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# Subsistence?

A critical analysis of the EU protection of indigenous peoples' rights  
through the case of the EU Seal Regime

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# Abstract

The EU's protection of indigenous peoples' rights is investigated through the case of the EU Seal Regime. In 1983 and subsequently in 2009, 2010 and 2015, the EU adopted a limitation in the trade in seal products. Although an Inuit Exemption was always included as a protection to the Inuit market, the EU Seal Regime is criticized for violating indigenous peoples' rights. The EU seal legislation, the development of its scope and its praise and criticism is reviewed. The possible interpretations of the wording of the Inuit Exemption particularly the meaning of subsistence and the consequences for the level of protection provided is discussed. The vagueness of the formulation opens to interpretations reflecting a cultural misunderstanding and the Exemption – de facto if not directly – fails to protect the subsistence of Inuit and Inuit culture. No EU policies specifically relate to the protection of indigenous peoples living in relation to the EU. One way forward is a fair information campaign by the EU Commission on Inuit, Inuit realities and the Inuit Exemption. The EU's protection of indigenous peoples' rights is discussed in light of the concepts of universality and relativism. The EU should take care not to lose its otherwise good reputation as a protector of indigenous peoples' rights.

*Dedicated to Finn Lynge for the important work he did for Inuit rights in his lifetime,  
and to Aaju Peter for the important work she is doing now.*



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# 1 Introduction

One day in class in International Law, I was making a presentation on indigenous peoples' rights with a group of fellow students. Talking about the different human rights systems in the world, we asked: "Are there any indigenous peoples in Europe?" The answer was immediate: "No". The indigenous question is not as big a part of the European history and identity as in the more recently colonized North and South America or Africa, but indigenous peoples are trying to carry on with their traditional way of living in a few areas on the European continent.

This master thesis will investigate the level of protection of indigenous peoples' rights within the human rights system of the European Union. The EU Seal Regime will serve as a case for the investigation as it affects indigenous communities, particularly the Inuit. Although the indigenous Inuit of Greenland cannot be characterized as being part of Europe in a physiographic perspective, they are politically and in matters of international relations part of the European Union. Greenland was part of the European Union from 1973 to 1985 and is still connected to the EU through the Overseas Association Decision and through its affiliation to Denmark<sup>1</sup>, an active member of the EU. Greenland is one of the EU countries' Overseas Countries and Territories – OCT – and citizens of Greenland are EU citizens within the meaning of EU treaties and Danish nationality law. This only makes the case of the EU Seal Regime more directly relevant for this investigation. The Regulation contains a so-called Inuit Exemption, but does this Exemption actually protect the indigenous people? Some will argue yes, others will argue no. The Inuit Exemption, as well as its consequences, will be investigated so as to determine whether the EU lives up to its reputation and its goals concerning the protection of indigenous peoples.

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<sup>1</sup> European Commission. (2018, May). Greenland. Retrieved May 2018, from International Cooperation and Development - Building partnerships for change in developing countries: [https://ec.europa.eu/europeaid/countries/greenland\\_en](https://ec.europa.eu/europeaid/countries/greenland_en)

## 1.1 Research question

Does the EU adequately protect the rights of those indigenous peoples living in or in relation to EU Member States?

- ➔ How are indigenous peoples' rights protected within the EU?
- ➔ Does the EU Seal Regime, with its Inuit Exemption, support or weaken this protection?
- ➔ How could this protection be further reinforced?

## 1.2 Method, sources and limitation

The European Union's protection of indigenous peoples' rights will be scrutinized using the case of the EU's seal legislation as focus. The approach will be interdisciplinary, drawing on elements from international relations, law and humanities. In the following section, I will account for the methods used throughout this dissertation, as well as the sources used. I will likewise clarify the limitations of my dissertation due to focus of attention, but also time and space.

### 1.2.1 Qualitative research method

The investigative and analytical work of the dissertation is conducted using the qualitative method, based on qualitative data, so-called textual data, which in this dissertation is constituted by texts such as academic articles and testimonies. In qualitative research, interpretation is a key element: "Qualitative research is guided by concepts from the interpretive paradigm"<sup>2</sup>. The hermeneutic circle will be used in the interpretative approach to amplify my knowledge and understanding of the chosen topic. Through the dissertation, the legislative EU Seal Regime will be interpreted drawing on the opinions of academics from different fields that have uttered themselves on the legislation. Likewise,

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<sup>2</sup> Hennink, M., Hutter, I., & Bailey, A. (2011). Qualitative Research Methods. London: SAGE Publications Ltd. Page 14.

written testimonies of Inuit that are living and experiencing the consequences of the legislation will be used, along with an in-depth interview with Aaju Peter, lawyer and Inuit rights activist, and conversations with Geneviève Desportes, General Secretary of NAMMCO, the inter-governmental organization providing advice on the management of seal population in Northern Europe. The hermeneutic circle leads one to understand the parts on the basis of the whole and understand the whole on the basis of the parts<sup>3</sup>.

The qualitative research method is used in preference to the quantitative research method because the interpretation of the legislation is the center of the research question and the center of the analysis of the dissertation. Quantitative methods could have been useful to examine how many Europeans advocate for a total ban on seal hunt or how many Europeans consider buying sealskin coats, but when examining the arguments for whether or not the EU seal legislation is fulfilling its purpose and whether or not it is violating indigenous peoples' rights the qualitative approach is more relevant, as illustrated in the table below. The objective of the dissertation is not to quantify data and extrapolate results to a broader population, but rather to analyze the EU's protection of indigenous peoples' rights through the wording of its legislations.

	<b>Qualitative research</b>	<b>Quantitative research</b>
Objective	To gain a detailed understanding of underlying reasons, beliefs, motivations	To quantify data and extrapolate results to a broader population
Purpose	To understand why? How? What is the process? What are the influences or contexts?	To measure, count, quantify a problem. How much? How often? What proportion? Relationships in data.
Data	Data are words (called textual data)	Data are numbers or numerical data
Study population	Small number of participants or interviewees, selected purposively (non-randomly)	Large sample size of representative cases
	Referred to as participants or interviewees	Referred to as respondents or subjects
Data collection methods	In-depth interviews, observation, group discussions	Population surveys, opinion polls, exit interviews
Analysis	Analysis is interpretive	Analysis is statistical
Outcome	To develop an initial understanding, to identify and explain behaviour, beliefs or actions	To identify prevalence, averages and patterns in data. To generalize to a broader population

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<sup>3</sup> Klausen, S. H. (2013). *Hvad er videnskabsteori*. Akademisk Forlag. Page 153.

<sup>4</sup> *Supra* note 2. Page 16.

### 1.2.2 Sources and texts

To answer the research question, different types of texts and sources will be used. As motivated in the introduction, the dissertation concerns the protection of indigenous rights and the Universal Declaration of the Rights of Indigenous Peoples will therefore be central. The case of the EU Seal Regime is used to exemplify the protection of indigenous peoples' rights within the EU, and the seal legislation – a total of five legal texts – will be the center of the analysis. As a means to outline the debate concerning the legislation, academic texts with different centers of attention will be taken into consideration. Background information so as to Inuit culture and Inuit perceptions and experience of the seal legislation will mainly come from two notable advocates for Inuit rights, Finn Lynge, from Greenland, and Aaju Peter from Nunavut, Canada.



### 1.2.3 Limitation of subject

In my analysis of the EU's protection of indigenous peoples' rights I have chosen to focus on the case of the EU Seal Regime and the legislation's consequences to Inuit – one of two indigenous peoples living in relation to the EU. A closer look at the EU's protection of indigenous peoples' rights could have included both the EU's initiatives inside the EU as well as outside the borders of the Union. Indigenous peoples within the EU are, however, subject to much less attention and awareness than the indigenous peoples of the Southern hemisphere, as experienced in the classroom in the monastery of San Nicolò, and, due to the limitation of time and space, I therefore chose to concentrate on one of

the two indigenous peoples that live in relation to EU member states. Likewise, much EU legislation could have been investigated, but the Seal Regime is particularly relevant because it already is centerpiece in the discussion on whether or not the EU violates indigenous peoples' rights.

Regarding the EU Seal Regime, choices of attention have likewise been made. Many angles could have been chosen in relation to this legislation – such as the animal welfare, NGOs' influence in the decision process, the Europeans' perception of seal hunt and the reasons behind this perception and an analysis of the proportionality of animal rights versus indigenous peoples' rights. The angle subsistence of the indigenous people was chosen because the term “subsistence” itself is such a central element of the Inuit Exemption as well as of the criticism to the legislation. Subsistence of the Inuit is the reason behind the Inuit Exemption; it is likewise the reason for the Inuit fight against the same legislation and its exemption. As apparent from the section outlining the opinions on the EU Seal Regime, the opinions are many and diverse, touching upon different elements of the seal legislation – from trade, to human rights and environmental consequences. Due to limitations of time and space it was not possible to investigate and carry on all opinions. Choices have therefore been made, they will be explained further in the relevant section.



### 1.3 Abbreviations

• CJEU	Court of Justice of the European Union
• EC	European Community
• ECHR	European Convention on Human Rights
• ECSC	European Coal and Steel Community
• EEC	European Economic Community
• EFSA	European Food Safety Authority
• EIDHR	European Initiative for Democracy and Human Rights
• EU	European Union
• EUCFR	European Union Charter of Fundamental Rights
• FCNM	Framework Convention on the Protection of National Minorities
• HRC	Human Rights Committee
• HSI	Humane Society International
• ICCPR	International Covenant on Civil and Political Rights
• IFAW	International Fund for Animal Welfare
• ILO	International Labour Organization
• ITK	Inuit Tapiriit Kanatami
• NAMMCO	North Atlantic Marine Mammal Commission
• OAS	Organization of American States
• TFEU	Treaty of Functioning of the EU
• UN	United Nations
• UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
• WGIPC	Working Group on Indigenous Populations/Communities in Africa
• WTO	World Trade Organization
• WWF	World Wildlife Fund



## 2 Background: Indigenous Peoples' Rights and the EU Seal Regime

As described in the introduction, indigenous peoples are affected by matters relating to the EU and its policies, of which the EU Seal Regime is an outstanding example. This section will represent an information base and introduction for the rest of the dissertation. It is split up into two sub-sections, each relating to the two fundamental areas of the dissertation, namely indigenous peoples and their rights in the first sub-section and the EU legislation on sealing for the second.

### 2.1 Indigenous peoples

When analyzing the EU protection of indigenous rights, it is necessary to establish an understanding of who indigenous peoples are and which specific rights they have. The UN estimates that there are 370 million indigenous people living in the world, spread across 90 countries<sup>5</sup>. They represent more than 5000 cultures and speak an overwhelming majority of the world's 7000 languages. But what is the definition on an indigenous people, who are they? This section attempts to answer this question review the human rights specifically associated to indigenous peoples, as well as describe how indigenous rights are inscribed and protected within the human rights regional systems of the world.

#### 2.1.1 Indigenous peoples – a definition

A common conception of indigenous peoples is that they are a minority; that they have distinct cultural traditions and practices different from the majority, maybe even a distinct social and political system. This conception of indigenous peoples as a minority comes from the understanding of indigenous peoples as the first inhabitants of the territory. "Indigenous peoples" is a term often used in connection to colonialism to describe the people that lived on the respective lands before the

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<sup>5</sup> United Nations Development Programme. (2018). Indigenous Peoples. Retrieved May 2018, from Democratic governance and peacebuilding: <http://www.undp.org/content/undp/en/home/democratic-governance-and-peacebuilding/rule-of-law--justice--security-and-human-rights/indigenous-peoples.html>

conquistadores and cowboys came along. And this is exactly how indigenous peoples were defined in the ILO Convention 107 from 1956, titled *Convention (No.107) concerning the Protection and Integration of Indigenous and Tribal and Semi-Tribal populations in independent countries*: in terms of their history of colonization along with their distinct social and cultural characteristics. The ILO Convention 107 was the first international legal instrument providing for a definition of indigenous peoples<sup>6</sup>.

“Original inhabitants” and the descendants of same does not define indigenous peoples adequately by itself, however. The adoption of the ILO Convention 169 in 1989, *Convention (No.169) Concerning Indigenous and Tribal People in Independent Countries*, introduces the subjective criterion of self-identification<sup>7</sup>. A labelling given by the surrounding world is not enough to define a person as a member of an indigenous people: the members of the indigenous group have to regard themselves as part of the group. Also, the term “population” is replaced by the term “peoples” in the ILO Convention 169, thus supporting “the respect of the traditions, customs and way of life of indigenous peoples rather than the integration of these communities into the rest of society”<sup>8</sup>.

In 2007, after more than ten years of discussions and negotiations, the UN General Assembly adopted the UNDRIP. It was adopted on September 7<sup>th</sup>, 2007, by a majority of 144 votes out of 160<sup>9</sup>. The Declaration introduced a new element, a new right, to the indigenous peoples: “Throughout the drafting process [of the UNDRIP], indigenous peoples maintained that control over their lands was vital for the exercise of their right to self-determination as well as their very survival”<sup>10</sup>. As the first international document to introduce indigenous peoples’ right to self-determination, the declaration, according to Maria Victoria Cabrera Ormaza, “constitutes a very important step in the internalization

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<sup>6</sup> Ormaza, M. V. (2012). Re-thinking the Role of Indigenous Peoples in International Law: New Developments in International Environmental Law and Development Cooperation. *Goettingen Journal of International Law*, 4(1), 263-290. Page 270.

<sup>7</sup> *Ibid.* Page 272.

<sup>8</sup> *Ibid.*

<sup>9</sup> UNDESA Division for Inclusive Social Development Indigenous Peoples. (2007). United Nations Declaration on the Rights of Indigenous Peoples. Retrieved July 2018, from UNDESA Division for Inclusive Social Development Indigenous Peoples: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>10</sup> Barelli, M. (2010, November). The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime. *Human Rights Quarterly*, 32(4), 951-979. Page 959.

of indigenous rights”<sup>11</sup>. UNDRIP, in other words, carries on the definition of indigenous peoples as brought forward by the ILO Convention 107 and ILO Convention 169, and further develops it.

Notwithstanding the continued development of the indigenous rights regime there is still no international agreement on a universal definition of indigenous peoples. There is, however, as the development through the international instruments indicates, a common meaning, a common sense on who the term *indigenous peoples* refers to. In short, indigenous peoples are characterized by the following:

- they are a minority in a non-dominant position
- they have distinct cultural and social practices, as well as distinct traditions
- they have a special relation to the land and territories on which they live, often because of ancestral ties
- they are objectively considered to be member of the indigenous people in question, just as they subjectively regard themselves as part of the group.

But why are Icelanders, Norwegians or Faroese, who have inhabited the Faroe Islands longer than the maori have inhabited New Zealand, not defined as *indigenous peoples* when Greenlanders are<sup>12</sup>, asks Finn Lynge, an indigenous rights activist and at times a representative of the Inuit Circumpolar Conference<sup>13</sup> and the International Work Group for Indigenous Affairs. According to Lynge, the element of ethnicity also plays a role: whereas Icelanders, Norwegians and Faroese all are from European “white” descent, “Greenland hunters will always look different even if they get the idea of wearing suit and tie and fancy shoes”<sup>14</sup>. As Lynge points out, the definition of indigenous peoples is not stringent, there is no clear and specific delineation. The characterization of *indigenous peoples* is as much a characterization to define a group as it is a political tool to obtain those specific rights that are allocated indigenous peoples.

