peru* also gives guidance when it comes to the insufficient mere duty of consultation, which should be completed by 'the free, prior and informed consent of the members of the community when there are plan for such extensive intervention as in the case

[127] Ravna, Ø. (2020). The Duty to Consult the Sámi in Norwegian Law. *Arctic Review on Law and Politics, 11*, 233-255, p. 239
[128] *Supra* 17, Article 27
[129] Proposed by the Sámi Right Committee in NOU 2007: 13 Den nye sameretten (The new Sámi law). Available at https://www.regjeringen.no/contentassets/e1e9506bce034637a6cfec8bdf2eec75/no/pdfs/nou200720070013000dddpdfs.pdf (last accessed 30.08.2022)
[130] Prop. 86 L (2020–2021), Endringer i sameloven mv. (konsultasjoner), Kapittel 4. Retrieved from <https://www.regjeringen.no/no/dokumenter/prop.-86-l-20202021/id2835131/?ch=14> (last accessed 10.08.2022)
[131] *Ibid*, §4.1
[132] *Ibid*, 'I saker som er knyttet til naturgrunnlaget for samisk kultur, gjelder bestemmelsene i kapitlet her for tiltak og beslutninger som planlegges iverksatt i tradisjonelle samiske områder, eller som kan få virkning på samisk materiell kulturutøvelse i tradisjonelle samiske områder.'
[133] *Ibid*, §4.3 'Plikten til å konsultere etter bestemmelsene i kapitlet her gjelder for 1. regjeringen, departementer, direktorater og andre underliggende virksomheter, 2. statsforetak og private rettssubjekter når de utøver myndighet på vegne av staten.'

in question. In addition, the measures should respect the principle of proportionality so as not to endanger the very survival of the community and its members.'[134] The revision of the Sámi Act could perhaps, in the future, lead to the introduction of further minimum standards on the free, prior and informed consent of the Sámi regarding offshore renewable energies that can entail their territories and therefore the basis of their culture.
The participation and consultation of the Sámi regarding offshore renewable energy is also mentioned in Article 19 UNDRIP which has been recognized by Norway.
D. Cambou and G. Proelzer explain that '[t]he right of Indigenous peoples to participation based on the principle of FPIC [Free, Prior and Informed Consent] is a core element of their right to self-determination, which must be respected and protected by all states and respected by corporate actors, especially when energy projects affect their lands and resources and the maintenance of their culture.'[135] They further pointed out that the development of renewable energy has also 'adverse effect to damage the traditional land and resources of Sámi communities.'[136]

Here again, the abovementioned issue is the clashing of Indigenous peoples' interests, and rights, and private (or State) interests. On the one hand, there is the need of the Norwegian State to reach its environmental targets and on the other hand, there is the need to safeguard Sámi culture. As mentioned by D. Cambou, 'most of the policy and decision makers addressing the topic emphasize the question of providing sustainable energy but often overlook the social risks generated by the impact of renewable energy projects.'[137] The English summary[138] of the Strategic Impact Assessment[139] eloquently shows these issues: it does not mention at all the interests and the lands of Sámi people, neither does the NVE Rapport itself. This report is a Strategic Impact Assessment[140] (SIA) that takes into account risks at the level of birds, fish, marine mammals and benthic organisms as well as the environmental risk in general (mainly linked to pollution) into account. However, there is no mention of the populations that possibly rely on these species, such as coastal Sámi, fishing for their subsistence. For example, the

[134] *Supra* 111, para. 7.6
[135] *Supra* 102, p. 187
[136] *Ibid*, p. 197
[137] Cambou, D. (2020). Uncovering Injustices in the Green Transition: Sámi Rights in the Development of Wind Energy in Sweden. *Arctic Review on Law and Politics, 11*, 310-333.
[138] Norwegian Water Resources and Energy Directorate. (2020) *Offshore Wind Power in Norway. Strategic Impact Assessment – English Summary*
[139] Norge Vassdrags- og energidirektorat (2010). NVE Rapport 47-12 *Havvind – Strategisk Konsekvensutredning*
[140] '[F]ormalized, systematic and comprehensive process of identifying and evaluating the environmental consequences of proposed policies, plans or programmes to ensure that they are fully included and appropriately addressed at the earliest possible stage of decision-making on a par with economic and social considerations.' See more on https://www.cbd.int/impact/whatis.shtml (last accessed 11 July 2022)

Report states that '[t]here are established populations of harbor seals in the area, and killer whales can be present during winter'[141] without any additions on the long-term consequences, such as an imbalanced marine biology, if these animals would come to disappear. The traditional diet of coastal Sámi consists of fish, meaning that if offshore renewable power plants are built in the zone, in the territorial sea for instance, they can modify the migration patterns and the presence of these species in the zone.

Fishing as a mean of subsistence is evidently a part of the traditions and culture of coastal Sámi people as they have relied on it for millennia.[142] If their main means of subsistence is in danger of disappearance or reduction, their culture and traditions are exposed to the same danger of vanishing. And this, despite the fact that Article 13(1) ILO 169 explicitly states that 'governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories […] which they occupy or otherwise use […].'[143] That the report does not consider or even mention Sámi interests, does not seem to be in accordance with the ILO 169. One point that can be underlined is the Report, when assessing each zone, mentions that 'care must be taken to ensure that fishing interests are appropriately included in the planning process.'[144] It seems that the term 'fishing interests' is referring to the fishing industry and not necessarily to the means of subsistence for Indigenous peoples.

Another point worth mentioning is the pollution issue. Article 1(4) of the LOSC gives a definition of the term 'pollution' as the 'introduction by man, directly or indirectly, of substances or energy into the marine environment […] which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazard to human health […].'[145] The Report also mentions the environmental risk of pollution. Among the potentially interesting sites to implement offshore renewable energy power plants, three 'would generate the highest pollution potential,'[146] including Sørøya nord, being one of the Sámi lands, both used onshore and offshore for their traditional activities. However, the Directorate considered that 'it is important to note that the actual risk of accident is considered as low in all zones.'[147] The main issue with that statement is that there is no definition of which type of accident it

[141] *Supra* 138, p. 10
[142] *Supra* 119, p. 465
[143] *Supra* 19
[144] *Supra* 138, p. 9
[145] *Supra* 20, Article 1 (4)
[146] *Supra* 138, p. 4
[147] *Ibid*

could be, neither the type of pollution that could occur. In addition, when looking at the map of the areas presented in the Norwegian version of the Report, it is shown that at least 6 planned plants are 'nær land'[148] ('near land', and as mentioned in the Report, not more than 12 nautical miles, meaning within the limits of the territorial sea as set by Article 3 LOSC) and coincide with Sámi lands.[149] M. Das Neves also analyzed the 'release of polluting substances during construction, operation and decommissioning phases or resulting from potential vessel collisions with the installations.'[150] It is widely known that the melting of the Arctic is opening routes to heavier ship traffic transiting near the Norwegian coast, where for example the Sandskallen – Sørøya Nord power plant is supposed to be implemented. This means that in case of accident, as mentioned by M. Das Neves, or pollution, the resources present in the sea near the coast and being the basis of coastal Sámi will disappear due to pollution in the area, leading to the disappearance of the marine life there. M. Das Neves also outlined other challenges offshore renewable energy plants can raise, applicable in Norway and elsewhere in the world. She mentions the impacts have a wide range from 'disruption of migration paths of fish and marine mammals due to vibrations, noise, changes in water flows, and electromagnetic fields of submarine electricity cables'[151] to 'loss of birds, fish and marine mammal life due to collisions with the various types of installations and due to the electromagnetic fields generated by submarine electricity cables,'[152] but also 'habitat disturbance or destruction during the construction phase'[153]

If the abovementioned scenario becomes reality, the Norwegian State would have failed to fulfil its obligations regarding the safeguarding of Sámi's lands, culture and traditions, as well as its duties under the LOSC, in particular Articles 192 and 193 LOSC, and in general, its duties regarding international environmental law.