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<sup>11</sup> *Supra* note 6. Page 274.

<sup>12</sup> Lynge, F. (2013). *Et langt liv på tværs - Eqqaamsat - 1980-2010* (Vol. 2). Viborg: Forlaget Atuagkat. Page 112-114.

<sup>13</sup> Since 2006: the Inuit Circumpolar Council

<sup>14</sup> *Supra* note 12. Page 113. (*Personal translation*).

### 2.1.2 Indigenous peoples' rights

Individuals that belong to an indigenous people are first of all humans: they have the right to full enjoyment of all human rights. With the recognition that indigenous peoples through history have been victims of marginalization, violence and exclusion<sup>15</sup>, and with the recognition that these vulnerable groups need special protection, a specific indigenous peoples' rights regime has developed over many years. The UNDRIP was adopted in 2007, being the first UN human rights document relating specifically to indigenous peoples. The UNDRIP consists of 46 articles outlining a variety of specific rights to indigenous peoples. The rights within the Declaration are overall separated into three categories of rights: property rights, cultural rights and political rights, as well as it protects both individual and collective rights. The indigenous peoples' rights relating to the research question are further developed in the following.

Human rights are fundamentally individual rights, protecting the individual human. Indigenous peoples, as an integral group, are, however, in the need of specific rights protecting their collectivity and their collective way of living: "for many indigenous peoples their identity as an individual is inseparably connected to the community to which that individual belongs"<sup>16</sup>. This is where the collective rights of indigenous peoples come in: collective rights protect the group and the functioning of the group, acknowledging the importance of the survival of the group as a prerequisite for the survival or subsistence of the indigenous people. Examples of collective rights are the development and preservation of the indigenous peoples' distinct culture, language and traditions. As described in the previous section on the definition of an indigenous group, indigenous peoples have a distinct culture, distinct traditions and practices from the majority, which make them special and characterizes them as a distinct group. Article 11(1) of the UNDRIP emphasizes the indigenous peoples' rights to "practice and revitalize their cultural traditions and norms" and Article 31(1) underlines indigenous peoples' right "to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions".

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<sup>15</sup> UNDRIP, Recital

<sup>16</sup> United Nations Regional Information Center for Western Europe. (2017). Individual vs. collective rights. Retrieved May 2018, from United Nations Regional Information Center for Western Europe: <https://www.unric.org/en/indigenous-people/27309-individual-vs-collective-rights>

Article 3 of the UNDRIP is also essential when it comes to the protection of indigenous culture. The article links cultural development to the right of self-determination: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The right to self-determination is a very central right that was internationally first granted to the indigenous peoples with the adoption of the UNDRIP in 2007, as described in the previous section. This entails that the indigenous peoples are free to determine how they and their culture should develop – without interference from the state in which they live. Self-determination applies to both culture and political status, as stated in the article, but it also applies to the management of the territory on which the indigenous people lives and has lived.

“Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities”. Such reads Article 20(1) of UNDRIP. By this article, the indigenous people are secured their right to maintain their culture at a status-quo but also develop as they see fit, as their way of life takes them. “Their own means of subsistence” here relates to amongst other the food resources the indigenous people have traditionally had access to, through agriculture or hunting, means made possible by the territory on which they have traditionally lived and on which they have developed and practiced their distinct culture. Indigenous peoples depend on this land, why the rights to environmental protection has been granted them as a right through Article 29(1) of the UNDRIP: “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination”. The State is thus given the responsibility to protect and maintain the territory of the indigenous in such a way as they can keep on living and developing their culture.

### 2.1.3 The protection of indigenous peoples' rights within the regional systems

Regional systems are an important part of the international protection of human rights. According to Mauro Barelli<sup>17</sup>, the Inter-American, the African, and the European regional human rights systems have played a central role in the emergence of the global regime of indigenous peoples' rights. Through their regional mechanisms they have monitored and promoted indigenous rights by supporting and strengthening the global political process towards the recognition of indigenous rights, as well as contributing significantly to the legal interpretation of controversial provisions of the regime. This section will briefly review and compare the three existing regional human rights systems – the Inter-American, African and European. In order to make a brief comparative analysis of the focus on indigenous rights in different parts of the world, this section will focus on the three regional human rights systems. The Pacific and Asian regions are lacking such organizations<sup>18</sup> despite the existence of recognized indigenous groups in both geographical areas.

#### 2.1.3.1 The Inter-American System of Human Rights

The Inter-American system of human rights was the first regional human rights system to be established. It is based under the Organization of American States (OAS), an organization of 35 independent countries of the Americas, and the system is composed of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights<sup>19</sup>. The OAS has been the forefront of the protection of indigenous rights<sup>20</sup>. Since its very establishment in 1948, the existence of “an indigenous question” was acknowledged through amongst others Article 39 of the Inter-American Charter of Social Guarantees that provides for the protection of the “native population”<sup>21</sup>. A systematic approach to indigenous rights was followingly developed in the late 1980s. Following the decision of the UN Working Group on Indigenous Populations to draft a universal declaration on the rights of indigenous peoples, as well as a recognition that the existent

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<sup>17</sup> *Supra* note 10. Page 953.

<sup>18</sup> Grimheden, J. (2009). Human Rights in the Asia-Pacific. In F. G. Isa, & K. de Feyter, Barelli, M. (2010, November). The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime. *Human Rights Quarterly*, 32(4), 951-979. Page 962. (pp. 943-962). Bilbao: University of Deusto. Page 943.

<sup>19</sup> International Justice Resource Center. (n.d.). Inter-American Human Rights System. Retrieved May 2018, from International Justice Resource Center: <https://ijrcenter.org/regional/inter-american-system/>

<sup>20</sup> *Supra* note 10. Page 962.

<sup>21</sup> *Ibid.*

legal framework was not enough to address the indigenous populations and the particular problems they faced, it was decided to draft an American Declaration on the Rights of Indigenous Peoples<sup>22</sup>. A few years later, in 1990, the Inter-American Office of the Special Rapporteur on the Rights of Indigenous Peoples was created, which in turn a decade later inspired the UN to create a similar mechanism. The American Declaration on the Rights of Indigenous Peoples was adopted in 1997 – beating the UN Declaration on the Rights of Indigenous Peoples by 10 years<sup>23</sup>. The Inter-American system of human rights, in other words, integrated specific rights to indigenous peoples from the very beginning, giving indigenous rights a special status.

#### 2.1.3.2 The African System of Human Rights

The African system of human rights is the youngest of the three regional systems and was established a lot later than the Inter-American system, but also here the indigenous rights regime is quite strong. The African regional system is composed of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights<sup>24</sup>. The African Charter on Human and People's Rights was adopted in 1981, including both civil and political rights, economic and social rights and individual duties, but also so-called solidarity rights such as the right to self-determination of Article 20 and the right to development of Article 22<sup>25</sup>. The mere name of the Charter clearly suggests an understanding and acknowledgement of the existence of different peoples, an aspect that is not that obvious in neither the Inter-American nor the European system.

Despite the delay in the development of the African human rights system, the process of recognition and promotion of indigenous peoples' rights has progressed rapidly and contributed to the global process<sup>26</sup>. In 2000, the African Commission decided to establish the Working Group on Indigenous

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<sup>22</sup> Organization of American States. (Adopted 18 Nov. 1989). General Assembly Resolution No. 1022/89. Retrieved May 2018, from Organization of American States: <http://www.oas.org/en/sla/docs/ag03803E01.pdf>

<sup>23</sup> This section is inspired by page 962-963 of: Barelli, M. (2010, November). The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime. *Human Rights Quarterly*, 32(4), 951-979.

<sup>24</sup> International Justice Resource Center. (n.d.). African Human Rights System. Retrieved May 2018, from International Justice Resource Center: <https://ijrcenter.org/regional/african/>

<sup>25</sup> Organization of African Unity. (Adopted 1981). African (Banjul) Charter on Human and Peoples' Rights. Retrieved May 2018, from African Commission on Human and Peoples' Rights: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf)

<sup>26</sup> *Supra* note 10. Page 964.

Populations/Communities in Africa (WGIPC)<sup>27</sup> and “[w]ith this historic step, the African Commission had opened the door to further important developments”<sup>28</sup>. Already since 2001, representatives of indigenous communities have attended sessions of the African Commission testifying “their desperate situation and the gross human rights violations to which they are victim”<sup>29</sup> as well as the different kinds of discrimination they experience. The situation of the indigenous peoples and communities of the countries of the former Organization of African Unity, now the African Union, is thus an important part of the agenda of the African Commission who has assigned the WGIPC an increasingly significant role since its creation<sup>30</sup>.

### 2.1.3.3 The European System of Human Rights

The Inter-American and African regions share the characteristics of a large number of indigenous peoples living in their territories<sup>31</sup>. In the European region, however, there are few indigenous peoples, mainly confined to its far North and far East, far away from the European center, the best known being the Inuit in Greenland and the Sámi, spread across Northern Scandinavia and the Kola Peninsula of Russia. Another difference between the Inter-American and African system on one side compared to the European is that whereas the two former regional systems have mechanisms that protect indigenous rights specifically, this is not the case in the European region. The lack of indigenous communities remaining in Europe, and the fact that the few communities are living far away from the European center, is a major reason that the European regional system has focused on minority rights generally in preference to indigenous rights specifically<sup>32</sup>. Minorities and indigenous peoples share many characteristics: both are usually in a non-dominant position, with culture, languages and religious beliefs different from those of the majority, and with a self-identification as

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<sup>27</sup> African Commission. (Adopted 6 Nov. 2000). Resolution on the Rights of Indigenous Peoples’ Communities in Africa. Retrieved May 2018, from African Commission on Human and Peoples’ Rights: <http://www.achpr.org/sessions/28th/resolutions/51/>

<sup>28</sup> *Supra* note 10. Page 965.

<sup>29</sup> African Commission’s Working Group of Experts on Indigenous Populations/Communities. (2005). Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities. Retrieved May 2018, from IWGIA: [https://www.iwgia.org/images/publications//African\\_Commission\\_book.pdf](https://www.iwgia.org/images/publications//African_Commission_book.pdf). Page 8.

<sup>30</sup> *Supra* note 10. Page 965.

<sup>31</sup> International Work Group for Indigenous Affairs. (April 2018). The Indigenous World 2018. (P. Jaquelin-Andersen, Ed.) Copenhagen: The International Work Group for Indigenous Affairs.

<sup>32</sup> Kovács, P. (2016). Indigenous Issues Under the European Convention of Human Rights, Reflected in an Inter-American Mirror. The George Washington International Law Review, 48(4), 781-806. Page 785.



part of the group. With many overlapping characteristics the big difference is the traditional, long-standing and ancestral attachment to the land of the indigenous peoples<sup>33</sup>.

Within the European regional system there are two major institutions: the Council of Europe and the European Union (EU). Even though different on several aspects and created 50 years apart, they complement and support each other in many ways, why both institutions should be considered part of the European regional human rights system. The human rights protection within the Council of Europe and the protection of human rights within the EU will be elaborated separately.

#### 2.1.3.3.1 The Council of Europe

The Council of Europe was founded in 1949<sup>34</sup> as a reaction to the atrocities committed during World War II and with the goal of protecting the human rights of those people living on the geographical Europe. It is an inter-governmental organization with currently 47 member states. In its protection of human rights, the Council of Europe is based on the *European Convention on Human Rights* (ECHR), adopted in 1951. The Convention protects civil and political rights, whereas the *European Social Charter*, signed in 1961 and revised in 1999, protects the economic and social rights<sup>35</sup>. The European Court of Human Rights is the judicial body that treats the violations of the ECHR; individual victims can submit their complaints directly to the court<sup>36</sup>.

In the ECHR, indigenous rights are not mentioned explicitly. Article 14 concerns the prohibition against discrimination, and the elements of language, religion and “national or other origin” as well as “association with a national minority” are mentioned as grounds on which one may not be discriminated<sup>37</sup>. These same grounds are likewise stated in the general prohibition against discrimination in Article 1 of *Protocol 12 for the Protection of Human Rights and Fundamental*

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<sup>33</sup> Right to Education. (2018). Minorities and Indigenous Peoples. Retrieved June 2018, from Right to Education: <http://www.right-to-education.org/issue-page/marginalised-groups/minorities-and-indigenous-peoples>

<sup>34</sup> Pinder, J., & Usherwood, S. (2007). *The European Union - A Very Short Introduction*. Oxford: Oxford University Press. Page 178.

<sup>35</sup> Gauthier, C., Platon, S., & Szymczak, D. (2017). *Droit européen es droits de l'Homme*. Paris: Éditions Dalloz. Page 24-25.

<sup>36</sup> International Justice Resource Center. (n.d.). European Court of Human Rights. Retrieved May 2018, from International Justice Resource Center: <https://ijrcenter.org/european-court-of-human-rights/>

<sup>37</sup> Council of Europe & the European Court of Human Rights. (1950). *European Convention on Human Rights*. Retrieved May 2018, from European Court of Human Rights: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf). Page 12.

*Freedoms*<sup>38</sup>. As explained above in section 2.1.1 on the definition of indigenous peoples, the features of distinct language and religion, as well as the subjective and objective association to a minority, are some of the characteristics of an indigenous people, but the term “indigenous people” is however not mentioned explicitly in the ECHR. Indigenous peoples’ rights within the ECHR can merely be interpreted implicitly in these two above mentioned articles.

Another document to be considered according to the protection of indigenous peoples’ rights within the Council of Europe is the *Council of Europe’s Framework Convention on the Protection of National Minorities* (FCNM) adopted in 1994 and entering into force in 1998<sup>39</sup>. The FCNM mentions rights such as the right to cultural development and preservation of cultural traditions and heritage in Article 5 and the right to effective participation in affairs affecting them in Article 15<sup>40</sup>, which are central in the indigenous peoples’ rights regime. However, like the ECHR, the FCNM does not contain explicit references to indigenous peoples. Both documents do contain, though, references to *national minorities*: Indigenous peoples are often a minority in the country where they live. Despite the lack of explicit mentioning within the FCNM and the ECHR it is therefore clear that indigenous peoples are likewise protected by the protection accorded to national minorities. According to Barelli, the thorough protection of national minorities, combined with the relatively small number of indigenous peoples within the region, discouraged the creation of regional mechanisms or bodies designed specifically to protect the rights of indigenous peoples<sup>41</sup>.

#### 2.1.3.3.2 The EU

The connection between Council of Europe and the EU in matters of human rights is that the EU itself, its current 28 member states and also candidates for the EU membership, are required to ratify the ECHR under the Article 6(2) of the *Treaty of Lisbon*. As of now, the EU has not yet completed its accession to the ECHR<sup>42</sup>. Within the EU, the so-called fundamental rights are guaranteed

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<sup>38</sup> *Supra* note 37.

<sup>39</sup> Council of Europe. (2018). About the Framework Convention for the Protection of National Minorities. Retrieved May 2018, from Council of Europe: <https://www.coe.int/en/web/minorities/at-a-glance>

<sup>40</sup> Council of Europe. (1995). Framework Convention for the Protection of National Minorities and Explanatory Report. Retrieved May 2018, from Council of Europe: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c10cf>

<sup>41</sup> *Supra* note 10. Page 967.

<sup>42</sup> European Parliament. (2018, April 20). Legislative train schedule - Area of justice and fundamental rights: Completion of EU accession to the ECHR. Retrieved May 2018, from European Parliament:

nationally through the constitutions of the member states and at EU level by the *Charter of Fundamental Rights* (EUCFR); the EUCFR thus only applies to Union law.

The history of the EU began with the creation of the European Coal and Steel Community (ECSC) with the Treaty of Paris in 1951 as a reaction to the divided Europe under World War II; it was created to make war impossible, unthinkable<sup>43</sup>. The European Economic Community (EEC) was established through the *Rome Treaty* in 1957, then renamed the European Community (EC) by the *Treaty of Maastricht* in 1992<sup>44</sup>. The ECSC was absorbed by the EC in 2002. With the signing of the *Lisbon Treaty* in 2009, the EC became the EU. Human rights were not part of the initial objective of the EEC/ECSC/EC/EU, whose focus was mainly the creation and maintenance of an internal market as a means to prevent future wars<sup>45</sup>. Little by little, a protection of human rights did however develop within the EU and the CJEU; the latter both creating its own general principles and leaning on the ECHR in the decision on many cases. In 1999 it was decided to draft a declaration on fundamental rights; the EUCFR became legally binding with the entering into force of the *Treaty of Lisbon*, also known as the *Treaty of the Functioning of the EU* (TFEU), in 2009<sup>46</sup>. In contrast to the ECHR, the EUCFR contains both civil and political rights and economic and social rights; it is founded on the “indivisible, universal values” of human dignity, freedom, equality and justice<sup>47</sup>. It is the first international human rights instrument emphasizing the indivisibility of human rights. Article 21 of the EUCFR concerns the right to non-discrimination, and Article 22 states that “The Union shall respect cultural, religious and linguistic diversity”, but just like the ECHR it contains no explicit mentioning on indigenous peoples’ rights.

Within the EU there are, however, specific policies regarding indigenous peoples’ rights. One important example is the Council Resolution from 1998, on Indigenous Peoples within the

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<http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-completion-of-eu-accession-to-the-echr>

<sup>43</sup> *Supra* note 34. Page 1-3.

<sup>44</sup> *Supra* note 35. Page 27.

<sup>45</sup> *Ibid.* Page 30.

<sup>46</sup> *Ibid.* Page 30-33.

<sup>47</sup> The European Communities. (2000). Charter of Fundamental Rights of the European Union. Retrieved May 2018, from European Parliament: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

Framework of the Development Cooperation of the Community and the Member States<sup>48</sup>, which establishes the guidelines on the cooperation with and support for indigenous peoples. Through the Resolution the Council acknowledges the key role played by indigenous peoples in the conservation and sustainable use of natural resources<sup>49</sup>, underlines the importance of their effective participation<sup>50</sup>, and establishes that “indigenous peoples have the same rights as everybody else to a secure livelihood, and the lifestyle of their choice, [...] they should also have access, on a non-discriminatory basis, to the opportunities and natural resources required to achieve these aspirations, [...]”<sup>51</sup>.

These guidelines are carried on in a number of policies and initiatives by the EU in the area of human rights, for example in *A Sustainable EU Policy for the High North*<sup>52</sup>, adopted in 2011. The policy regards amongst other things the consequences of climate change on the indigenous peoples of the Arctic and their way of life, and “the importance of interacting with Arctic communities [...] in order to improve the quality of life of indigenous and local communities in the region and gain more understanding of the living conditions and cultures of these communities”<sup>53</sup> is emphasized. Initiatives to protect the rights of indigenous peoples in countries outside of the EU are likewise on the EU’s agenda. In a program aimed to support and promote human rights and democracy worldwide, namely the *European Initiative for Democracy and Human Rights* (EIDHR), indigenous peoples are named specifically as a center of attention: “In implementing the EIDHR the Commission will ensure the promotion of gender equality, of children's rights and of the rights of indigenous peoples, through 'mainstreaming' them as cross-cutting issues in all projects”<sup>54</sup>.

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<sup>48</sup> Council of the European Union. (1998, November 30). Council Resolution of 30 November 1998: Indigenous peoples within the framework of the development cooperation of the Community and the Member States. Retrieved May 2018, from European Commission - Development: [http://ec.europa.eu/development/lex/en/pdf/res\\_98\\_indigen.pdf](http://ec.europa.eu/development/lex/en/pdf/res_98_indigen.pdf)

<sup>49</sup> *Ibid* paragraph 5

<sup>50</sup> *Ibid* paragraph 2

<sup>51</sup> *Ibid.* paragraph 5

<sup>52</sup> European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North, OJ C 136, 2012.

<sup>53</sup> *Ibid.* paragraph 7

<sup>54</sup> Commission of the European Communities. (2001, May 8). Communication from the Commission to the Council and the European Parliament: The European Union's Role in Promoting Human Rights and Democratisation in Third Countries. Retrieved May 2018, from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0252&from=EN>. Page 29.

The Inuit and Saami are the only nationally recognized indigenous peoples living partly on the territory of EU Member States<sup>55</sup>; the indigenous peoples are in other words too few and too far and have therefore not been the center of attention in the EU human rights agenda. Despite the lack of a body or mechanism for the protection of indigenous peoples' rights specifically, indigenous peoples are an important element on the agenda of the EU – both regarding indigenous communities inside as well as outside the EU. Also, says Barelli<sup>56</sup>, “it should not be forgotten that all EU countries have consistently supported initiatives aimed at fostering the rights of indigenous peoples within the UN human rights machinery”. In line with this, in the *EU Policy for the High North*, the European Parliament calls on all Arctic governments, especially Russia, to adopt and endorse the UNDRIP<sup>57</sup>.

#### 2.1.3.4 Sub-conclusion: different levels of protection

The three regional human rights systems of the world all support the protection of indigenous rights – although in slightly different manners. The issue of indigenous rights was part of the Inter-American system, the first regional system, from the very beginning. Also, within the African system, essential indigenous rights such as the right to self-determination were included in the Charter from its adoption and the protection of indigenous rights has increased rapidly. In the European system of human rights, however, there is no explicit mentioning of indigenous rights neither within the ECHR or the EUCFR. With only a few indigenous communities living in the European region, compared to the many living in the African or the Inter-American regions, the European regional system has focused more on the protection of minority rights, which to a large degree also covers the protection of indigenous rights. Within the EU, policies have though been adopted on the protection of indigenous rights mainly outside of Europe, but also a few policies protecting the indigenous peoples on the European territory.

Indigenous peoples live all over the world – from North to South, from West to East. The respect for their history and their culture is increasing and an increasing number of countries around the world

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<sup>55</sup> European Commission. (2016, April 27). Joint Communication to the European Parliament and the Council: An integrated European Union policy for the Arctic. Retrieved March 4, 2018, from European Union External Action: [http://eeas.europa.eu/archives/docs/arctic\\_region/docs/160427\\_joint-communication-an-integrated-european-union-policy-for-the-arctic\\_en.pdf](http://eeas.europa.eu/archives/docs/arctic_region/docs/160427_joint-communication-an-integrated-european-union-policy-for-the-arctic_en.pdf). Page 2.

<sup>56</sup> *Supra* note 10. Page 970.

<sup>57</sup> European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North, OJ C 136, 2012. paragraph 65.

have taken steps to recognize the identity and rights of indigenous peoples; some countries are even considering constitutional changes in that regard<sup>58</sup>. Despite the growing concern and consideration for indigenous peoples' rights there is still a long way to go: according to the UN, despite of making up less than 5% of the world's population, indigenous peoples' account for 15% of the poorest<sup>59</sup> and are still, in many countries, victims of marginalization, violence and exclusion<sup>60</sup>.

## 2.2 The EU Seal Regime

The EU Seal Regime is a regulation of the trade in seal products within the EU market. The first directive in the matter was adopted in 1983; in 2009 a regulation was adopted, followed by further regulations in 2010 and 2015. This following section will describe and analyze the EU Seal Regime from different angles. First, the background and history of the EU Seal Regime along with the context in which it was adopted will be described, followed by an analysis of the development in the legislation in section 2.2.2. Section 2.2.3 will outline the debate on the seal regime by presenting the points of praise and criticism and the critics presenting them.

### 2.2.1 Background and context

Looking back to the very beginning, the earliest proof of humans living on the Greenlandic soil date back to more than 4000 years ago: from the district of the Bering Sea, travelling through Alaska and Arctic Canada, Arctic hunters reached Greenland<sup>61</sup>. Later, the Nordic sagas narrate that the Vikings, led by the Icelandic Erik the Red, settled down on the Southwestern coast of Greenland in 985<sup>62</sup>. For

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<sup>58</sup> United Nations. (2017, August 9). Press release: International Day of the World's Indigenous Peoples - 9 August. Retrieved May 2018, from [un.org/indigenous](http://un.org/indigenous):

<http://www.un.org/en/events/indigenousday/pdf/Press%20Release%20Indigenous%20Day%202017.pdf>

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Gulløv, H. C. (2014, October 2). Grønland - forhistorie. (Gyldendal, Producer) Retrieved April 2018, from Den Store Danske: [http://denstoredanske.dk/Geografi\\_og\\_historie/Gr%C3%B8nland/Gr%C3%B8nlands\\_forhistorie/Gr%C3%B8nland\\_\(Forhistorie\)](http://denstoredanske.dk/Geografi_og_historie/Gr%C3%B8nland/Gr%C3%B8nlands_forhistorie/Gr%C3%B8nland_(Forhistorie))

<sup>62</sup> Arneborg, J. (2016, December 6). Grønland - historie. (Gyldendal) Retrieved April 2018, from Den Store Danske: [http://denstoredanske.dk/Geografi\\_og\\_historie/Gr%C3%B8nland/Gr%C3%B8nlands\\_samfund%2c\\_kultur\\_og\\_historie/Gr%C3%B8nland\\_\(Historie\)](http://denstoredanske.dk/Geografi_og_historie/Gr%C3%B8nland/Gr%C3%B8nlands_samfund%2c_kultur_og_historie/Gr%C3%B8nland_(Historie))

more than 4000 years inhabitants of the Arctic regions, some of whom are called the Inuit people, have survived on the fish they could fish and the meat they could catch: “It is noteworthy that by and large, agriculture is impossible north of the 60° latitude. North of that line, we are meat-eaters and fishermen. We are predators”<sup>63</sup>.

In 1977, French actress Brigitte Bardot travelled to Newfoundland, Canada, to take closer look at the annual mass hunt on seal pups<sup>64</sup>. The groundbreaking and defining picture of the actress cheek to cheek with a white seal pup was taken and published: the picture became a campaign of dimensions that had never been seen before<sup>65</sup>. According to Joanna Kerr<sup>66</sup>, the executive director of Greenpeace Canada, “the campaign took on a life of its own and became global”. The campaign also reached Europe and the European Community: on June 24, 1982, the Council of the EEC decided on a motion for a resolution to support for early action for the protection of seals<sup>67</sup>. “In light of the present uncertainty about the current status and future prospects of Harp and Hooded seal”<sup>68</sup> the European Parliament supported the initiative of the Council, and on March 28, 1983, the Directive 83/129/EEC was adopted, banning the import of products deriving from pups of harp and hooded seal as stated in Article 1, with the objective of protecting the populations of these two types of seals specifically.

In 2008 the European Commission made an impact assessment on the potential impact of a ban on seal species. It was here established that the seals hunted for commercial purpose are generally not endangered species<sup>69</sup>. Because of explicit concerns with animal welfare expressed by the public and members of the European Parliament, however, and because some member states had already adopted

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<sup>63</sup> Lynge, F. (1995). Indigenous Peoples between Human Rights and Environmental Protection - An Arctic Perspective. *Nordic Journal of International Law*, 64, pp. 489-494. Page 489.

<sup>64</sup> Lynge, F. (1992). *Arctic Wars, Animal Rights, Endangered Peoples*. (M. Stenbaek, Trans.) Hanover & London: University Press of New England. Page 9.

<sup>65</sup> *Ibid*. Page 11.

<sup>66</sup> Kerr, J. (2014, June 25). Greenpeace apology to Inuit for impacts of seal campaign. Retrieved April 2018, from Greenpeace Canada: <http://www.greenpeace.org/canada/en/blog/Blogentry/greenpeace-to-canadas-aboriginal-peoples-work/blog/53339/>

<sup>67</sup> European Parliament: Working Document 1-831/82, Motion for a Resolution, page 5.

<sup>68</sup> European Parliament. (1982, November 19). Resolution closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Regulation on rules for a prohibition to import skins of certain seal pups and products derived therefrom into the Community. Retrieved March 2018, from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1982:334:FULL&from=EN>. OJ No. C334, 20.12.1982. Page 135, Recital C.

<sup>69</sup> Commission of the European Communities. (2008, July 3). Impact Assessment on the potential impact of a ban of products derived from seal species. Retrieved April 2018, from European Commission: [http://ec.europa.eu/environment/biodiversity/animal\\_welfare/seals/pdf/seals\\_ia.pdf](http://ec.europa.eu/environment/biodiversity/animal_welfare/seals/pdf/seals_ia.pdf)

general bans on seal products, the EU in 2009 adopted Regulation 1007/2009 – this time banning the import of seal products from all types of seals, focusing on the animal welfare aspect of the seal hunt. Further regulations followed in 2010 and 2015. An exemption for seals caught by Inuit was included.

The consequences of these legislations have had the effect of an important decrease in the number of hunted seals, as well as that of a dramatic fall in the price of seal skin at a global level: in 2006 the price averaged at 600DKK (€80), but after the legislation adopted in 2009 the price dropped by 60%<sup>70</sup>. According to Inuit communities around the Arctic, the EU legislation is a risk to the Inuit way of life: “They threaten our aboriginal cultures. [B]ecause if we cannot market our products then we have no economy, and if we have no economy, people cannot go on living as trappers and hunters”<sup>71</sup>. The International Fund for Animal Welfare (IFAW) has another perspective and applauds the regulations ending years of what they define as cruel and inhumane seal hunt: “The ban is a significant victory in IFAW’s 40-year campaign to end commercial sealing”<sup>72</sup>. As the two quotes clearly indicate, seal hunt is a controversial issue.

### 2.2.2 Development

The following section will describe the development of the legislative framework of the EU Seal Regime from the first directive in 1983 till the last regulation in 2015. In relation to the research question of this dissertation, there are three relevant elements to consider in the development in the seal trade legislation: the development in the reach of the regulations of the trade and the development in the argument for the increased regulation. The third important element is that of the reach of the exemption to the legislation. The focus of the analysis of the development will be on the legally binding legislation; the declarations and recommendations from the EU bodies in between will therefore not be treated here.

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<sup>70</sup> Tamma, P. (2017, December 1-13). Greenland gets EU’s support for Inuit seal products. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 4-5. Page 5.

<sup>71</sup> *Supra* note 63. Page 490.