An important institution is the Sameting, the Sámi parliament in safeguarding and expressing Sámi interests. The role of the Sameting is laid down in the Sámi Act[154] and Section 2-1 affirms that the Sameting has business in 'any matter that in the view of the parliament particularly

[148] *Supra* 139, p. 7
[149] See Annex I of this thesis, retrieved from Ravna, Ø., & Kalak, L. (2019). Legal Protection of Coastal Sámi Culture and Livelihood in Norway. In S. Allen, N. Bankes & Ø. Ravna (Eds.). *The Rights of Indigenous Peoples in Marine Areas* (pp. 213–236). Oxford: Hart Publishing. p. 213
[150] *Supra* 25, p. 215
[151] *Ibid*
[152] *Ibid*
[153] *Ibid*
[154] *Supra* 91

affects the Sámi people.'[155] The second sentence continues by explaining that the institution 'may on its own initiative raise and pronounce an opinion on any matter coming within the scope of its business. It may also on its own initiative refer matters to public authorities and private institutions, etc.'[156] In that regard, it seems that Sámi can have their voice heard through the Sameting on matters that can affect their culture. It means that, as fishing and hunting is part of the Sámi culture, offshore renewable energy projects can reduce these activities and therefore lead the Sámi population, and particularly the coastal one, to change their way of life, meaning to leave their traditions behind them because of the lack of area left to fish. By having their voice heard, as well as through the suggestion of other solutions to the Norwegian government regarding renewable energies, Sámi people would be able to protect their traditions and culture. In the proposition of the amendment of the Sámi Act, the Minister of Local Government and Regional Development states that '[t]he Sámi Parliament will also be an important actor when it comes to assessing the entirety of the intervention, and whether it should be allowed.'[157] According to Ø. Ravna, a big step is taken by 'obliging the State to obtain consent from the Sámi Parliament before major land encroachments can be carried out.'[158] But it has been emphasized by an article from NRK,[159] the year after the Supreme Court decided that onshore renewable energy power plants are encroaching Sámi territories, the Government decided to continue their operation. Therefore, the positions of the Government regarding the amendment of the Sámi Act introducing the duty of consultation and the decision to continue to run the Fosen power plant are not clear anyhow.

After examining the Norwegian legal framework regarding both offshore renewable energies and Indigenous peoples' rights, Norway has a duty to consult and have the participation of Sámi people in its projects. However, as it has been demonstrated through the analysis of the potential projects of offshore renewable energies, the SIA does not necessarily take into account coastal users and does not even mention Sámi lands. Another revealing aspect is also the aftermath of certain court decisions. The Supreme Court of Norway declared, in the *Fosen* judgement that wind power development will have a significant impact on the Sámi 'to enjoy their culture

[155] *Ibid*, Section 2-1
[156] *Ibid*
[157] *Supra* 130 p. 109 ('Sametinget vil dessuten være en viktig aktør når det gjelder å vurdere helheten i inngrepet, og om det bør tillates.')
[158] Ravna, Ø., The Fosen Case and the Protection of Sámi Culture in Norway Pursuant to Article 27 ICCPR. Paper under publishing in International Journal on Minority and Group Rights
[159] Rønning, O. M., (28 July 2022), Vindkraftverkene bryter folkeretten – regjeringen vil forsete driften. Retrieved from <https://www.nrk.no/trondelag/regjeringen-vil-beholde-vindkraft-og-reindrift-pa-fosen_-enda-hoyesterett-har-sagt-at-det-er-ulovlig-1.16046513> (last accessed 11.08.2022)

[…].'[160] However, even though the Norwegian State has a duty to protect its Indigenous peoples, the Government, as mentioned in the NRK article, will continue to operate the wind turbines, contrary to the conclusion of the *Fosen* judgement which states that the justification of climate change cannot be used as an excuse to encroach Sámi territories, as well as their culture and way of life. The Norwegian State has, through the revision of the Sámi Act, reinforced its duty of consultation of Sámi. This duty to consult works hand in hand with the duty to protect traditional Sámi livelihoods, as Article 5 of the ILO 169 states. If the Government continues to run the Fosen power plant, it will go against both international law but also against its newly introduced amendment on consultation and participation of Sámi.

The *Fosen* case explicitly referred to Article 108 of the Norwegian Constitution which obliges the State to 'create conditions enabling the Sámi people to preserve and develop its language, culture, and way of life.' The planning of the implantation of offshore renewable energies in coastal areas, and therefore Sámi territories, may not respect Article 108 of the Constitution neither Article 27 of the ICCPR as it will encroach their territories, create fish migration patterns, leading to the disappearance of their means of survival, therefore leading to the loss of their traditional way of life, and culture. As pointed out by Ø. Ravna, there is no possibility for the Norwegian State to continue running the onshore windfarm in Fosen without breaching international law. The same would apply in the case of offshore renewable energies, when encroaching coastal Sámi territories, for now only at the stage of mapping, but which could become a reality in the future.

As a conclusion on the analysis of the Norwegian legal framework it can be said that the Norwegian State has more obligations towards the Indigenous people than the mere duty of consultation and participation of Sámi people. It also has the obligation, according to the international treaties it signed, and its Constitution, to protect the traditional way of living of the Sámi. Such traditional way of living is protected through the Sámi Act, which is amended by the revision of 2021, the Constitution, ILO 169, and the ICCPR, as well as by other means offered by the Arctic Council, although it is not legally binding. The Norwegian Supreme Court has its role to play, as it did in the *Fosen* case, to preserve and protect the Sámi culture in its entirety. By drawing from the *Fosen* judgement and applying it to offshore renewable energies in coastal Sámi areas, the Supreme Court should, however, precise which measures could be taken to preserve the Sámi culture as a whole. The Supreme Court should give guidance, in

[160] *Supra* 5 (*Fosen* case), para. 144

future cases relating to Sámi traditional lands and culture, on the means to implement in order to preserve it. The duty to consult and participation as well as the duty to protect the Sámi peoples lay in the hands of the Norwegian State which has the duty to implement it and effectively apply it thought the Strategic Impact Assessment by setting precise criterion, in accordance and consultation with the Sameting.

3.2 Analysis of the Canadian Constitution and policy towards rights of Inuit communities with regards to offshore renewable energies

In Canada, such as in Norway, offshore renewable energy projects are not yet a reality[161] but '[i]n the recent years, Canada has taken concrete actions to develop its offshore renewable energy potential, and improve market and regulatory certainty for industry, investors and stakeholders.'[162] Norway seems a bit more in advance on the related laws, with its Offshore Energy Act No. 21 of 2010[163] modified in 2021. However, Norway mentioned Sámi interests[164] without further elaboration. Canada, as previously mentioned, has a different tradition in interacting with Indigenous peoples on its territory. In fact, the Energy Policy Review of Canada from the International Energy Agency explains that Canada is planning to advance the development of its Energy Regulator Act in order to 'develop safety and environmental protection […] for offshore renewable energy, while at the same time pursuing discussions with interested coastal provinces for the joint management of offshore renewable energy.'[165] The reference to the 'coastal provinces' therefore means an implication of the local Indigenous peoples such as in the province of Nunavut, for example, as it will be further developed. Even though the law regulating energy in Canada, the Canada Energy Regulator Act of 2019,[166] is more recent than the Norwegian one, contains a part named 'Rights and Interests of the Indigenous Peoples of Canada,'[167] directly referring to the Constitution when it comes to the adverse effects such planning could have in the rights of Canadian Indigenous peoples.[168]

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[161] Offshore Renewable Energy Regulations Initiative, available at <https://www.nrcan.gc.ca/transparency/acts-and-regulations/forward-regulatory-plan/offshore-renewable-energy-regulations-initiative/23042> (last accessed 28.08.2022)
[162] International Energy Agency (2022) *Canada 2022 Energy Policy Review*, available at https://iea.blob.core.windows.net/assets/7ec2467c-78b4-4c0c-a966-a42b8861ec5a/Canada2022.pdf, p. 121 (last accessed 28.08.2022)
[163] Lov om fornybar energiproduksjon til havs (havenergilova), LOV-2010-06-04-21, available at <https://lovdata.no/dokument/NL/lov/2010-06-04-21> (last accessed 28.08.2022)
[164] *Ibid*, §1-5
[165] *Supra* 162, p. 129
[166] Canada Energy Regulator Act (S.C. 2019, c. 28, s. 10), available at https://laws-lois.justice.gc.ca/eng/acts/C-15.1/ (last accessed 28.08.2022)
[167] *Ibid*
[168] *Ibid*, Article 56(1)

Canada has a tradition of common law, meaning that Supreme Court case law and decisions have a great importance in shaping the legal landscape of the country. Therefore, it is interesting to analyze this country with regards to Indigenous peoples, who do not have the same place than Norwegian Sámi within the legal sphere. They as well have been paid attention to in the country's Constitution, but, contrary to Norway, not only through one Article, but an entire part has been dedicated to them, which is entitled 'Part II – Rights of the Aboriginal Peoples of Canada' and found in the Constitution Act of 1982. The difference of the countries' legal framework aside, Inuit peoples of Canada were chosen because they traditionally rely on fishing and marine mammals hunt as a main source of their diet.[169] Therefore, as being coastal Indigenous peoples, they are also impacted by future potential projects of offshore renewable energies, and thus face similar challenges as the coastal Sámi in Norway. In addition, as the Sámi through the Sámi Council, they also have their voice in the Arctic Council, through the Inuit Circumpolar Council.

Several legal texts are of interest when it comes to balancing Indigenous peoples' interests and offshore renewable energy in Canada. Canada not being a State party to the ILO 169, this convention will not be analyzed in this section. The Canadian Constitution and its Part II of the Constitution Act of 1982 is the foundation for Indigenous rights in Canada. In addition to this text, Canada has recently adopted, in 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act,[170] which translates the UNDRIP into Canadian law, making it legally binding to Canada in domestic courts. Canada is also a member State of the ICCPR, as well as it is a State party to the Arctic Council. The State attaches importance to renewable energies on its territory, which are regulated by the Canadian Energy Regulator Act[171] and which also refers to the right of Indigenous peoples of Canada in its Article 3. Canadian Indigenous peoples are also mentioned in the Impact Assessment Act.[172]

It should be recalled that global warming is faster in the Arctic than elsewhere around the globe and that 'the shorter ice season and reduced ice thickness that result from climate change are not only environmental concerns, but they also put Inuit hunters and ice-fishers at risk.'[173] So

[169] Wallace, S. (2014) Inuit health: Selected findings from the 2012 Aboriginal Peoples Survey. Retrieved from <https://www150.statcan.gc.ca/n1/pub/89-653-x/89-653-x2014003-eng.htm> (last accessed 13.07.2022)
[170] *Supra* 95
[171] *Supra* 166
[172] Impact Assessment Act, S.C. 2019, c. 28, s. 1
[173] Paquet, A., Cloutier, G., & Blais, M. (2021). Renewable Energy as a Catalyst for Equity? Integrating Inuit Interests with Nunavik Energy Planning. *Urban Planning, 6*(S2), 338-350, p. 339

climate change is not only an environmental issue but also a human rights and lives issues, in particular for people living in remote areas, such as Inuit peoples in Canada.

The Global Wind Energy Council has published a map on the offshore wind technical potential in Canada[174] and a great number of interesting areas are located on Inuit territories, in the north of Canada for example in the Nunavut province. These are areas that could potentially, in case of need, be opened to install both fixed and floating offshore wind turbines.[175]

The right to self-determination of Inuit in Canada, laid down by the implementation of the UNDRIP and ICCPR in the Canadian legislation, is a key factor in the Canadian policy regarding renewable energy. The fact that land agreements between the Government of Canada and Indigenous populations have been signed shows the will of the State in letting Inuit be self-governed.[176] However, as mentioned by G. Wilson and P. Selle, 'Inuit regions and their governments still find themselves embedded within a preexisting political structure at both the national and provincial/territorial levels that constrains their ability to fully exercise self-rule and, by extension, self-determination.'[177] Inuit have the treaty rights, through the land treaties, to have control over their natural resources, however, these rights also 'fall under the jurisdiction of provincial or territorial governments and are jealously guarded by these government. Some examples are natural resources […].'[178] This is due to the fact that these provinces and territories are depending 'on the revenues from natural resources development and are often reluctant to relinquish control over this lucrative source of revenue.'[179] The incorporation of UNDRIP in the legal system could change this path as Inuit have now the right to self-determination strengthened at the national and international level, both by the newly integrated UNDRIP and by the ICCPR. Regarding these facts, the question is to know how the Canadian government will integrate Inuit's self-determination in its future plans for offshore renewable energy, and whether the encroachment of Inuit territories by power plants, as well as probable modification of their traditional landscape, will be accepted and implemented by these peoples.

[174] Global Wind Energy Council (2021). Offshore Wind Technical Potential in Canada. Retrieved from <https://gwec.net/wp-content/uploads/2021/06/Canada_Offshore-Wind-Technical-Potential_GWEC-OREAC.pdf> (last accessed 14.07.2022)
[175] For further details about the difference between fixed and floating turbine, please consult https://www.bw-ideol.com/en/floating-offshore-wind (last accessed 28.08.2022)
[176] Wilson, G. N., and Selle, P. (2019) Indigenous Self-Determination in Northern Canada and Norway. *IRPP Study 69*. Montreal: Institute for Research on Public Policy
[177] *Ibid*, p. 19
[178] *Ibid*
[179] *Ibid*

Canada also has a duty to consult Indigenous peoples, according to Article 19 UNDRIP. It has also been clearly explained in the Report on Canada by the International Energy Agency (IEA) that '[t]he government of Canada also has statutory, contractual and common law obligations to consult with Indigenous peoples, and where appropriate, accommodate, when the government contemplates conduct that might adversely impact potential or established aboriginal or treaty rights.'[180]

For example, in the province of Nunavut, the Nunavut Land Claim Agreement[181] created different institutions such as the Nunavut Impact Review Board (NIRB) and the Impact and Benefit Agreement (IBA). The IBA is laid down in Article 26 and shall be in accordance with 'any ecosystemic and socio-economic impact review.'[182] As explained by D. Newman *et al.*, the 'NIRB conducts environmental impact assessments of proposed projects in the Nunavut settlement region. It conducts public hearings as part of this process and then, makes recommendations regarding the future of the project to the relevant federal Minister.'[183] This procedure 'ensures that the Inuit in Nunavut are guaranteed participation rights in federal environmental decisions impacting Nunavut lands.'[184] It also means that in Nunavut, as well as in other Inuit territories, the government has more than a mere duty of consultation, it has an obligation of participation of Inuit living on the territory, before taking any decision that could harm their rights.

The duty to consult Canadian Indigenous peoples has been interpreted by the Supreme Court in 2004 in light of Article 35(1) of the Constitution. It held, confirming another case from 1997,[185] that 'the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it […].'[186] Article 35(2) includes 'Indian, Inuit and Métis peoples of Canada' as 'Aboriginal,' meaning that the duty to consult also applies to Inuit, in the context of this thesis. Therefore, the duty to consult exists not only at the federated level, as shown in the previous paragraph, but also at the federal level. In any case, it applies to every Indigenous

[180] *Supra* 162, p. 20
[181] *Supra* 34 (Nunavut Land Claims Agreement Act)
[182] *Ibid*, Article 26.6.1
[183] Newman, D., Biddulph, M., & Binnion, L. (2014). Arctic energy development and best practices on consultation with indigenous peoples. *Boston University International Law Journal, 32*(2), 449-508, p. 468
[184] *Ibid*, p. 469
[185] *Metecheah v. British Columbia (Minister of Forests)*, 1997 CanLII 2719 (BC SC), retrieved from <https://canlii.ca/t/lf4lh> (last accessed 14.07.2022)
[186] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII), [2004] 3 SCR 511, para. 35, retrieved from <https://canlii.ca/t/lj4tq>, (last accessed 14.07.2022)

people living in Canada, therefore creating equality between the different peoples present on the Canadian ground.