<sup>72</sup> International Fund for Animal Welfare - IFAW. (2010, October 28). EU Seal Ban comes into full effect. Retrieved April 2018, from International Fund for Animal Welfare - IFAW: <https://www.ifaw.org/international/node/26111>





#### 2.2.2.1 Directive 83/129/EEC

The first directive adopted in 1983 was *Council Directive of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom*<sup>73</sup>, from now on mentioned as Directive 83/129/EEC. This Directive was specific in its limitation of the seal hunt and only prohibited the import of products deriving from specifically the pups of harp seals, *Pagophilus groenlandicus*, and pups from hooded seals, *Cystophora cristata*, so-called whitecoats and blue-backs respectively<sup>74</sup>. It was imposed to Member States to ensure that such products were “not commercially imported into their territories”<sup>75</sup>. Opposition to the killing methods and thus concerns of animal welfare certainly played a role in the adoption of the ban and the Directive encourages “further investigation into the scientific aspects and consequences of the culling of pups of harp and hooded seals”. The explicitly mentioned argument in the Directive 83/129/EEC is however conservation purposes, due to doubts concerning the population status of these two populations of seals<sup>76</sup>.

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<sup>73</sup> Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products therefrom. OJ L 091, 1983.

<sup>74</sup> *Ibid.* Annex.

<sup>75</sup> *Ibid.* Article 1.

<sup>76</sup> *Ibid.*

In Article 3 of the Directive it is specified that the trade limitation only applies “to products not resulting from traditional hunting by Inuit people”. The importance of the seal hunt to Inuit people is acknowledged, and since the protection of seal pups is the target of the directive and hunting as traditionally practiced by the Inuit according to the Recital leaves seal pups unharmed, the interests of the Inuit people are not to be affected.

#### 2.2.2.2 Regulation 1007/2009

In 2009, *Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products*<sup>77</sup>, from now on Regulation 1007/2009, is adopted. Compared to the Directive 83/129/EEC there is a clear development on several aspects. First of all, the limitation of the importation of and trade in seal products extends to not only pups of harp and hooded seal, but this time targets products deriving from all species of seals<sup>78</sup> or pinnipeds<sup>79</sup>. The increased limitation is now justified because of “expressions of serious concerns” to the welfare of the seals and as a means to put an end to “cruel hunting methods”<sup>80</sup> and the “pain, distress, fear and other forms of suffering which the killing and skinning of seals (...) cause to those animals”<sup>81</sup>. Bludgeons, hakapiks<sup>82</sup> and guns are named specifically as “cruel hunting methods” in recital 1, though however not prohibited explicitly in the regulation itself. In this regulation there are no references to concerns of the seal populations; the trade limitation is thus based exclusively on concerns for animal welfare.

The regulation contains a clear exemption for seal products that result from “hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence”<sup>83</sup>. In recital 14 it is acknowledged that hunting is an integral part of the Inuit culture and as such is recognized by

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<sup>77</sup> Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products. OJ L 286, (2009).

<sup>78</sup> *Ibid.*

<sup>79</sup> Definition of pinniped: any of an order or suborder (Pinnipedia) of aquatic carnivorous mammals (such as a seal or walrus) with all four limbs modified into flippers (Merriam-Webster. (2018, March 18). pinniped. Retrieved April 2018, from Merriam-Webster Dictionary: <https://www.merriam-webster.com/dictionary/pinniped>)

<sup>80</sup> *Supra* note 77. Recital 1

<sup>81</sup> *ibid.*, Recital 4

<sup>82</sup> Definition of hakapik: an implement used in seal hunting, consisting of an iron steel hook, sometimes with a hammer opposite, mounted on a long wooden pole. (Dictionary.com. (2018). hakapik. Retrieved April 2018, from Dictionary.com: <http://www.dictionary.com/browse/hakapik?s=t>)

<sup>83</sup> *Supra* note 77. Article 3(1)

the UNDRIP. The “fundamental economic and social interests of Inuit communities engaged in hunting of seals as a means to ensure their subsistence” are therefore not to be affected by the implementation of the new regulation on trade in seal products.

Two other possible derogations to the import ban are likewise specified: (a) goods for the personal use of travelers and their families, as well as (b) seal products resulting from by-product of hunting that is regulated by national law and conducted for the sole purpose of sustainable management of marine mammal resources<sup>84</sup>.

#### 2.2.2.3 Regulation 737/2010

*Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) 1007/2009 of the European Parliament and of the Council on trade in seal products*<sup>85</sup>, from now on Regulation 737/2010, further specifies the rules for the implementation of Regulation 1007/2009. The Inuit Exemption is further emphasized, and Article 3 specifies the conditions for the Inuit and indigenous hunt to be fulfilled to allow the resulting seal products to be placed on the market, insisting on hunt as a tradition within the community and that the hunt is an important part of the subsistence of the community<sup>86</sup>. Likewise, the possible derogation of the importation of products for personal use as well as seal products deriving from hunt with the sole purpose of sustainable management of marine resources are further specified.

#### 2.2.2.4 Regulation 2015/1775

In October 2015, *Regulation (EU) 2015/1775 of the European Parliament and of the Council of October 6 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010*<sup>87</sup>, from now on Regulation 2015/1775, is adopted, bringing some significant changes to the EU Seal Regime.

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<sup>84</sup> *ibid* Article 3(2)

<sup>85</sup> Commission Regulation (EU) No 737/2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products, OJ L 216, (2010).

<sup>86</sup> *Ibid.* Article 3(1).

<sup>87</sup> Regulation (EU) 2015/1775 of the European Parliament and of the Council amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010.

The broader definition of Inuit and “other indigenous communities” from Article 2(1) of Regulation 737/2010 is inserted into Regulation 1007/2009. The more specified list from the 2010 Regulation of conditions for the placing on the market of seal products resulting from traditional hunt contributing to subsistence of the community is however further specified: a sub-paragraph is added that the hunt must be conducted in a manner that “has due regard to animal welfare”<sup>88</sup>. Likewise, there is now a condition that the products must be accompanied by a document attesting that the here mentioned conditions are complied with<sup>89</sup>.

The exemption of the placing on the market of seal products deriving from management of marine resources is not kept in the amendment for reasons explained in the recital 4: “(...) those hunts may be difficult to distinguish from the large-scale hunts conducted primarily for commercial reasons”. The intention of the limitation of the trade in seal products has been all along to ban the pure commercial aspect of the trade, as stated in Regulation 1007/2009 in the recital 10. Since “(...) seal hunts traditionally conducted by Inuit and other indigenous communities do not raise the same public moral concerns as seal hunts conducted primarily for commercial reasons”<sup>90</sup> the exemption of the products deriving from traditional Inuit hunts is kept, along with the exemption of products for the personal use of travelers and their families. Furthermore, a paragraph 5 under the amended Article 3 is added, empowering the Commission to take action if there is evidence that “a seal hunt is conducted primarily for commercial reasons”<sup>91</sup>.

Along with the stricter amendments to Regulation 1007/2009, Article 5a is inserted stating that the Commission shall inform the public about the rules under which seal products can be placed on the market. This serves both as a measure to assure that Inuit and other indigenous peoples will not be unnecessarily affected by the trade limitations, but also to ensure that Inuit and indigenous peoples have regard animal welfare and that the hunt serves a purpose of subsistence of the indigenous community rather than being for commercial reasons.

The extent of the amendments to Regulation 1007/2009 applied through the Regulation 2015/1775 makes Regulation 737/2010 superfluous, why it is repealed. The overall argument for the limitation

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<sup>88</sup> *Ibid.* Article 1(2)1.

<sup>89</sup> *Ibid.* Article 1(1) and 1(2)1a.

<sup>90</sup> *Ibid.* Recital 2

<sup>91</sup> *Ibid.* Article 1(2)5

on the trade in seal products, as expressed in prior regulations, remains the same: a response to “public moral concerns about the animal welfare aspects of the killing of seals”<sup>92</sup>.

#### 2.2.2.5 Regulation 2015/1850

The *Commission Implementing Regulation (EU) 2015/1850 of October 13 2015 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products*<sup>93</sup>, from now on Regulation 2015/1850, serves as a further specification of the rules of the implementation of Regulation 1007/2009, this time specifying and limiting the conditions for seal products imported for the personal use of travelers and their families.

#### 2.2.2.6 Sub-conclusion: Development of the EU Seal Regime from 1983 to 2015

There is a clear development in the legislation concerning the trade of seal products within the internal market of the EU. Whereas the first Directive from 1983 prohibits the import of products made of seal pups of harp and hooded seal specifically, the later regulations move to a ban on products from all species of pinnipeds. Also, the argumentation for the trade regulations alters significantly: in 1983 the justifications are those of conservation of the seal populations, whereas the justification in the Regulation from 2009 and onwards clearly is that of animal welfare exclusively.

All along there is an intention of leaving the Inuit people unharmed by the trade regulations. Within the Directive from 1983 it is stated that the trade limitation “shall only apply to products not resulting from traditional hunt by Inuit people”, and the exemption is further specified in the Regulation from 2009. In the regulation from 2010, later inserted in Regulation 2015/1775, the exemption is extended to include Inuit and “other indigenous communities” whereas the conditions for the placing on the market of products deriving from indigenous hunt are further specified, emphasizing the conditions that the hunt has to be conducted by Inuit or other indigenous community which have a tradition of seal hunt<sup>94</sup> as well as the seal hunt should be contributing element to the subsistence of the community. In Regulation 2015/1775, and thus the amendments to Regulation 1007/2009, it is added

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<sup>92</sup> *ibid.* Recital 1

<sup>93</sup> Commission Implementing Regulation (EU) 2015/1850 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on the trade in seal products, OJ L 271, (2015).

<sup>94</sup> *Supra* note 87. Article 3(1-a)

that also Inuit and indigenous hunts should have regard to the welfare of the hunted animals. Regulation 737/2010 likewise introduces a concept of documentation of the seal products proving that they satisfy the conditions for importation, a concept that is then inserted in Regulation 2015/1775 and further developed by Regulation 2015/1850.

### 2.2.3 Review of opinions: praise and criticism

Since the first limitation on the trade in seal products was adopted in 1983, followed by the regulations in 2009, 2010 and 2015, the criticism of the EU Seal Regime has been, and still is, manifold. This section will briefly outline the points of criticism and the critics presenting them.

First of all, the EU Seal Regime has been criticized for containing many **vague formulations**, rendering a satisfactory compliance difficult. These vague formulations are contained especially in the Inuit Exemption, as argued by Kamrul Hossain<sup>95</sup> from the Northern Institute for Environmental and Minority Law, pointing to the fact that the term “traditionally conducted” seal hunt has not been identified as to whether the hunts can be conducted using only traditional methods or modern ones as well. Also, Dorothee Cambou, a researcher in the field of international law with a focus on human rights law from the University of Helsinki, criticizes the vagueness of the Inuit exception<sup>96</sup> and the lack of definition of “indigenous subsistence” as formulated in Article 3(1) of the Regulation 1007/2009 and later in Article 3(1b) of Regulation 2015/1850.

**The objective** of the trade regulation, in connection with the means employed to achieve it, is likewise a point of controversy. “The 2009 seal ban regulation was a huge victory in recognising animal welfare in EU trade policy,”<sup>97</sup> argues David Martin, Member of Parliament of the European Union for the Group of the Progressive Alliance of Socialists and Democrats. The objective of the legislation is indeed to protect the welfare of seals, but “by focusing only on transactions involving seal products, this scheme makes no distinction between seals that are cruelly killed and those that

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<sup>95</sup> Hossain, K. (2012, March 28). The EU ban on the import of seal products and the WTO regulations: neglected human rights of the Arctic indigenous peoples? *Polar Record*, 49(2), 154-166. Page 162.

<sup>96</sup> Cambou, D. (2013, October). The Impact of the Ban on Seal Products on the Rights of Indigenous Peoples: A European Issue. *The Yearbook of Polar Law*, 5(1), pp. 389-415. Page 396.

<sup>97</sup> Martin, D. (2015, May 11). New Commission proposal is good for seal protection. Retrieved May 2018, from EURACTIVE: <https://www.euractiv.com/section/trade-society/opinion/new-commission-proposal-is-good-for-seal-protection/>

are more humanely culled,”<sup>98</sup> argues Peter L. Fitzgerald from Stetson University College of Law. “If the justification for the regulatory scheme is that it is “morally” wrong to use hakapiks or clubs to kill seals, how can there be exceptions where their use might be tolerated?”<sup>99</sup>. According to Nikolas Sellheim from the University of Lapland “it must be clarified what animal welfare entails. This is problematic as within the discourse of a trade ban and animal welfare improvement no clear-cut definition of ‘animal welfare’ has been enunciated”<sup>100</sup>. Sellheim criticizes the seal legislation for not having clear-cut goals<sup>101</sup>. In continuation of this line of reasoning Martin Hennig from the Arctic University of Norway, Tromsø, argues that “[i]f EU wishes to take the protection of animal welfare seriously, the “easy” solution would be to ban the marketing of all seal products”<sup>102</sup>. To John Bowis, member of the European Parliament and the Conservative spokesperson on the environment, health and food safety, a complete seal ban is indeed the best solution: “The hunt is brutal, unnecessary and wasteful. (...) It is clear to me that an outright ban, with no loopholes, is the only way to prevent products from cruel hunts entering the EU. (...) A partial ban was not enough to end the cruelty. This time around we simply cannot afford any loopholes which would allow commercial hunts to continue”<sup>103</sup>. Henning however adds that “doing so, would remove a means of livelihood for the Greenlandic Inuit, which would certainly be a controversy”<sup>104</sup>.

Hossain argues that the ban with its exception is already making the seal hunt unprofitable, thus **encroaching on indigenous rights**: “The imposed ban [...] undermine internationally recognised human rights standards insofar as the regulations make it difficult for the concerned indigenous groups to enjoy their right to economic subsistence”<sup>105</sup>. He is again backed up by Cambou<sup>106</sup> that along with the violation of the right to economic, social and cultural development, likewise points to the violation of the right to self-determination and the indigenous’ right to own, use, develop and

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<sup>98</sup> Fitzgerald, P. L. (2011). "Morality" May Not Be Enough to Justify the EU Seal Products Ban: Animal Welfare Meets International Trade Law. *Journal of International Wildlife Law and Policy*, 14, 85-136. Page 125.

<sup>99</sup> *Ibid.* Page 128.

<sup>100</sup> Sellheim, N. (2014, January 27). The goals of the EU seal products trade regulation: from effectiveness to consequence. *Polar Record*, 51(258), 274-289. Page 279.

<sup>101</sup> *Ibid.* Page 286.

<sup>102</sup> Hennig, M. (2015). The EU Seal Products Ban - Why Ineffective Animal Welfare Protection Cannot Justify Trade Restrictions under European and International Trade Law. *Arctic Review on Law and Politics*, 6(1), 74-86. Page 84.

<sup>103</sup> Bowis, J. (2009, March 16). Stop the ice turning red. Retrieved May 2018, from The Guardian: <https://www.theguardian.com/commentisfree/cif-green/2009/mar/13/wildlife-eu>

<sup>104</sup> *Supra* note 102. Page 84.

<sup>105</sup> *Supra* note 95. Page 163.

<sup>106</sup> *Supra* note 96. Page 399.

control the lands and resources that they have traditionally owned<sup>107</sup>, as stated in Article 26 of the UNDRIP.