It has been understood by Canada that Indigenous peoples have a better knowledge of the environment they inhabit, than non-Indigenous peoples. Indeed, for millennia, they have used the environment, and continue to do so, for living and sustenance, and therefore have a greater understanding of the impact of climate change on their territories, but also worldwide. In addition, Canada, in its Nationally Determined Contribution (NDC)[187] explicitly mentions 'Indigenous Climate Leadership,'[188] to involve even more its Indigenous peoples and therefore put them on an equal footing as many other actors in international law. W. Greaves[189] underlines an interview where an Inuit explained that '[t]he greatest risk to our security is these companies that operate offshore could do major damage to our marine biology.'[190] This is where the precautionary principle, as explained above, plays an important role, but also Indigenous traditional knowledge (TK),[191] all along the EIA process. W. Greaves adds that '[e]nvironmental changes are depicted as the context within which decisions about resource extraction must be made, emphasizing both global and local dimensions of risk due to extractive activities.'[192] The paper mentions 'extractive activities,' but the analogy can be applied to offshore renewable energies, as they also pollute and create stress in the marine environment, as previously mentioned.

Traditional knowledge is set in Article 31 UNDRIP, and therefore has been translated into the Canadian legal system. A Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat[193] focuses mainly on non-renewable resources but can be applied to renewable resources as '(a) issues surrounding the appropriate use of nonrenewable and renewable resources are inextricably linked, and (b) the principles set out in this Declaration are, in many ways, applicable to the use of renewable resources.'[194] TK is mentioned several times in the Declaration, such as in §7.4: '[i]n determining the sustainability of a resource development

[187] Canada's 2021 Nationally Determined Contribution under the Paris Agreement (2021), available at <https://unfccc.int/sites/default/files/NDC/2022-06/Canada%27s%20Enhanced%20NDC%20Submission1_FINAL%20EN.pdf> (last accessed 28.08.2022)
[188] *Ibid*, p. 7
[189] Greaves, W. (2016). Arctic (in)security and Indigenous peoples. *Security Dialogue, 47*(6), 461-480. p. 467
[190] Konek J., Konek, C., & Mauro, I. (directors) (2013) *Nilliajut: Inuit Voices on Arctic Security*. Ottawa: Inuit Qaujisarvingat. Available at: <http://www.inuitknowledge.ca/content/nilliajut-inuit-perspectives-arctic- security-1> (last accessed 14.07.2022)
[191] 'Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world.' <https://www.cbd.int/traditional/intro.shtml> (last accessed 14.07.2022)
[192] *Supra* 189 (Greaves)
[193] A Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat, May 2011
[194] *Ibid*, §1.4

initiative, the best available scientific and Inuit knowledge and standards must be determined and employed,' as well as the reference, in §10.1 to the UNDRIP. TK is useful in the context of the duty of consultation and participation with regard to the planning of offshore renewable energy power plants on Inuit territories since they have been living on these territories for millennia, and are therefore perfectly knowledgeable on the land, the waters and the climate present there. TK has also been enacted in the Impact Assessment Act,[195] in Article 6(1)(j) alongside with 'scientific information' and 'community knowledge.' Article 6(1)(l) also stresses the precautionary principle with regard to projects that can have a significant adverse impact on the environment.

However, as mentioned by W. Greaves, 'where certain Inuit communities in Canada have very close relations to marine resources, Canada has even negotiated one marine "land claims" treaty. But Canadian law on Indigenous rights in marine contexts is extremely underdeveloped and the relation of Inuit communities to marine resources implies the need for further work in this area.'[196]

The Impact Assessment Act requires in Article 7(1) that no project can be enacted if it has adverse effect 'with respect to the Indigenous peoples of Canada,' and has 'an impact – occurring in Canada and resulting from any change to the environment – on […] (ii) the current use of lands and resources for traditional purposes […].'[197] This sentence directly refers to the right to land, as well as to the constitutional rights of Indigenous peoples of Canada. However, any offshore renewable energy power plant project will encroach Inuit traditional lands, as shown on the Global Wind Energy Council map.[198] As wind energy is one of the most advanced technologies, compared to tidal energy or offshore solar energy for example, it is sensible to cartograph windy zones in Canadian territorial waters, in context of the Inuit settlements.

A paper by N. Mercer *et al.*[199] emphasized the different views among Inuit communities in Canada by interviewing their inhabitants. The paper draws a negative image of the consultation, participation and FPIC when it comes to renewable energies in Inuit communities. It concludes that, '[w]hile Canada has recognized the importance of community consent via Call to Action

[195] *Supra* 172
[196] *Supra* 189, p. 505
[197] *Supra* 172, Article 7(1)(c)
[198] *Supra* 174
[199] Mercer, N., Hudson, A., Martin, D., & Parker, P. (2020). "That's Our Traditional Way as Indigenous Peoples": Towards a Conceptual Framework for Understanding Community Support of Sustainable Energies in NunatuKavut, Labrador. *Sustainability (Basel, Switzerland), 12*(15), 6050

under the Truth and Reconciliation Communication, and further commitments supporting the United Nations Declaration on the Rights of Indigenous Peoples, the existing state of research and policy is inadequate.'[200] It is for example the case shown by R. Sharma in her article[201] '[w]hen asked to elaborate on how he [Trudeau] plans to get Indigenous communities off diesel, he offered no further information.' It means that on one side the government is willing to shift from diesel to clean and renewable energy in Indigenous communities, and on the other side, there are the rights of communities, such as their right to land, but also FPIC that pose obstacles to any decision taken regarding the encroachment of their land. As mentioned earlier, these two sides need to be coordinated and well balanced to reach the fairest result.

It seems that balancing Inuit rights and the government's plans for offshore renewable energies is more complicated to implement than in Norway. Because of the different land treaties signed between Canada and Canadian Indigenous peoples, Canada is not able to implement offshore renewable energy power plants on its territory just by following, for example, the strength of the wind in the most exposed areas. As the rights of Indigenous peoples are set in the Constitution as well as treaties, Indigenous peoples seem to have more powers regarding decision-making in Canada than in Norway. Moreover, as a federal State, Canada has two levels of law implementations, one at the national and the other at the States level. It means that, for instance, a plan of action to develop offshore renewable energies deemed possible at the national level could be challenged by the obstacles the federated level raises, such as the lands agreements with Indigenous peoples, or opposition from the local inhabitants.

As a conclusion on Canada's policy, it seems that the duty of the Government to consult and make Indigenous peoples' participation in the process of a project encroaching their land is well safeguarded, both by the Constitution, the UNDRIP, ICCPR, Impact Assessment Act, lands claim agreements, as well as Supreme Court decisions. The fact that Canada has international environmental targets and obligations puts the State into a position where it has to strike the perfect balance between the latter and the protection of its population, in particular the Indigenous one. This duty of participation and consultation is held by different institutional organisms, which are in charge of interacting with the Inuit population, such as the NIRB. The right to self-determination, closely tight to the management of resources and the consultation

[200] *Ibid*, p. 27
[201] Sharma, R. (2019) Trudeau Promises to eliminate diesel during Iqaluit visit. Retrieved from <https://www.nunavutnews.com/nunavut-news/trudeau-promises-to-eliminate-diesel-during-iqaluit-visit/> (last accessed 14.07.2022)

and participation duty is also reinforced thanks to the land treaties, and national and international legal obligations Canada agreed to yield to. Several other tools are used by Canada to strengthen Indigenous peoples' right and design its national policies to both protect the environment, according to its international environmental commitments, and its Indigenous peoples, by implementing international legislations into its national legislation and strengthening its national legislation by laying down several duties, binding the State. It seems that Canada is also trying to strengthen this duty by including, for instance, Indigenous traditional knowledge, along with other 'standard' knowledge the Western society is using, namely scientific knowledge. If Canada actually includes Indigenous traditional knowledge throughout the EIA, the State can fulfill its duty, as well as by holding meetings and consultation with the whole impacted Indigenous population living on the territories the offshore renewable energy projects are planned. The recent integration of UNDRIP into the Canadian legal system should make the duty of participation and consultation of Indigenous peoples stronger than before, and stronger than in other countries, because Canada would be liable in case of non-respect of this obligation, both at the national and international levels.