The violation of indigenous rights was one of the reasons that brought Inuit Tapiriit Kanatami (ITK), an association representing the interests of Canadian Inuit, and a number of other associations and individuals to challenge the EU Parliament and EU Council on the regulation on the trade in seal products in 2010<sup>108</sup>, asking for the annulment of the regulation. They claimed, in line with Hossain and Cambou, that the seal ban **affected their economic interests**. The CJEU however dismissed the appeal in its judgement of October 3, 2013<sup>109</sup> due to admissibility. In 2011, ITK and Others lodged a second complaint that likewise relates to indigenous rights. They claimed that the seal ban had been composed and adopted without participation of the indigenous peoples and thus violating the fundamental indigenous right of consultation and participation in decision-making in matters concerning them, as specified by Article 18 and 19 of UNDRIP<sup>110</sup>. The CJEU ruled that the UNDRIP does not have legal force in the EU, and the claim was thus overruled<sup>111</sup>. Cambou does not agree with the Court's final judgement and challenges the adoption of the seal legislation: "Above all, because human rights should prevail over the law of the EU market, there is a clear necessity to re-consider the adoption of the ban on seal products and to further advance indigenous peoples' rights in Europe"<sup>112</sup>.

Another point brought up by ITK and Others in 2011 was the **validity of the regulation**, they claimed that the Regulation has no legal basis in the EU Treaties. The principal objective of the Regulation is supposedly the protection of animal welfare, which is not included in TFEU 114 (ex. Article 95 EC) – the legal basis of the Regulation<sup>113</sup>. This point of criticism has also been touched upon by Hennig: "It is also clear from case law of the European Court of Justice that Article 114 TFEU does not confer upon the EU legislative competence to harmonise national laws in pursuit of purely *non-economic objectives*. (...) Simply prohibiting the undesirable product, does not necessarily improve the

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<sup>107</sup> *Ibid.* Page 400.

<sup>108</sup> *Inuit Tapiriit Kanatami and Others v Parliament and Council* [2013] C-583/11 P

<sup>109</sup> *Ibid.*

<sup>110</sup> *Inuit Tapiriit Kanatami and Others v Commission* [2015] C-398/13 P

<sup>111</sup> *Ibid.*

<sup>112</sup> *Supra* note 96. Page 415.

<sup>113</sup> *Inuit Tapiriit Kanatami v Commission* [2013] T-526/10. Para. 26



functioning of the market.”<sup>114</sup> Robert Howse and Joanna Langille from the New York University School of Law and Katie Sykes from Thompson Rivers University, however, argue otherwise: “We will argue that the WTO [World Trade Organization] legal framework **allows countries to adopt trade restrictive measures** based on anti-cruelty concerns, both to protect the animals and to express moral censure of those practices”<sup>115</sup>.

In 2009, first Canada, and later also Norway, did indeed challenge the EU Seal Regime and the ban on seal before the WTO<sup>116</sup>. The seal-exporting countries claimed that the EU legislation went **against commitments to free trade under international free trade agreements**. Since the European production of seal-products is small, the greatest impact of the Regulation is upon non-EU countries like Canada and Norway, and therefore the non-discrimination principle of General Agreement on Tariffs and Trade and the WTO is contravened<sup>117</sup>. This matter was, however settled by the WTO: the EU seal legislation was indeed deemed discriminatory on certain aspects, and the Regulation was therefore changed to address these concerns<sup>118</sup> by removing the potentially discriminatory elements and recognizing the Government of Nunavut, Canada, as an attestation body qualified to certify Inuit seal products under the EU Seal Regime in the same manner as the government Greenland<sup>119</sup>.

Fitzgerald criticizes<sup>120</sup> the EU Seal Regime for being characterized by a double standard: The Regulation 1007/2009 (later with amendments from Regulation 2015/1850) is legitimized by improving the internal market of the EU by adopting the most **trade disruptive** measure possible: a ban. Fitzgerald is of the opinion that the effects of the Regulation do not compare favorably with the objective of the legislation: “In this case a labeling or certification scheme distinguishing between

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<sup>114</sup> *Supra* note 102. Page 76.

<sup>115</sup> Howse, R., Langille, J., & Sykes, K. (2012). Permitting Pluralism: The Seal Products Dispute And Why The WTO Should Accept Trade Restrictions Justified By Noninstrumental Moral Values. *Yale Journal of International Law*, 368-433. Page 368.

<sup>116</sup> European Council. (2018, March 19). Seal products trade: the EU ban adapted to WTO rules. Retrieved April 2018, from European Council: <http://www.consilium.europa.eu/en/press/press-releases/2015/10/01/seal-products/>

<sup>117</sup> *Supra* note 98. Page 123

<sup>118</sup> European Council. (2018, March 19). Seal products trade: the EU ban adapted to WTO rules. Retrieved April 2018, from European Council: <http://www.consilium.europa.eu/en/press/press-releases/2015/10/01/seal-products/>

<sup>119</sup> European Commission. (2015, October 26). Commission Decision of 26 October 2015 recognising the Department of Environment, Government of Nunavut in accordance with Article 3 of Commission Implementing Regulation (EU) 2015/1850 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products. Retrieved March 2018, from EUR-Lex: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1027\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1027(01)&from=EN). OJ C 355/4 (2015).

<sup>120</sup> *Supra* note 98. Page 126.

humane and inhumane methods of culling seal would be much less disruptive to trade than the import ban”<sup>121</sup>. Whereas Fitzgerald is arguing for less trade disruptive solutions, Bowis has difficulties picturing such an alternative: “(...) it would be far too costly to effectively monitor the hunt to verify whether the sealers comply with humane criteria. All the evidence shows that a humane standards derogation would be impractical and virtually impossible to enforce”<sup>122</sup>.

Another criticism relating to indigenous peoples is the element of culture and cultural misunderstanding. Finn Lynge, who apart from being a strong advocate for rights of indigenous peoples’ is also a former member the EU Parliament for Greenland, sees the ban of seal products most of all as a **cultural misunderstanding** and a cultural conflict where the indigenous Inuit culture finds itself suppressed: “This is not an ordinary debate between alternative opinions. It is a struggle between cultures, wherein one – earnestly and with a great deal of self-righteousness – believes itself to have a national authority to dictate how things ought to be”<sup>123</sup>. In the movie *Angry Inuk* from 2016, the director Alethea Arnaquq-Baril passes on a similar message. According to her, seal hunt is mistakenly portrayed as an evil and greedy thing<sup>124</sup>, without the life sustaining and old traditional elements taken into account.

Another point of criticism to the EU legislation on the trade in seal products are the environmental aspects and **environmental consequences** of the legislation. The North Atlantic Marine Mammal Commission (NAMMCO) is an international body for co-operation on conservation, management and study of marine mammals in the North Atlantic. When the ban on seal products was adopted in 2009, NAMMCO issued a statement from its 18<sup>th</sup> Annual Meeting with the title: *EU import ban on seal products is a huge step backwards for sustainable development*. Assembling the four marine mammal hunting peoples in the North Atlantic, NAMMCO likewise criticized the legislation for not considering rights of all peoples to use their resources responsibly and sustainably for their economic development. As a body that bases its governmental advice on conservation status of marine mammals on science, local knowledge and technological development and looking at the marine

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<sup>121</sup> *Ibid.*

<sup>122</sup> *Supra* note 103.

<sup>123</sup> *Supra* note 64. Page 35.

<sup>124</sup> Pope, A. (5. January 2018). An 'Angry Inuk' defends the seal hunt, again. Hentet April 2018 fra Canadian Geographic: <https://www.canadiangeographic.ca/article/angry-inuk-defends-seal-hunt-again>

ecosystem as a whole<sup>125</sup>, NAMMCO criticized the legislation for **not being science-based** and therefore not being a useful tool to ensure the conservation of seal stocks. But according to Howse, Langille and Sykes, science need not be the basis of a trade restriction like the seal ban: “Although scientists can give a sense of the duration and intensity of animal suffering that likely result from a given killing method, it is **ultimately the predominant moral beliefs** of a particular society that will determine how much and what kinds of suffering are acceptable or unacceptable to that society, and therefore the level of protection it demands against animal suffering”<sup>126</sup>.

Marine biologist and current General Secretary of NAMMCO Geneviève Desportes, points to another dubious point of the seal legislation. She criticizes<sup>127</sup> the European seal legislation for **going against the general EU environmental policies** such as promoting blue economy by decreasing the access to and the use of low ecological footprint food and cash opportunities, thus favoring a high- energy option: the import of cheap flown-in food, mass-produced at a high ecological cost in other areas. “As an environmental scientist, I have difficulty seeing how the EU seal ban favoring ecologically costly options, with an Inuit exemption not associated with any sustainability criteria, could be in line with the blue economy”. Bowis, on the other hand, calls the hunt itself “wasteful”<sup>128</sup>. The EU director for the International Fund for Animal Welfare (IFAW), Lesley O’Donnell, agrees with Bowis: “This ban is about the right of Europeans to say ‘No’ to products that stem from **cruel and unnecessary hunts**. IFAW will continue to work to defend this right and to defend the EU seal ban”<sup>129</sup>.

Summing up the cultural and environmental points of criticism, the foundation of the ban is simply wrong, according to Ditte Sorknæs, the former CEO of Great Greenland, a Greenlandic public company trading in sealskins and seal skin products since 1977. “The **foundation of the ban is wrong**, in the sense that if you look at facts it doesn’t make any sense”<sup>130</sup>. But Joanna Swabe, Europe’s executive director of Humane Society International (HSI), does not share this opinion: “The

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<sup>125</sup> NAMMCO. (2009, September 10). Statement issued at the 18th Annual Meeting of NAMMCO: EU import ban on seal products is a huge step backwards for sustainable development. Annual Report NAMMCO.

<sup>126</sup> *Supra* note 115. Page 371.

<sup>127</sup> Desportes, G. (2017, December 13). Which is more blue, Arctic sealing or the EU seal ban? EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 9-11. Page 11.

<sup>128</sup> *Supra* note 103.

<sup>129</sup> *Supra* note 72.

<sup>130</sup> Tamma, P. (2017, December 1-13). Great Greenland CEO: seal hunting ban ‘devastating’ for Inuit communities. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 6-8. Page 6.

EU ban has withstood every single legal test that has been thrown at it; the moral decision to close EU borders to these products of animal suffering has been repeatedly vindicated. Let this be an end to it now.”<sup>131</sup>

The opinions on the EU Seal Regime include both praise and criticism, and touch upon and question different elements in the trade limitation. However, if many law scholars are to be found amongst the critics, along with scientists, human rights activists and politicians, the articles praising the legislation are few and difficult to find. In an attempt to find more articles with a positive view of the legislation, a small investigation was made: an email was sent to a list of NGOs<sup>132</sup> known for their opposition to commercial sealing and their support of the EU seal legislation, asking them to send references to articles – legal as well as scientific – supporting the point of view of their respective organization. As seen in Appendix II, only some of the NGOs replied. The conclusion of the mini-investigation is the following: except for a few articles which within the WTO consider the ban justified under the moral exception, the academic articles acclaiming the seal legislation are very few. Likewise, hardly any marine mammal scientists are to be found in the proponents’ group. When taking a look at those praising the legislation it is interesting to note that the group is mainly comprised by animal rights NGOs and politicians. In her response, Joanna Swabe from the Humane Society International, Europe, wrote: “It is a shame to hear that there are more scholarly articles criticising the legislation, than supporting it. This was certainly not the case in the popular media, which widely celebrated the legislation and it being upheld by the WTO, as well as the EU Courts.”<sup>133</sup>

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<sup>131</sup> Humane Society International. (2015, September 8). EU Strengthens Trade Ban on Cruel Seal Hunt Products, Sends Strong Moral Message to Canada & Norway. Retrieved May 2018, from Humane Society International: [http://www.hsi.org/news/press\\_releases/2015/09/eu-strengthens-seal-trade-ban-090815.html?credit=huffpo120215](http://www.hsi.org/news/press_releases/2015/09/eu-strengthens-seal-trade-ban-090815.html?credit=huffpo120215)

<sup>132</sup> See: Appendix II.

<sup>133</sup> Personal mail from Joanna Swabe.

### 3 Analysis: The Inuit Exemption – a closer look

The first legislation limiting the trade in seal products in the EU internal market was adopted in 1983 within the EEC, followed by legislations in 2009, 2010 and 2015 adopted by the EU. Since the beginning, the legislation on trade in seal products contained special considerations for the Inuit people. Whereas only the trade in some seal products was prohibited at first, and later the trade in all products deriving from seals, the legislation has always been meant not to harm the indigenous peoples of the Arctic: “it is (...) appropriate to see that the interests of the Inuit people are not affected” reads the Recital of Directive 83/129/EEC. “The fundamental economic and social interests of Inuit communities engaged in hunting of seals (...) should not be adversely affected” continues Regulation 1007/2009 in recital 14. The intention of the EU is thus clear: the protection of indigenous people, in this case in particular the Inuit, should be ensured. Following the criticism of the EU seal legislation, as presented in section 2.2.3, the question is, though, if the good intentions of the EU have prevailed.

In the following analysis, the wording of the so-called Inuit Exemption will be analyzed so as to determine its actual reach. Secondly, the Inuit Exemption will be analyzed so as to determine the degree of protection provided to the Inuit and indigenous communities – an analysis on whether the Exemption fulfills its purpose.



### 3.1 Wording of the Inuit Exemption

In continuation of the account of the development of the EU Seal Regime in section 2.2.2, followed by the outline of the criticism in the previous section, this section will take a closer look at the wording of the Inuit Exemption. As mentioned in section 2.2.3, Hossain and Cambou both point to the fact that the Inuit Exemption is vague, with several undefined elements; the wording of the Exemption will therefore be examined so as to see what it says and omits to say. The EU Seal Regime is defined by the latest regulation, meaning the Regulation 1007/2009 with the amendments from Regulation 2015/1775<sup>134</sup>. Only the legislative parts are here analyzed, thus not the recitals. The final and amended regulation is attached in Appendix I.

**Article 1**, named “Subject matter”, indicates the purpose or the objective of the Regulation in question. The objective of the Regulation is here expressed as a harmonization of the rules concerning the placing on the market of seal products. As expressed in section 2.2.1, the overall objective for the legislation is the strengthening of animal welfare; the trade harmonization is thus a means to reach this overall objective.

**Article 2** concerns the definition of relevant matters in relation to the legislative framework, such as the definition of “seal” and “seal products” as seen in Article 2(1) and (2), as well as “Inuit” and “other indigenous communities” in Article 2(4) and 2(4a). Also, the definition of “placing on the market” as well as “import” is specified. These definitions set the frame of the legislation and the achievement of the objective of increased animal welfare.

**Article 3** in which the Exemption is defined, is the relevant article in the Regulation for the sake of this dissertation. Article 3(1) provides a list of conditions that must be fulfilled in order for the products deriving from Inuit hunt to be allowed on the market. The first condition **3(1a)** is that the hunt has “*traditionally* been conducted by the community” [emphasis added]. But what does *traditionally conducted* entail? The second condition **3(1b)** is that of the hunt of the seal *contributing to the subsistence* of the Inuit or indigenous community. What are the requirements for a hunt to be defined as contributing to the subsistence? Subsistence once again comes into play in the support of *sustainable livelihood*, and here again the meaning is vague: what are the requirements for a

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<sup>134</sup> A compilation of the two regulations are to be found in Appendix I.

livelihood to be considered as sustainable? Also, the third condition **3(1c)** entails some questions. The condition demands that the hunt of the seals is conducted “in a manner which has *due regard to animal welfare*, taking into consideration the way of life of the community and the subsistence purpose of the hunt”. What the article fails to specify is how a hunt can be considered to having due regard to animal welfare: what is the definition of animal welfare and when is *due regard* achieved, does consideration of the way of life mean that this standard can be slackened? It is not mentioned whether it is a matter of specific hunting methods or other requirements.

The conditions posed by the seal legislation have the intention of leaving the *traditional* practices of Inuit and indigenous communities unharmed. The *subsistence* and survival of the communities should be assured. The question is, though, as pointed out above, what the definitions of these key words is. The conditions for the Inuit’s placement of seal products on the EU internal market leave room for interpretation and the well-meaning positive discrimination of Inuit suffer from this vagueness. The next section will further elaborate on the interpretation of the three conditions for placing seal products on the EU internal market and investigate if the conditions protect the interests of Inuit as intended or fail to do so.

**Article 4**, named “Free movement”, refers back to Article 1 and the purpose of the Regulation, namely the harmonization and strengthening of the trade market, thus emphasizing the objective.

The new **Article 5a** of the Regulation emphasizes that information about the ban should be transmitted to the public, in order to raise their awareness on which products can legally be imported into the Community. Proper information will prevent that authorized products will be confiscated at the borders because of travelers’ or even custom authorities’ lack of information. But adequate information should also ensure that the public is aware that the importation of certain types of seal products is still legal and that these products therefore continuously should be purchased and thus imported. Whether the Commission has succeeded in this task will be revisited in the discussion.

In **Article 7(3)** it is expressed that the Commission in its report on the implementation of the Regulation, to be submitted by 31 December 2019, shall “assess the functioning, effectiveness and impact” of the Regulation 1007/2009 with its amendments from Regulation 2015/1775<sup>135</sup>. It will

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<sup>135</sup> Regulation 2015/1775, Article 7(2)

indeed be interesting to see the considerations of the Commission; if there according to the Commission is agreement between objective and results.

### 3.2 Protection of indigenous peoples as provided by the conditions of the Inuit Exemption

As mentioned in the recitals to the various documents of the EU seal legislation, along with the proposal for action in the Commission's communication from 2008 entitled *The European Union and the Arctic Region*, the intention of the EU's limitation on seal trade has not been to harm the "fundamental economic and social interests of Inuit communities engaged in the hunting of seals as a means to ensure their subsistence"<sup>136</sup> but to end the killing of seals for so-called primarily commercial purposes. An exemption for Inuit is therefore included in the legislation from the very first Directive from 1983 and onwards, allowing seal products "from hunts conducted by Inuit or other indigenous communities" and contributing to their subsistence. The most recent version of the Inuit Exemption, Regulation 2015/1775, does not however grant an unconditional market access for Inuit seal products, but states three conditions that must be fulfilled in order for Inuit to the place of seal products on the European internal market. As pointed out in the previous section, the three conditions are however vague, lacking definitions of some of the core concepts. This section will unfold the vagueness of the conditions. Even though the condition of due regard to animal welfare is the last of the three conditions in the Exemption, it is the most important in the context of the objective of the legislation. The condition of *subsistence*, on the other hand, is the most important in regard to the protection of the indigenous peoples of the Arctic because *subsistence* equals survival and continuity of the Inuit culture. This section will analyze whether the three conditions within the Inuit Exemption succeed in protecting the Inuit and other indigenous communities, elaborating more on the concept of *subsistence* which deserves special attention because it directly refers to the subsistence of Inuit culture.

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<sup>136</sup> Regulation 1007/2009. Recital 14.



### 3.2.1 “Traditional hunt”

*“the hunt has traditionally been conducted by the community”*

Such reads the first of the three conditions for placing Inuit seal products on the EU internal market. Hossain<sup>137</sup> implies that there is a lack of the definition of what *traditionally conducted* entails: does it refer to conducted since a long time, or does it mean conducted in a traditional way, using traditional methods? No definition of *traditional* is included in any of the regulations. To Aaju Peter, the interpretation of the legislation is however clear: “The EU want us to go back 500 years and hunt our seals by foot and with a harpoon, and that is simply not possible. It would be the same as they [the European] had to go back to living without electricity”<sup>138</sup>. With this interpretation, the EU would certainly protect the old way of life of the Inuit. At the same time, though, possibilities for developing the hunt and the hunting methods would be impossible. According to Dr. Med. Vet. Egil Ole Øen from the Wildlife Management Service of Norway, who has dedicated his work to the improvement of hunting methods of seals and whales, hunting traditions are however not synonymous with the use of any particular kind of weapon: “Developments and changes of hunting weapons have been in progress from the stone tipped arrows and spears up to the modern firearms and bullets used to day. Traditions are built on the preparation and the hunting action, the exercise and execution of the hunt and the utilisation of the products, not on a certain design of the weapons used in a certain period”<sup>139</sup>. An interpretation of *traditionally conducted* demanding that Inuit go back to the hunting methods of former times, would not only be limiting for the development of the Inuit, but it would also go against the purpose of the legislation since more modern and more humane hunting methods would be unusable: “This is not an argument to warrant the use of weapons that are not optimal in hunts where more efficient weapons that kills the animal more rapidly and reduces the risk of losses, are available,” states Øen<sup>140</sup>. The possibility for development of the hunt, in matters of for example hunting methods in regard to how quickly the animal dies, is lost. This interpretation contradicts the objective of increased animal welfare because it impedes the development of hunting methods into

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<sup>137</sup> Hossain, K. (2012, March 28). The EU ban on the import of seal products and the WTO regulations: neglected human rights of the Arctic indigenous peoples? *Polar Record*, 49(2), 154-166. Page 162.

<sup>138</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

<sup>139</sup> NAMMCO. (5-6 April 2017). 25th Meeting of the Council. Nuuk, Greenland. Page 40

<sup>140</sup> *Ibid.*

being more humane – more efficient at killing quickly – for the sake of the animals and both more safe for the sake of the Inuit. This interpretation does not protect the Inuit.

Another possible interpretation of the condition is that *traditionally conducted* refers not to the hunt and the hunting methods, but rather the hunting activity. *Traditionally conducted* would then be a reference to the peoples and the communities who since the beginning of time have depended on the seal and the seal hunt as a means to survive. This interpretation would not freeze the Inuit in time in relation to how the hunt is conducted and the possibility of improving the hunt in regard to animal welfare and hunters' safety would be safeguarded. The interpretation does, however, limit who is allowed to conduct the hunt. The act of hunting is preserved within the community, leaving the method of hunting open to improvements, following the development of technologies, but restricting the permission of hunting to a restricted group. The legislation gives its own definition of Inuit and indigenous peoples'; a definition that is however not adopted in a wider international perspective, as noted in section 2.1.1.

### 3.2.2 “Due regard to animal welfare”

*“the hunt is conducted in a manner which has due regard to animal welfare, taking into consideration the way of life of the community and the subsistence purpose of the hunt”*

Such reads the third condition, condition 3(1c) of Regulation 2015/1775; a condition that refers directly back to the main goal of the legislation. The Inuit Exemption is made in order to protect the Inuit or indigenous way of life, but what if the traditional hunting methods are to be considered contradictory to the intention of *animal welfare*: is it then the protection of the traditional way of life that prevails, or must the subsistence of Inuit culture be lost in respect of the well-being of the seal? Prior to adopting Regulation 1007/2009, the European Food Safety Authority (EFSA) were asked to provide a scientific opinion on the killing and skinning of seals. In the report, EFSA's Animal Health and Welfare Panel analyzes the killing methods used in 10 different countries<sup>141</sup> where at the time seal hunt was conducted. The Panel concludes that “it is possible to kill rapidly and effectively

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<sup>141</sup> European Food Safety Authority. (2007). Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal, 610, 1-122. Page 24-35.

without causing them avoidable pain or distress”. However, the Panel also reported evidence that, “in practice, effective and humane killing does not always happen”<sup>142</sup>. Whereas hunting methods such as hakapik and clubs are deemed appropriate if designed and used correctly, the Panel recommends that the hunting method of netting and trapping of seals underwater “should not be used as it is inherently inhumane because of the possibility of prolonged suffering”<sup>143</sup>. No hunting methods are however explicitly named in the condition set forth by the Exemption, nor in the Regulation itself. If the EU should follow up on its own policy, and the aim of the Regulation itself of increasing animal welfare, then netting should be prohibited as a hunting method.

If the EU should follow up on its own policy, and the aim of the Regulation of increasing animal welfare, then netting should be prohibited as a hunting method as it does not comply with the first part of the condition of the hunt being *conducted in a manner which has due regard to animal welfare*. But if one considers the second part of condition 3(1c) of *taking into consideration the way of life of the community and the subsistence purpose of the hunt*, the netting would be an acceptable hunting method: Netting is an important part of subsistence hunting in for example Northern Greenland where darkness rules for months in the wintertime. Hunting methods requiring visibility, for example riffles, are therefore useless<sup>144</sup> during certain periods of the year. Should netting then be prohibited, in respect of the main purpose of the legislation, this would be counterproductive to the condition of subsistence hunting and the intention of leaving the Inuit unharmed, which is the purpose of the Inuit Exemption.

In practice, the EU Seal Regime aims at increasing the welfare of the seals quantitatively – at the population level – by reducing the demand on the market for seal products. The EU Seal Regime does however not increase the welfare of the seals qualitatively – at the individual level. A limitation of the trade in seal products will influence negatively the demand and contribute to less seals being killed, but there is no qualitative improvement as there is no specification on killing methods to be used for those seals being killed.

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<sup>142</sup> European Food Safety Authority. (2007, December 19). EFSA adopts scientific opinion on the animal welfare aspect of killing and skinning seals. Press Release.

<sup>143</sup> *Ibid.*

<sup>144</sup> Garde, E. (2013). Seals in Greenland: -An important component of culture and economy. The Last Ice Project. Copenhagen: WWF. Page 31-33.

### 3.2.3 “Subsistence of the community”

*“the hunt is conducted for and contributes to the subsistence of the community, including in order to provide food and income to support life and sustainable livelihood, and is not conducted primarily for commercial reasons”*

Such stands the second condition Article 3(1b) of the Inuit Exemption. But the term *subsistence* is vague, as pointed out by Cambou<sup>145</sup> as the legislation provides no definition of the concept. If *subsistence* simply means that there should be enough food for the community to survive, then the meat providing from seal hunt loses its importance as such because it can be replaced by other types of food, for example food flown-in from the South. Enough of this will make the livelihood sustainable to the Inuit in the sense that the Inuit will survive, if one gives no regard, though, to the much higher cost of imported foods. On the other hand, this alternative food is unsustainable as it has a high ecological cost, thus possibly ruining the environment in which the Inuit live, and undermines the traditional Inuit way of life<sup>146</sup>. If *subsistence* however refers to the subsistence of the culture, then the seal hunt and the meat from the seal is crucial because it has been part of Inuit culture for millennia<sup>147</sup>. A limitation on the trade in seal products could therefore prove to be limiting to the *subsistence* of the Inuit culture if it limits the possibility of hunting the seal. In the following, the reach of the term *subsistence* will be elaborately investigated, starting by an attempt to define the concept. An investigation on the different elements that are inevitably connected to the *subsistence of the community*, such as the Inuit connection to the economic market and the significance of the seal hunt for the day to day survival, will then be conducted.

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<sup>145</sup> Cambou, D. (2013, October). The Impact of the Ban on Seal Products on the Rights of Indigenous Peoples: A European Issue. *The Yearbook of Polar Law*, 5(1), pp. 389-415. Page 396.

<sup>146</sup> Desportes, G. (2017, December 13). Which is more blue, Arctic sealing or the EU seal ban? EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 9-11. Page 11.

<sup>147</sup> Peter, A. (2010, May/June). The European Parliament Shuts Down Seal-Product Imports - Again. *Arctic Journal*, 39-43. Page 40.

### 3.2.3.1 A definition of subsistence

*Subsistence* is a central word in the second condition of the placement of Inuit seal products on the EU internal market. Because of the lack of a definition of *subsistence*, the condition is however unclear, as pointed out by Hossain and Cambou. No definition of *subsistence* is to be found in any of the seal regulations. The regulation from 1998 establishing the approach of the EU in the work with indigenous peoples<sup>148</sup> does not offer a definition either, neither does the European Commission webpage on indigenous peoples nor any of the documents on indigenous peoples indicated there, neither does *A Sustainable EU Policy for the High North*. With a search on the European Commission's webpage for the *Common Fisheries Policy*<sup>149</sup> there is no mention of neither subsistence nor indigenous peoples except for the references to the sealing regulations, and with a search on eur-lex.europa.eu on “subsistence indigenous peoples” and “subsistence definition” the results are mainly subsistence in relation to travels of employees and parliamentarians; no definition of *subsistence* in relation to indigenous peoples is to be found. The definition must therefore be found elsewhere.

According to the Merriam-Webster Dictionary, *subsistence* signifies “the condition of remaining in existence”, with the related words of “continuation” and “perseverance”. *Means of subsistence* signifies “the minimum (as of food and shelter) necessary to support life”<sup>150</sup>. With this definition in mind, the condition of the Inuit Exemption can be interpreted as such as the hunt and the catching of seals can only be done at a level of complete minimum so as to solely secure the “remaining in existence” of the community. Seals may only be hunted when utmost necessary for survival, and the pelt from these seals may be placed on the European market. This definition of *subsistence hunting* is the one shared by IFAW: “IFAW does not oppose the killing of seals for food, clothing and other products for local use by indigenous peoples. Nor do we oppose the sale and distribution of seal

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<sup>148</sup> Council of the European Union. (1998, November 30). Council Resolution of 30 November 1998: Indigenous peoples within the framework of the development cooperation of the Community and the Member States. Mentioned in section 2.1.3.3.2 on indigenous rights within the EU.

<sup>149</sup> European Commission. (n.d.). The Common Fisheries Policy (CFP). Retrieved May 2018, from European Commission - Fishing: [https://ec.europa.eu/fisheries/cfp\\_en](https://ec.europa.eu/fisheries/cfp_en)

<sup>150</sup> Merriam-Webster. (2018, May 4). subsistence. Retrieved 8 2018, from Merriam-Webster Dictionary: <https://www.merriam-webster.com/dictionary/subsistence>

products from subsistence hunts within indigenous communities. [emphasis added]”<sup>151</sup>. The NGO views the Inuit indigenous community as a closed entity, not communicating with the outside world in matters of business, but merely trading amongst the indigenous themselves.

In the *Scientific Opinion of the Panel on Animal Health and Welfare, elaborated on request from the Commission on the Animal Welfare aspects of the killing and skinning of seals*<sup>152</sup> by the EFSA prior to the adoption of Regulation 1007/2009, it is written that the term *subsistence hunt* is indeed often used to describe a hunt conducted for personal consumption by indigenous. “However,” says the report, “in many areas, all or part of the seal may be sold to purchase food or other supplies and seals may also be killed for personal consumption by non-aboriginals.” According to Cambou, the interpretation of *subsistence* that the EU seal legislation puts forward is based on the following misunderstanding: “The ban on seal products is based on the assumption that the trade in seal products and the subsistence activities are two separate issues which do not relate to each other”<sup>153</sup>. But, she says, “the combination of subsistence and commercial activities provides the economic basis for indigenous lifestyle”. The EU seal legislation was adopted with the intention of putting an end to commercial sealing, but the Inuit also rely on market economy. Aaju Peter, an Inuit lawyer, activist and sealskin clothes designer, asks: “If the hunter’s wife prepares the skin and makes mittens out of the skin and sells them, is this subsistence?”<sup>154</sup>. Inuit seal hunting is not a hunt that solely satisfies the basic needs of Inuit – there’s another element to it. The commercial aspect of the hunt, the fact of selling the skins, is an essential complement. “Income that hunters receive from selling sealskins enables them to go hunting again for food for their families and allows their families to purchase goods from the stores”<sup>155</sup>.