4 Chapter 4: Challenges and opportunities raised by coastal Indigenous peoples regarding offshore renewable energies

Several papers interviewed coastal Indigenous peoples to collect their individual opinion, as well as the communities' overall stance, on the implementation of offshore renewable energy on their territories. The first part of this chapter will take a sociological angle, although keeping in mind the legal challenges and opportunities present in the implementation of offshore renewable energies while the second part will try to understand, from a non-Indigenous point of view, how coastal Indigenous peoples could benefit from offshore renewable energy infrastructures and which solutions could be brought to them, in order to secure their future and planet's one.

4.1 Social challenges offshore renewable energies raise in the Arctic

As previously mentioned, countries, such as Norway and Canada, have international and national legal obligations regarding climate change and mitigating it. As explained in the previous chapter, States have a duty to consult and have the participation of their Indigenous peoples in the process of installing renewable energies. And as aforementioned in the analysis

of both countries, they also have the duty to not deny the practice of traditional Indigenous activities and have the obligation to ensure that such traditional practices are not exposed to a substantive negative impact. However, it has been shown that States also have the 'last word' when they consider the EIA directing towards greater benefits with regard to offshore renewable energy on Indigenous territories, which sometimes resulted in lawsuits because of violations of the laws. Nonetheless, the sociological part and the survival of traditions also play a great role when companies need the green light from the States to implement their power plants on Indigenous territories. The justification of such land encroachments by States is the justification through climate change, but it is also understood as 'green colonialism'[202] by Indigenous peoples and activists.[203] Green colonialism has been identified as a risk which Indigenous peoples are facing: 'further intrusion of Western models of resource governance, exposure to risks associated with novel technologies, and massive administrative burdens of projects.'[204]

Regarding the coastal Sámi, it has been recognized that they have 'traditions of coastal fishing'[205] and that 'it is […] important that the opportunity for continued Sámi coastal fishing is secured.'[206] Ø. Ravna considers that 'Norway is a country that has made great efforts in fulfilling its obligations to the Indigenous Sámi.'[207] Despites all of this, he sees improvement in the Norwegian policy 'before it fully accomplishes its legal obligations to the Sámi when it comes to recognizing their right to lands, waters and natural resources.'[208]

It is the opinion shared by a lot of Sámi reindeers herders, that see their territories encroached by renewable energy projects. Of course, the same issue is applicable to coastal Sámi as their land could probably be encroached by offshore renewable energy projects. Most of the opinions expressed are the ones of reindeer herders but are also relevant opinions applicable to coastal activities. Indeed, reindeer husbandry is considered as a cultural and traditional aspect of the Sámi life, it is their means of survival. The same applies to coastal Sámi, for whom fishing is

[202] Earth.org (2021) What Is Green Colonialism? Retrieved from <https://earth.org/green-colonialism/> (last accessed 14.07.2022)
[203] Fjellheim, E. M., Carl, F. (2020) 'Green' colonialism is ruining Indigenous lives in Norway. Retrieved from <https://www.aljazeera.com/opinions/2020/8/1/green-colonialism-is-ruining-indigenous-lives-in-norway> (last accessed 14.07.2022)
[204] Mercer, N., Parker, P., Hudson, A., & Martin, D. (2020). Off-grid energy sustainability in Nunatukavut, Labrador: Centering Inuit voices on heat insecurity in diesel-powered communities. *Energy Research & Social Science, 62*, 101382. p. 4
[205] Ravna, Ø. (2014). The Fulfilment of Norway's International Legal Obligations to the Sámi - Assessed by the Protection of Rights to Lands, Waters and Natural Resources. *International Journal on Minority and Group Rights, 21*(3), 297-329. p. 315
[206] *Ibid*
[207] *Ibid*, p. 327
[208] *Ibid*, p. 328

their traditional and cultural way of subsistence, but remain, unlike reindeer husbandry, unrecognized by Norwegian law, meaning that where offshore renewable power plants are installed, their means of subsistence disappears due to changes in migration patterns, without any strong legal consequence on the Norwegian State.

It seems that the great majority of Sámi peoples are not in favor of these renewable energy projects. Several sources tend to show this trend. The first is the Tråante Declaration[209] which states, in its Article 17, on the right to land and its resources, and Article 18, more particularly on the 'salt water-areas Saami have traditionally used.'[210] Another source is paper written by S. Normann, in which Southern Sámi have been interviewed in the context of reindeer herding and onshore renewable energy. The parallel with offshore renewable energy projects can also be drawn as they will also encroach their lands, as previously explained. One of the interviewees stated that 'the turbines bring increased human activity, the construction of energy infrastructure […] will negatively affect reindeers' pasturelands, thus threatening Sámi herding practices, livelihoods, and consequently their cultural survival.'[211] This can be seen in the context of the LOSC and coastal Sámi, as previously mentioned, where States have an obligation of preservation of the marine environment, and the construction of energy infrastructure goes against Article 192. The construction of offshore energy infrastructure will pollute the marine environment, according to Article 1 LOSC and will therefore breach several dispositions in the LOSC.

Moreover, another person interviewed 'pointed to contradictions between, on the one hand, strengthened legal framework guaranteeing Indigenous rights and, on the other, a high number of interventions that the herders must consider and eventually contest.'[212] In the case of coastal Sámi, it seems that no file has been filed to contest the implementation of offshore renewable energies near the coasts. It has also been pointed out in an article from the National Geographic, not related to renewable energies but to the construction of a mine, that '[t]hough they live on the fjord only for a season, the Sámi reindeer herders have a stronger legal case against the mine than the resident Sámi fishers, because herders' traditional livelihoods are technically protected

[209] Tråante Declaration, 2017
[210] *Ibid*
[211] Normann, S. (2021). Green colonialism in the Nordic context: Exploring Southern Saami representations of wind energy development. *Journal of Community Psychology, 49*(1), 77-94, P. 81
[212] *Ibid*, p. 85

under Norwegian law; fishers' are not.'[213] Even though fishers' traditional livelihoods are not protected under Norwegian law, their culture still is under Norwegian law, such as in the Human Rights Act[214] and Article 108 of the Constitution which mentions both Sámi culture and way of life.

The main social challenge coastal Sámi are facing with the installation of offshore renewable energy, or any energy, is the loss of their means of subsistence, the loss of their livelihood but also the progressive loss of their culture, due to forced migration. This has been confirmed by R. Johnstone who indicated that 'the impact of offshore industry on living marine resources are not fully known but there is already enough evidence to indicate that seismic testing can injure marine mammals and possibly fish, and noise pollution is known to trigger behavioral changes in singing, movement and mating.'[215] These changes in migration pattern would force coastal Sámi to migrate, and therefore leave the place they were born and raised, to better areas where they can fish, but which are not necessarily within their original homeland.