In context of the EU seal legislation the concept of *subsistence* can be understood as the definition given by the Merriam-Webster dictionary: seal hunt for utmost survival. According to several academics, representatives of the Inuit community and advocates for Arctic indigenous peoples’ rights, the concept of *subsistence* is however more than just catching the very number of seals needed

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<sup>151</sup> International Fund for Animal Welfare. (n.d.). Indigenous seal hunts. Retrieved May 2018, from International Fund for Animal Welfare: <https://www.ifaw.org/united-states/our-work/seals/indigenous-seal-hunts>

<sup>152</sup> *Supra* note 141. Page 13.

<sup>153</sup> *Supra* note 145. Page 396.

<sup>154</sup> *Supra* note 147. Page 40.

<sup>155</sup> *Ibid.* Page 43.

to survive: the subsistence of Inuit is inseparably linked to the international market and the selling of seal skins.

### 3.2.3.2 Limitation of market = limitation of subsistence

The link between Inuit subsistence and the market is an important factor in relation to the EU seal legislation. “Seal hunting has been a cornerstone of Inuit culture, nutrition and survival in the Arctic for millennia. Since the introduction of the cash economy in the Canadian Arctic, seal hunting has also been an important factor in the socio-economic well-being of Inuit”<sup>156</sup>. Inuit are aware of the Inuit Exemption and their permission to sell their seal products, but the fear of the crashing market and the resulting difficulties in selling sealskin, in part due to the demonization/political uncorrectness of buying/using seal product following the declaration of a ban, is evident – despite the Exemption. It is indeed stated in the basic Regulation 1007/2009 in recital 10 that “it is also necessary to take action to reduce the demand leading to the marketing of seal products and, hence, the economic demand driving the commercial hunting of seals”. The intention of the ban is explicitly to limit the seal products market.

After the initial Directive on seal products was adopted in 1983, the market for seal skin did crash: “The opposition [to the EU seal legislation] coming from Nunavut cites the dire effects that the 1983 ban had on Inuit, saying that despite the fact Inuit were not targeted at that time, the legislation had devastating social and economic consequences for Inuit,”<sup>157</sup> writes Peter. According to the government of the Canadian territory of Nunavut, the effect was the same after the adoption of Regulation 1007/2009: “The impact of the EU seal ban on market interest in sealskins was immediate and apparent”<sup>158</sup>. As a result of the Regulation, the price of Greenlandic sealskin, which in 2006 had recovered to an average of 600 DDK (€80), dropped by 600% in 2009 and has failed to recover since. In 2016, the average price was around 280 DDK (€40)<sup>159</sup>. The government of Nunavut attributes the tremendous price drop to an unwillingness from international fur buyers and brokers to purchase

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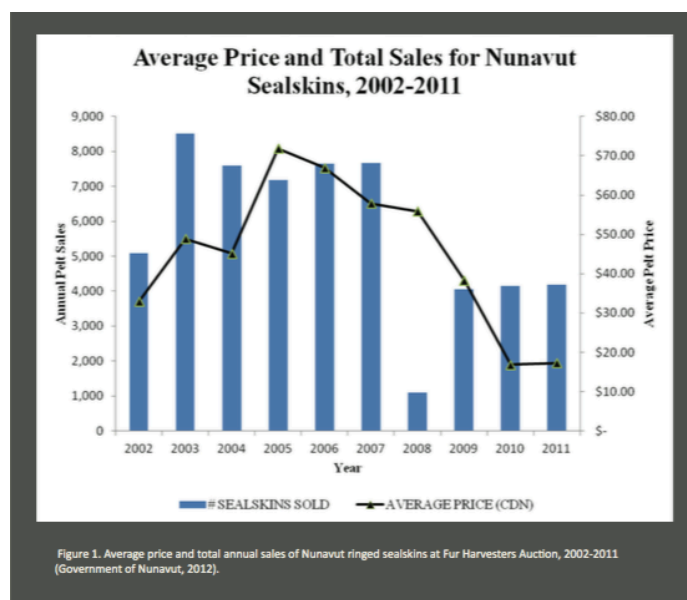
<sup>156</sup> Government of Nunavut. (2012). Report on the Impacts of the European Union Seal Ban, (EC) No 1007/2009, in Nunavut. Department of Environment. Iqaluit: Government of Nunavut. Page 1.

<sup>157</sup> *Supra* note 147. Page 40.

<sup>158</sup> *Supra* note 156. Page 3.

<sup>159</sup> Tamma, P. (2017, December 1-13). Greenland gets EU’s support for Inuit seal products. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 4-5. Page 5.

sealskins due to the uncertain future of the market and the uncertainties surrounding the international shipment through the EU<sup>160</sup>. The figure below<sup>161</sup> demonstrates the decline in market demand for Nunavut Ringed Sealskins at Fur Harvesters Auction from 2002 to 2010.



With the close linkage of Inuit subsistence and the commercial market, the objective of the EU of limiting the seal skin market has had a great effect on the ability of Inuit to conduct their commercial activities that are so important to the subsistence of their indigenous culture: “[...] as a consequence of the EU seal ban on marketing and importing seal products, the overall seal hunts become unprofitable affecting enormously the Inuit and other indigenous communities”<sup>162</sup>. Condition 3(1b) of Regulation 2015/1775 states that the hunt should be conducted to support the community “including in order to provide food and income”. But when the Inuit lose the possibility of selling their seal skins, they lose the possibility of getting this income; the Regulation thus contradicts itself. The intention of limiting the demand of seal products and thus reducing the market considerably supports the interpretation that *subsistence hunt* within the Inuit Exemption is meant as the hunt for

<sup>160</sup> *Supra* note 156. Page 3.

<sup>161</sup> *Ibid.* Page 4.

<sup>162</sup> *Supra* note 137. Page 162.



the utmost survival exclusively: seal skin should be for survival – not for sale. But Sellheim points out that “[...] with regard to the Inuit, continuous interaction with non-indigenous economies for several decades have created economic systems which can no longer be categorized as clearly market- or subsistence-based. [...] Consequently, with a reduction in market demand for seal products in general or declining prices, the subsistence dimension is affected directly”<sup>163</sup>.

### 3.2.3.3 Food and survival

The interpretation of *subsistence hunting* that is implicit in the EU seal legislation is that of hunting only what is necessary for the utmost survival for the Inuit and indigenous communities. Following this interpretation, the Inuit communities are kept in a sort of status-quo and their possibility for cultural and economic development is decreased heavily. “In trying to limit Inuit economic development to subsistence hunting, the Regulation does not recognize the fact that Inuit are not frozen in time but must pursue economic opportunities just like everyone else in Canada or Europe”<sup>164</sup>, says Peter. The selling of seal products is one of the few possibilities the inhabitants North of the 60-degree latitude have for gaining money. By limiting the market as intended by the seal legislation, the possibility for economic development – or simply survival – for Northerner indigenous peoples is limited: for some communities - for example in East Greenland<sup>165</sup>, the hunting of seals is the only possible activity which can procure cash.

Also, this interpretation is not consistent with the reality of the Arctic inhabitants: the reality here is that the Inuit economy and Inuit seal market is closely related to the European one – even dependent on it. “They [the EU] undermine our culture,” states Lynge, “because if we cannot market our products then we have no economy, and if we have no economy, people cannot go on living as trappers and hunters”<sup>166</sup>. If the European sealskin market is non-existent, so is the Inuit sealskin market: the ability to sell sealskins is part of the circle of the subsistence and survival of the Inuit

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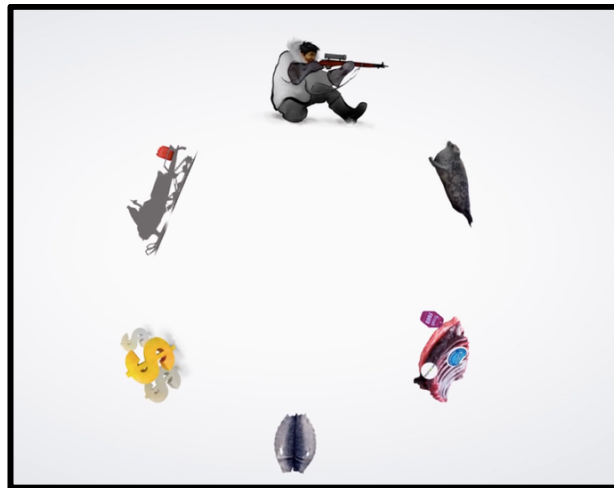
<sup>163</sup> Sellheim, N. (2016). The Narrated ‘Other’ – Challenging Inuit Sustainability through the European Discourse on the Seal Hunt. In K. Hossain, & A. Petrétei, *Understanding the Many Faces of Human Security - Perspectives of Northern Indigenous Peoples* (pp. 56-73). Brill Nijhoff. Page 65

<sup>164</sup> *Supra* note 147. Page 43.

<sup>165</sup> Tamma, P. (2017, December 1-13). Great Greenland CEO: seal hunting ban ‘devastating’ for Inuit communities. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 6-8. Page 8.

<sup>166</sup> Lynge, F. (1995). Indigenous Peoples between Human Rights and Environmental Protection - An Arctic Perspective. *Nordic Journal of International Law*, 64, pp. 489-494. Page 490.

culture. In the movie *Angry Inuk*, the director Alethea Arnaquq-Baril explains this circle of survival with the figure below: the hunter hunts the seal, eats the healthy and highly nutritional meat, sells the skin and earns money with which he then can buy fuel for his snow scooter or bullets for his gun, making his next hunt possible.



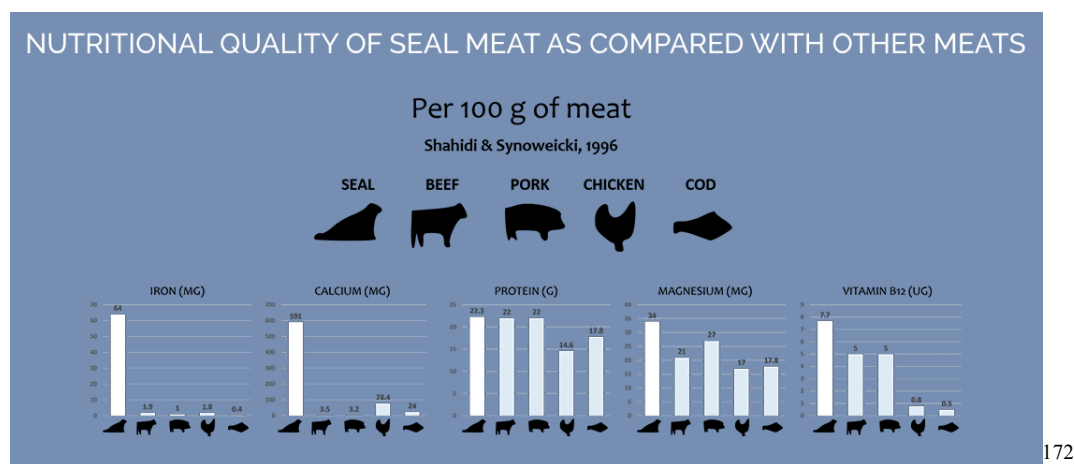
With the limiting of the market for seal products, as intended by the EU Seal Regime, the money is taken out of the circle of subsistence. The hunter will then, ultimately, not be able to buy fuel for his snow scooter and bullets for his gun, and the seal hunt will thus be difficult to realize. When losing, or at least decreasing, the possibility of catching a seal, the hunter and also his family lose the local source of food, which is both healthy and highly nutritious<sup>167</sup>. Since agriculture is impossible that far North, the alternative food source then becomes flown-in food from the South, flown in food which is expensive because of the transport. As cash opportunities have been limited, the food which can be purchased will be the cheapest one, i.e., low quality mass-produced items. This alternative flown-in food threatens the subsistence of the Inuit community in several ways. First of all, its quality threatens the health of the Inuit: “[I]n the Arctic, you cannot subsist on meat from cows and pigs. You have to eat the meat from the animals who live there, if you want to stay in good health. That is a proven medical fact”<sup>168</sup>. The local food from the High North, comprised of what the Inuit can hunt and fish,

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<sup>167</sup> seaDNA. (2018). Nutrition Facts. Retrieved May 2018, from seaDNA: <https://www.seadna.ca/nutritional-facts/>

<sup>168</sup> *Supra* note 166. Page 491.

is indeed highly nutritious with high values of vitamins, iron and protein<sup>169</sup>. Healthy food is one thing; enough food is another thing. “New information indicates that small communities and settlements in west northern and east Greenland experience food insecurity as a growing problem, partly due to restrictions in hunting rights”<sup>170</sup>. In Greenland in 2006 and 2010, 17% of 11-17 years old schoolchildren went to school or to bed hungry “always” or “often” due to lack of food in the home<sup>171</sup>.



With the trade restriction, the hunting of seals but also of other wildlife hunted for domestic purposes is now being made non-affordable for many, as the hunting costs are no longer covered by selling of the skins. “[B]y decreasing the access to and the use of low ecological footprint food and cash opportunities, it [the trade restriction] favours a high-energy option: the import of cheap flown-in food, mass-produced at a high ecological cost in other areas,” says Desportes<sup>173</sup>. Alternative flown-in food thus not only threatens the health and the culture of the Inuit, but also the environment in which they live. The environmental footprint of seal products is very low since the seals are both hunted and eaten locally with a resulting low carbon footprint, the hunt is sustainable and there are

<sup>169</sup> Gadsby, P., & Steele, L. (2004, October 1). The Inuit Paradox. Retrieved May 2018, from Discover - Science for the Curious: <http://discovermagazine.com/2004/oct/inuit-paradox>

<sup>170</sup> NAMMCO. (2017). Marine Mammals: A multifaceted Resource. NAMMCO. Page 26.

<sup>171</sup> Niclaesen, B., Petzold, M., & Schnohr, C. (2013). Adverse health effects of experiencing food insecurity among Greenlandic school children. *International Journal of Circumpolar Health*(72).

<sup>172</sup> *Supra* note 167.

<sup>173</sup> *Supra* note 146. Page 11.

minimal collateral environmental cost and fresh water use – all this in comparison with the ecological nightmare represented by intensive food production; the high carbon-cost of flown-in food is therefore avoided. The trade restriction and the thereof diminished access to local seals favors the import of higher carbon and ecological cost flown-in foods, increasing significantly the overall household carbon footprint in Greenland<sup>174</sup>. Ultimately, the induced supplementary carbon-emissions will contribute to increasing the pace at which the ice is melting in the High North<sup>175</sup> – the ice and snow in which the Inuit have always lived.