On the side of Inuit peoples in Canada, despite the small number of cases brought before the Canadian courts and tribunals regarding renewable energies, it seems it exists a bigger dichotomy among the Inuit peoples regarding the acceptance, or not, of renewable energies on their homelands. The main issue among these communities is their remoteness and the fact that they generally are off the electrical grid, so that they are heavily relying on fuel. However, as *e.g.*, the Ukrainian War showed, fuel prices are an unreliable factor to peacefully live their own way of life. This issue has already been mentioned in the past by D. Cambou and G. Poelzer: 'many Indigenous communities in the Arctic still lack access to clean and affordable energy or more singularly face the adverse impacts of renewable energy projects.'[216] They also add that '[…] many Inuit communities struggle to get affordable and clean energy in Alaska, Canada and Greenland […].'[217]

In the study conducted by N. Mercer *et al.* among Inuit communities of NunatuKavut, Labrador, 'wind and solar [resources] are regarded as low-impact development opportunities, which make use of the territory's abundant natural gifts without inflicting undue damage on land, waters, or

[213] Simpson, B. (2022) Can Norway balance its green energy goals with Indigenous concerns? Retrieved from < https://www.nationalgeographic.com/environment/article/can-norway-balance-green-energy-goals-with-indigenous-concerns> (last accessed 15.07.2022)
[214] *Supra* 101 (Norwegian Human Rights Act)
[215] Johnstone, R. (2018). Indigenous rights in the marine Arctic. In *Governance of Arctic Offshore Oil and Gas* (1st ed., pp. 72-91). Routledge, p. 81
[216] *Supra* 102, p. 188
[217] *Ibid*

people.'[218] Interviewed Inuit are conscious of the risks and the environmental impact renewable energies have on their environment, such as one of the respondents' answer demonstrates 'I look at the wind power or solar power, you are not doing no damage to the land.'[219] The lack of a solution in case of fuel shortages moves some Inuit of NunatuKavut being positive towards a positive stance regarding renewable energies, both as regards to the environmental impact and as a backup plan in case of fuel shortage ('[w]ind and solar are seen as measures to displace diesel-consumption and resulting emissions.')[220] Another Inuit said that 'if it's here, and available to us, like wind power, like solar – then we should try to capture what we can, so we can offset [diesel].'[221]

However, still within the Inuit community in NunatuKavut, some inhabitants have mixed feelings, who see the main downside of renewable projects are in their high price. An Inuit stated 'solar would be ideal, but… The panels themselves are like $20,000… How are people going to afford to put panels on their roof?'[222] and this view has been confirmed by another interviewed, who stated that 'solar power… It's a good idea, but it costs too much to get into. It's a price out of our reach.'[223] In the Annual Report to the Parliament[224] shows that Inuit earn, in average, $9,795 less than non-Indigenous Canadian.[225] Making the possibility to afford such 'new' technologies almost impossible. It should however be noted that these solutions only apply at small scale, if not the inhabitant scale, bigger projects of implementation of offshore renewable energies would be financed by the State as they would have as a goal to provide energy to the whole province or even State.

The study led by N. Mercer showed that 'community-members are not strictly opposed to marine renewables, but stressed desire to become informed about their benefits and risks prior to making decisions about development.'[226] This feeling is particularly present regarding the implication of marine renewable energies on the livelihoods and the cultural activities conducted by Inuit: 'fishery remains the backbone of economic activity in NunatuKavut communities and the harvesting of fish, sea birds, and marine mammals is integral for

[218] *Supra* 199, p. 11
[219] *Ibid*
[220] *Ibid*
[221] *Ibid*
[222] *Ibid*, p. 12
[223] *Ibid*, p. 12
[224] Annual Report to the Parliament, 2020. Retrieved from <https://www.sac-isc.gc.ca/DAM/DAM-ISC-SAC/DAM-TRNSPRCY/STAGING/texte-text/annual-report-parliament-arp-report2020_1648059621383_eng.pdf> (last accessed 15.07.2022)
[225] *Ibid*, p. 17
[226] *Supra* 199, p. 15

sustenance.'[227] It has been stressed by one of the interviewed from the aforementioned study that 'if it's [marine renewables] going to kill off our wildlife and the plankton on top the surface of the water, they're no good to us, cause that's the food chain.'[228] As previously mentioned, the food chain is part of the cultural and traditional way of life of Indigenous peoples, enshrined in several international conventions, meaning that, if due to the installation of structures for renewable energies Indigenous peoples lose their means of subsistence, States will have failed their duty of protecting them. However, as it has been pointed out 'there is limited research to determine if energy transitions are desired in Indigenous off-grid communities and the federal government's commitment to "eliminate diesel from all Indigenous communities by 2030" ignores the rights of communities.'[229]

To conclude this part, it can be said that the main social concern raised by Indigenous peoples regarding offshore renewable energies is also the one linked to their main legal challenge: the loss of their territory, and therefore of their culture and traditional way of life. It seems that some solutions can be available to Indigenous peoples, which will be discussed in more details in the next part.

4.2 How can coastal Arctic Indigenous communities benefit from offshore renewable energies infrastructures?

The second part of this Chapter entitled 'Challenges and opportunities raised by coastal Indigenous peoples regarding offshore renewable energies' will seek to understand how Indigenous peoples could benefit from the installation of such infrastructures, while maintaining and safeguarding their traditional way of life and their culture.

Mercer *et al.* pointed out that renewable energies could 'help Indigenous communities enhance self-sufficiency and achieve greater levels of autonomy by materially supplying their own sources of energy, by facilitating processes of self-decision making, or by generating revenues to invest in self-directed priorities.'[230] This could ideally work in Canada, where Indigenous peoples have a greater recognition of their lands, therefore having more autonomy on their choices. For instance, it is more applicable to Canadian Indigenous peoples compared to

[227] *Ibid*, p. 16
[228] *Ibid*, p. 16
[229] *Ibid*, p. 16
[230] *Ibid*, p. 4

Norwegian Sámi as the former mostly live in remote and off grid areas, making them dependent on fuel. However, for Norwegian Sámi peoples, they live on areas where access to electricity and energy is not an issue, making the argument of 'self-sufficiency' at the energy level weaker than in Canada.

For some Indigenous peoples in Canada, 'emphasiz[ing] renewable energy development [is] a means of exerting sovereignty.'[231] However, as reminded by the authors of the study, the argument of enhancing sovereignty and self-sufficiency could lead to a negative impact on Indigenous peoples if 'projects are forced on communities or if consultation processes are not meaningful – potentially resulting in inequitable and unjust development processes.'[232]

It has been pointed out by D. Cambou and G. Poelzer that 'it is not so clear to what extent the Sámi people in Norway exert control and decision-making power through local parastatal and cooperative electricity institutions.'[233] A better transparence on the actual weight of the Sámi Parliament in the decision-making of offshore renewable energy power plants could lead to a better energy justice among the inhabitants of Norway, especially among coastal Sámi communities. It is one of the solutions proposed in the Draft Nordic Sámi Convention. Article 16 of the Convention states that '[i]n matters of major importance to the Saami, negotiations shall be held with the Saami parliaments before decisions on such matters are made by a public authority.'[234] The Article adds that '[t]hese negotiations must take place sufficiently early to enable the Saami parliaments to have a real influence over the proceedings and the result.'[235] T. Koivurova explains that 'even though it is the public authorities that will determine whether a certain decision or plan is a matter of major importance to the Saami – and thus subject to negotiations – much emphasis in this evaluation must be placed on how the Saami parliament perceives the seriousness of planned measures.'[236] However, it seems important that there should be a safeguard that public authorities will consider any project or decision as impacting Sámi people wherever they have an interest. It has been confirmed by T. Koivurova who explained that 'because the threshold to trigger the right to negotiations of the Saami parliament is not high, it exposes all kind of governmental decisions to review by the Saami parliament.'[237]

[231] *Ibid*, p. 4
[232] *Ibid*, p. 4
[233] *Supra* 102, p. 190
[234] *Supra* 21
[235] *Ibid*
[236] Koivurova, T. (2008) The Draft for a Nordic Saami Convention. European Yearbook of Minority Issues Vol 6, 2006/7, pp. 119-120
[237] *Ibid*, p. 120

As mentioned earlier 'even though the authority might have subjected the measure in question as a matter for negotiations only, the Saami parliament might consider the matter one that may significantly damage the basic conditions for Saami culture, Saami livelihoods or society – and thus subject to its veto power.'[238] In the context of offshore renewable energies, States might consider the establishment of a project on a Sámi area, or near it, without taking into account the needs of the community neither its traditional knowledge. In this context, the consultation with the Sámi Parliament could reinforce the duty of consultation and participation. The Commentary to the Draft Nordic Sámi Convention confirms this idea by explaining that 'even minor measures may require the consent of the Saami parliament if they have a damaging impact on vulnerable Saami areas.'[239] The duty to consult the Sámi Parliament is stressed by the Draft Nordic Sámi Convention, and particularly its Commentary which insists on the fact that 'negotiations must be commenced as early as possible, in order for the Saami parliament to influence decision-making, and they must be given both financial and other resources (e.g., expertise assistance) to carry out these negotiations effectively.'[240]

Recognizing the rights of the Sámi to their traditional areas, both land and water, is also a means to safeguard their environment, and has been enshrined in the Draft Nordic Sámi Convention, Article 34. This Article must be read in accordance with Article 36 which states that 'regard shall be paid to the fact that continued access to such natural resources may be a prerequisite for the preservation of traditional Saami knowledge and cultural expressions.'[241] In addition, Article 36 especially mentions the application of the article to the use of natural resources 'such as […] wind power plants […].'[242]

Another solution to protect Indigenous peoples living in Arctic States would be to translate the Arctic Offshore Oil and Gas Guidelines the Arctic Council created and revised twice (in 2002 and 2009) into offshore renewable energies. Indeed, the second chapter of these Guidelines is entitled 'Arctic Communities, Indigenous Peoples, Sustainability and Conservation of Flora

[238] *Ibid*
[239] *Ibid*
[240] *Ibid*, p. 120
[241] *Supra* 21, Article 36(1)
[242] *Ibid*

and Fauna,' emphasizing the importance of their traditional knowledge,[243] their participation[244] and their traditional way of life.[245]

On the side of Inuit communities in Canada, K. Buhmann *et al.*[246] rightly pointed out the issues and opportunities raised by renewable energies: '[o]n the one hand, the projects may offer jobs and economic development. On the other hand, they are seen as posing new risks for people living in the Arctic.'[247] Some other benefits seen by the Inuit communities are 'expanding research in the field of Arctic renewable energy technologies […].'[248] D. Cambou and G. Poezler recommend to first properly consult the population, which could 'open up new avenues for reconciliation with Indigenous peoples through "steel in the ground" by creating equity ownership opportunities and long-term, sustainable revenue and employment streams.'[249]

For all Indigenous communities, the goal of achieving energy justice is also the path to 'increasing energy access and energy security.'[250] D. Cambou and G. Poelzer reaffirm the fact that '[l]ocally produced energy also provides opportunities for increased, sustainable employment, thus raising household incomes, if only modestly across a community as a whole.'[251] However, once again, these opportunities for Indigenous peoples should not be an excuse for sovereign States to impose their will, and their needs, for (offshore) renewable energy on Indigenous traditional lands.

To summarize, a cooperation between offshore renewable energies and Indigenous peoples could be possible at the condition that the latter are well-informed of the risks, but also the benefits these renewable technologies could bring them. The main pitfall to avoid is to impose a green shift to these peoples by not properly consulting but to include them in the decision-making process.

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[243] Arctic Council (2009) Arctic Offshore Oil and Gas Guidelines. Retrieved from <https://oaarchive.arctic-council.org/bitstream/handle/11374/63/Arctic-Guidelines-2009-13th-Mar2009.pdf?sequence=1&isAllowed=y> (last accessed 25.07.2022), p. 12
[244] *Ibid*, p. 12
[245] *Ibid*, p. 11
[246] *Supra* 16 (Buhmann, K., Bowles, P., Cambou, D., Hurup Skjervedal, A. S., Stoddart, M.)
[247] *Ibid*, p. 165
[248] McDonald, N., Pearce, J. (2013) Community Voices: Perspectives on Renewable Energy in Nunavut. *Arctic, 66*(1), 94-104, p. 100
[249] *Supra* 102, p. 191
[250] *Ibid*, p. 192
[251] *Ibid*

5 Chapter 5: Conclusion

Among the different duties and obligations States have regarding their populations, several duties can be pointed out for the planning offshore renewable energy. Amidst them, the most important is the duty of protecting Indigenous peoples living on their territories. From this duty stems also the duty of participation and consultation in order for the State to acquire an overview of the impact of a planned offshore renewable energy project. This duty for participation and consultation is fulfilled through the consultation of Indigenous parliaments, environmental impact assessments, public consultations and many other means that can be enshrined by national and international legislations.

The duty of the protection of the States' population bears an auxiliary component which is the protection of Indigenous peoples the States recognized and gave rights to. This protection is of great importance due to the fact that Indigenous peoples are minorities in the States and therefore do not have the power to change the path of a decision through their numerical weight by voting. Which makes it particularly difficult to safeguard their rights. This is even more important considering the fact that the traditional lands these peoples have lived on for millennia have been seized by what we now know as 'States,' therefore putting the peoples in a weakener position.

As previously mentioned, coastal States, as all States bound by international law, have a duty to protect both their populations and the environment. This duty is fulfilled through application of the precautionary principle (or approach, as seen in several countries around the world, such as the U.S.A) but also through international legally binding instruments. These instruments generally cover one 'theme' at the time, such as the LOSC covering the use of the seas, with a part on the protection of the marine environment, while the Paris Agreement, the UNFCCC and the Kyoto Protocol each cover the emission of greenhouse gases. National laws are also a tool to protect both Indigenous peoples and the environment.

Both the Commentary to the ICCPR and the *Poma Poma* case introduced criteria and threshold regarding the harm done to Indigenous peoples. These criteria are necessary as the Western societies have a different vision of what constitutes as culture than Indigenous peoples do. These criteria are crucial to protect the right to land and to culture of Indigenous peoples, otherwise States making laws will take their own vision of culture, without a precise understanding of what it means for Indigenous peoples living on these territories, leading to

legal clashes. To secure even more these rights, the ideal would be to set criteria in an additional annex to the ICCPR, with the participation and consultation of Indigenous peoples, in order for States parties to the Covenant to be able to fully respect Indigenous peoples' land and therefore fulfill their duty of participation and consultation set in other international agreements and national legal texts. However, the risk would be that less States will concur with this potential annex as they will carry a bigger burden than if no precise criteria are set, except in international jurisprudence.

These protections take different forms as it was previously presented in this thesis. For instance, Canada chose to crystallize Indigenous peoples' right in its Constitution and recognize their territories through land agreements signed with them. Norway, on its part decided to write its duty of protection into its Constitution but to give them a different status than the one given by Canada.

On the other side, States also need to protect the environment, as climate change is becoming a recurring issue in all fields. To act in such a way, States have signed conventions, treaties, agreements to legally bind them on the field of the protection of the environment. One of the means used is renewable energy that can be implemented onshore and offshore. However, these renewable energies need to be installed on lands or in marine areas where the States have sovereignty or sovereign rights. It has been seen in this thesis that most of the power plants, such as wind farms, are logically installed where the wind power is the strongest, or for tidal power where the tides are the strongest, etc. However, it often results in an encroachment of Indigenous peoples' traditional land such as demonstrated with Sámi and Inuit peoples. It worth mentioning that renewable energies, whether onshore or offshore, are not the only solution to counter climate change and that the balance between Indigenous peoples' rights and States international environmental duties should be perfectly struck to ensure peace between the two aforementioned actors.

To remedy this, States must conduct an EIA and strike a balance between safeguarding Indigenous peoples' rights to land and the protection of the environment as a whole. To do so, States must properly conduct the EIA, and even better would be a SIA which goes further than the EIA, and include Indigenous peoples' consultation and participation in the SIA, according to the States' commitments to international and national Indigenous peoples' laws as well as including their traditional knowledge in the planning and mapping of the suitable areas. In addition, the indication given in the *Fosen* case, that the green shift and States' international

obligations regarding climate change and the protection of the environment, should not be an excuse to set aside, or even worse, weaken Indigenous peoples' rights to enjoy their traditional way of living, culture and traditional lands., should be recalled
An important point to mention is the setting of precise criteria for conducting an EIA. Without precise criteria, States will have the tendency to apply a lower set of criteria for the execution of the EIAs. This lifts the monetary burden of conducting voluminous research off their shoulders but puts the burden of poorly conducted EIAs on the shoulders of the Indigenous peoples, because of the long-term consequences of the offshore renewable energy projects. The solution would therefore be the creation of an international set of criteria regarding EIAs and make them legally binding to the States. The pitfall could be that States would not accept any legally binding obligation in this way as it will place heavier burdens on them and therefore make the EIA not cost-beneficial.

This balance is hard to reach, each of the actors have their own goals and commitments to reach, in addition to the underlying interests. For the States, their goals are their commitment at the international level, especially for energy treaties, where concrete targets have to be met; for the renewable energy sector, it is its growth; while for Indigenous peoples it is the protection of their traditional lands, of their culture and traditional way of living. These diverse interests and objectives must not necessarily conflict with each other but should be harmonized with each other.

To reach this goal, a collaboration between the different actors on the theme of offshore renewable energies could be done through, for example, the establishment of expert committees, composed of scientists, Indigenous peoples, States representatives, and the renewable energy sector.

Another solution could be to use Article 56.1(a) LOSC to install offshore renewable energy power plants in the exclusive economic zone, where States have sovereign rights over the exploitation of natural resources. The advantage with this solution is two folded: coastal Indigenous peoples fish closer to the shore, meaning that any migration pattern will impact them less than installations in the territorial sea, and winds, currents and waves are generally stronger afar from shore, leading to a greater power creation.
The main drawback of using the exclusive economic zone for such power plants, is the transportation of the power, which will be lengthier and more costly than when closer to the shore. However, this monetary cost seems minimal compared to the benefit Indigenous peoples

will have to see their traditions and culture preserved, while States can fulfill their international commitments.

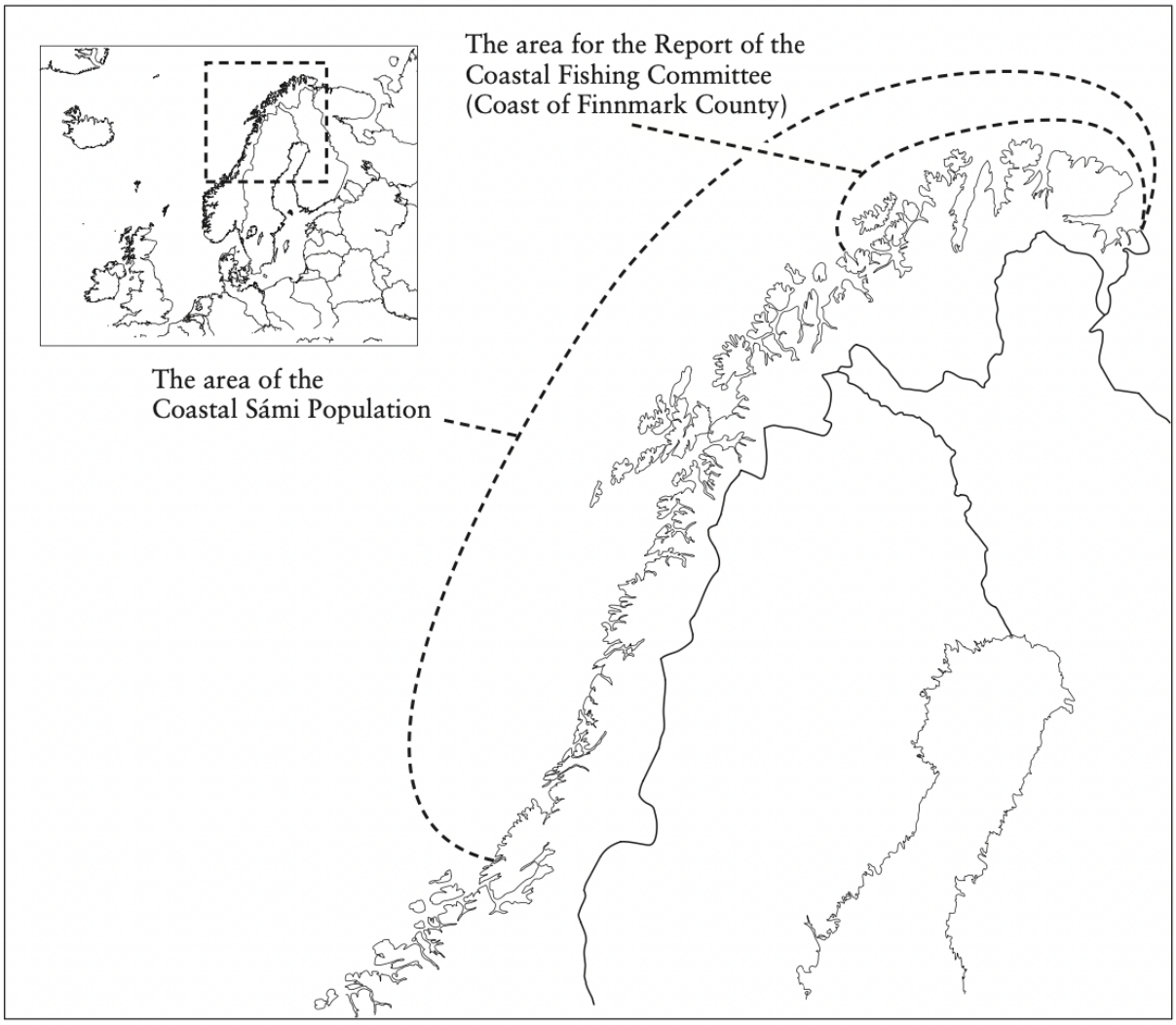
Some other solutions could be proposed, such as a revision of the LOSC and creating a new institution, on the same model as the Authority regarding the Area. The idea would be to create a regime for the high seas, under an institution specially designed to regulate offshore renewable energies in the high seas. Another point that could be revised in the LOSC would be to create a separate regime for offshore renewable energies, maybe under Part XII – Protection and Preservation of the Marine Environment. Indeed, if this provision or this regime for offshore renewable energies is written in the preservation of the marine environment part, they could take into account the global marine environment as well as its users, such as Indigenous peoples. However, the risk would be that less States would sign this new revision as it could be seen as a less favorable regime for them. As of today, the LOSC has 167 State parties, and a revision could lead to a lesser amount due to the change of regimes and positions of government since 1982.

Another proposition could be to add a human rights protocol to the LOSC to protect coastal Indigenous peoples of the world, as more and more issues regarding human rights at seas are arising, such as migrant crossing, for instance in the Mediterranean Sea and a non-respect of their rights by some States. The issue with such a protocol will be the same as with a revision of the whole LOSC: less countries could be willing to ratify it, especially countries where human rights are not a priority nowadays. A way of implementing it would be to have the international courts, such as the ITLOS, but also the United Nations Human Rights Committee, to explicitly reference the links between the LOSC and Indigenous peoples' law, as well as means to implement such a collaboration between the two.

Overall, several solutions regarding offshore renewable energies would be possible in theory but appear very difficult to implement in practice as the LOSC has been signed 40 years ago under different circumstances than the current ones. Strengthening human rights, in particular Indigenous peoples' rights, and safeguarding the global environment are two very closely linked battles that States generally deal with separately. As soon as States will understand that the environment cannot be understood without the help and traditional knowledge of Indigenous peoples, there will be more ways to have States and Indigenous peoples collaborate to solve pressing issues.

Annex

Annex I



The Coastal Sámi area of Norway. The map shows the total area with a coastal Sámi population and the area which was the subject of the Coastal Fisheries Committee's report. The committee's proposals and the response of the government are discussed below in sections III.B and III.C. Map: Bjørn Hatteng, UiT The Arctic University of Norway.

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