The sale of seal skins equals job opportunities and income not only for those hunting the seals and bringing home the skins, but also for those processing the skins and turning them into garments. Because of the low sale of seal skin and seal products, Great Greenland, the Greenlandic furhouse, had to close the last tannery it had in Greenland in January 2016<sup>176</sup>. Except for the lack of food, lack of income and loss of jobs, another consequence is that a great part of the Inuit culture is lost: Time has changed and the new generation feels cut off from the old generation without however being part of the new trends because of remoteness and limited economic means: “Inuit cultures have experienced the loss of identity that happens when a culture goes through a rapid and radical societal change, especially when those hunting cultures are at the same time demonized”<sup>177</sup>. From having one of the lowest suicide-rates in the world, the suicide-rate in Greenland is now the world’s highest<sup>178</sup>, with Nuuk being referred to as the Suicide Capital of the World<sup>179</sup>. The suicide-rate in Greenland, as well as in other Inuit communities<sup>180</sup>, skyrocketed in the 70’s and 80’s, and the connectedness of the graph below to the first anti-sealing campaign and the years of adoption of the seal legislation is striking.

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<sup>174</sup> *Ibid.*

<sup>175</sup> IOP - Institute of Physics. (2012, October 11). Glaciers cracking in the presence of carbon dioxide. Retrieved May 2018, from Institute of Physics: [http://www.iop.org/news/12/oct/page\\_58615.html](http://www.iop.org/news/12/oct/page_58615.html)

<sup>176</sup> Søndergaard, N. K. (2016, Januar 20). Great Greenland lukker systue efter hård konkurrence. Retrieved July 2018, from SERMITSIAQ: <http://sermitsiaq.ag/great-greenland-lukker-systue-haard-konkurrence>

<sup>177</sup> *Supra* note 170. Page 31.

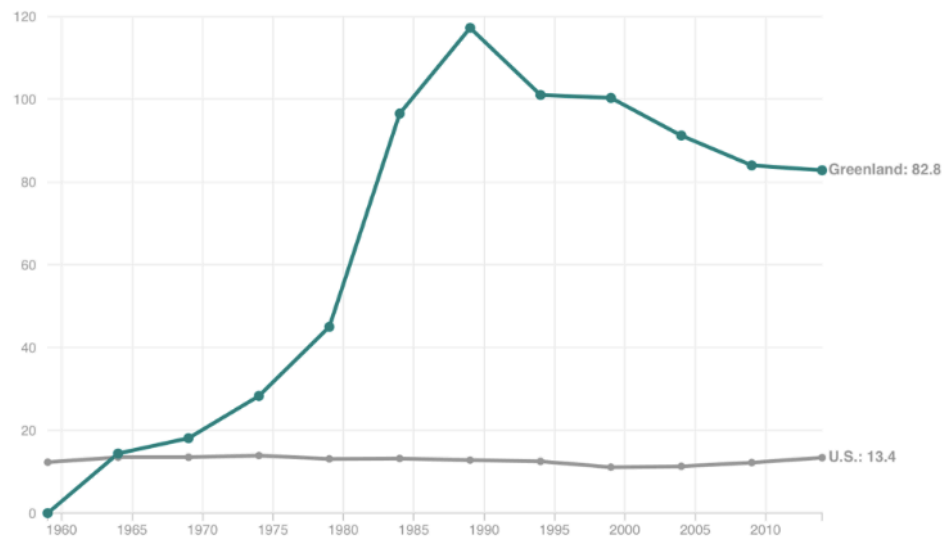
<sup>178</sup> Erikson, D. (2018, July 2). An Ignored Epidemic: Greenland's Suicide Crisis. Retrieved July 2018, from The Pendulum - International Affairs Magazine: <http://www.clemsonpendulum.org/online-articles/an-ignored-epidemic-greenlands-suicide-crisis>

<sup>179</sup> George, J. (2009, October 9). The Suicide Capital of the World. Retrieved July 2018, from Slate: [http://www.slate.com/articles/news\\_and\\_politics/dispatches/2009/10/the\\_suicide\\_capital\\_of\\_the\\_world.html](http://www.slate.com/articles/news_and_politics/dispatches/2009/10/the_suicide_capital_of_the_world.html)

<sup>180</sup> Peter Bjerregaard in *ibid.*

## Suicide Rates In Greenland And The U.S.

Suicides per 100,000, by year



### Notes

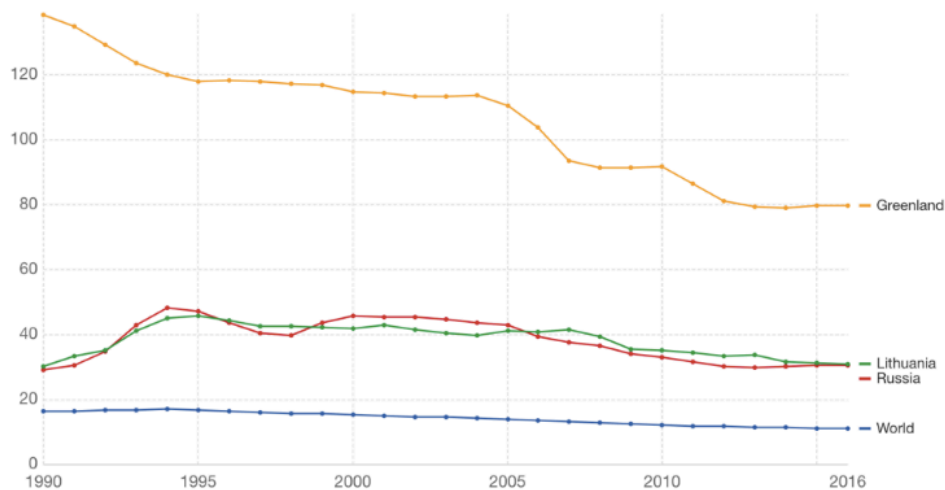
Analysis of suicides through 2010 in Greenland came from the International Journal of Circumpolar Health, which reported suicide rates for five-year periods. This rate has been standardized to compare to an annual figure. Additional data came from mortality reports by the Greenland Police.

Source: [International Journal of Circumpolar Health](#), [Organisation for Economic Co-operation and Development](#), [Centers for Disease Control and Prevention](#), [Greenland Police mortality reports](#)

Credit: Rebecca Hersher and Katie Park/NPR

## Suicide death rates (per 100,000)

Age-standardized death rates from suicide, measured as the number of deaths per 100,000 individuals. Age-standardization assumes a constant population age & structure to allow for comparisons between countries and with time without the effects of a changing age distribution within a population (e.g. aging).



Source: IHME, Global Burden of Disease (GBD)

### 3.3 Sub-conclusion: Does the Inuit Exemption fulfill its purpose?

When referring to the protection provided to the Inuit and other indigenous populations through the EU Seal Regime, it is important to note that none of the regulations mention “protection” of the indigenous communities. Rather, it is stated that the indigenous communities “should not be adversely affected”<sup>181</sup>. The apparent objective of the EU Seal Regime is to increase animal welfare of the seal through the limitation of the trade in seal products, as a limited market will influence negatively the demand and likely contribute to less seals being killed. The Inuit Exemption is an attempt to reduce the negative impact on the specific indigenous market. It could be argued that the protection of something or someone requires a positive action, a positive effect; the Exemption, on the other hand, is a negative action: the EU refrains from exerting an influence on the indigenous peoples’ market for seal products. The main goal of the legislation is the protection of the welfare of the seal, and thus a positive action in that context only.

The EU Seal Regime is criticized for its vague formulations by several. As illustrated above, there are indeed some vague formulations in especially the Inuit Exemption of the EU seal legislation. These unspecific definitions, such as that of *traditional hunt*, *subsistence* and *animal welfare*, result in several possible interpretations thereby rendering the frame of the legislation and the frame of the Exemption unclear. Despite the intention of leaving the Inuit unharmed by the legislation, these interpretations – some of which even contradict each other – are having the opposite effect. Whether the EU succeeds in its intention of leaving the Inuit sealskin market and thus the Inuit communities unharmed will be re-visited and discussed in the following discussion.

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<sup>181</sup> Such is stated in the Recital of Directive 83/129/EEC, paragraph 14 of Regulation 1007/2009, and paragraph 2 of Regulation 2015/1775.

## 4 Discussion: Are intra-EU indigenous peoples' rights adequately protected?

The EU is a strong supporter of indigenous rights, with many policies on the subject. The majority of the policies are, however, mainly regarding indigenous peoples outside of the EU. As explained in section 2.1.3.3, the focus on indigenous peoples' rights within the EU has not been important due to the relatively small number of indigenous peoples living on the European territory and because of the existence of strong protection of minority rights that to a wide degree also covers the protection of indigenous peoples' rights. The only two nationally recognized indigenous peoples living in countries related to the EU are the Inuit in Greenland and the Saami spread across Northern Scandinavia<sup>182</sup>. There are no EU policies concerning specifically the intra-EU indigenous peoples<sup>183</sup>, but they are mentioned in policies on the Arctic.

The EU Seal Regime is a legislation in which Inuit are expressly mentioned – a trade legislation that places restrictions on which products deriving from the seal that can be placed on the EU internal market. With an intention of not harming the indigenous people of Inuit, that through millennia have lived and survived thanks to the local and nutritious food of the seal provided for them by the Mother of the Sea<sup>184</sup>, an exemption for seals caught by Inuit has been included. But the analysis above suggests that the EU Seal Regime is self-contradictory when it comes to the matter of the protection of the indigenous people of Inuit: the legislation's implicit notion of *subsistence* weakens the actual subsistence and viability of Inuit and Inuit culture by proposing an Inuit exemption based on a cultural misunderstanding.

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<sup>182</sup> European Commission. (2016, April 27). Joint Communication to the European Parliament and the Council: An integrated European Union policy for the Arctic. Retrieved March 4, 2018, from European Union External Action: [http://eeas.europa.eu/archives/docs/arctic\\_region/docs/160427\\_joint-communication-an-integrated-european-union-policy-for-the-arctic\\_en.pdf](http://eeas.europa.eu/archives/docs/arctic_region/docs/160427_joint-communication-an-integrated-european-union-policy-for-the-arctic_en.pdf)

<sup>183</sup> The European Instrument for Democracy and Human Rights (EIDHR), an important instrument for the support of human rights and fundamental freedoms, for example, is a thematic funding instrument for EU **external** action. See: [https://ec.europa.eu/europeaid/how/finance/eidhr\\_en.htm\\_en](https://ec.europa.eu/europeaid/how/finance/eidhr_en.htm_en)

<sup>184</sup> Visit Greenland. (n.d.). The Legend of the Mother of the Sea. Retrieved June 2018, from Visit Greenland: <https://visitgreenland.com/about-greenland/legend-mother-sea/#top-section>

The following discussion will be three-folded. In the first section, I will discuss the claims of the legislation's violation of indigenous peoples' rights as put forward by amongst others Hossain and Cambou. In the second section of the discussion I will discuss which possible ways forward exist. Lastly, the case of the EU Seal Regime will be discussed in light of the values of universality and relativism. It will be discussed how the protection of Arctic indigenous peoples within the EU could be strengthened in the long run.



#### 4.1 Are the rights of Inuit adequately protected?

*Subsistence* is equivalent to survival and continuity and is therefore central when it comes to the protection of indigenous peoples; the purpose of indigenous peoples' rights is indeed the survival and continuity of the indigenous peoples and their respective cultures. The concept of the hunt contributing to the *subsistence* of the community is central and touches upon many different elements: the physical survival of the community, in terms of the available food-availability and well-nourishment, as well as the survival of the Inuit culture. With the interpretation of *subsistence* as the utmost survival exclusively and the limiting of the market, the EU objective of limiting the seal skin market is in other words counterproductive to the *subsistence* of the Inuit communities. The ability



to sell sealskin is part of the circle of the subsistence and survival of the Inuit culture, and if this circle is broken, there is a great risk of the Inuit culture being broken as well. Sellheim states: “It seems fair to say that the seal products trade regime is not a policy that supports indigenous and local populations in the Arctic, safeguards their interests or takes their views adequately into account. It therefore contradicts fundamental elements of the goals as formulated in the EU’s Arctic-related documents that make reference to the Arctic’s inhabitants”<sup>185</sup>. This claim will be the focus of this first section of the discussion. The rights mentioned in section 2.1.2 on indigenous peoples’ rights will be discussed in relation to the effects and consequences of the EU Seal Regime.

#### 4.1.1 Rights affected by the EU Seal Regime

A characteristic of indigenous peoples is that they have a culture, with traditional norms and practices, that is different from that of the majority. This culture is what identifies the group and that unites them as a people. The right of indigenous peoples to practice their culture is therefore essential and protected by Article 11 of the UNDRIP. For Inuit, seal hunting is an important part of their tradition and it has been as such for millennia: “How we get our food is intrinsic to our culture. It’s how we pass on our values and knowledge to the young,”<sup>186</sup> tells Patricia Cochran, an Inuit from Northwestern Alaska. The story of *Inuk’s First Seal*<sup>187</sup> is the story of a 14-year-old boy from a little village in Greenland, who, on a walk in the snowy landscape, gets lucky: “[T]hey [the kids of the village] run from house to house, telling everybody the good news: ‘Inuk has shot his first seal. Inuk is a real hunter.’”<sup>188</sup>. Like his father, Inuk wants to be a hunter. The tradition and the knowledge are passed down through the generations, from father to son<sup>189</sup>. When it comes to the preparations of the skins, the tradition and the knowledge is passed down from mother to daughter: “Mother makes clothing out of sealskin and Naja, the little sister, is learning how to do it”<sup>190</sup>. But with the trade limitation in

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<sup>185</sup> Sellheim, N. (2014, January 27). The goals of the EU seal products trade regulation: from effectiveness to consequence. *Polar Record*, 51(258), 274-289. Page 285.

<sup>186</sup> Patricia Cochran in Gadsby, P., & Steele, L. (2004, October 1). The Inuit Paradox. Retrieved May 2018, from Discover - Science for the Curious: <http://discovermagazine.com/2004/oct/inuit-paradox>

<sup>187</sup> Hansen, K. (1987). *Inuk’s First Seal* (2nd Edition ed.). (O. Heinrich, P. Lauritzen, Eds., & L. T. Rasmussen, Trans.) Nuuk, Greenland: Tusarliivik, The Greenland Home Rule Information Service.

<sup>188</sup> *Ibid.* Page 17.

<sup>189</sup> Garde, E. (2013). Seals in Greenland: -An important component of culture and economy. The Last Ice Project. Copenhagen: World Wildlife Fund. Page 27.

<sup>190</sup> *Supra* note 187. Page 6.

seal products the subsistence of the culture of the Inuit is threatened: “With the seal ban, with the inability to sell our seal skins, with the loss of income to continue our hunting we are losing our culture that we have been passing on through time and through generations!” says Aaju Peter<sup>191</sup>.

Because of the EU seal ban and despite of the Inuit Exemption the demand for sealskin, stamped as an evil product, and thus the prices have decreased significantly. This has rendered the seal hunt not only unprofitable, but it has also taken its toll on the circle of subsistence of the Inuit communities: by not being able to sell the sealskin the Inuit hunters must look wistfully at the money that helps them buy fuel or bullets for the next hunt, thus hindering them in going hunting again and hindering them in continuing their cultural practices and sharing their cultural practices with their sons and daughters that should have carried on the tradition, knowledge and culture. The important decrease in the sealskin market limit the Inuit in practicing their culture, and it likewise impedes the cultural development and the development of cultural knowledge, as protected by Article 31 of the UNDRIP: if the culture cannot be practiced and the traditional knowledge cannot be shared, then neither can it be developed. An encroachment of Article 11 and the right to practice cultural traditions and norms therefore entails an encroachment of Article 31 and the right to “maintain, control, protect and develop their cultural heritage and traditional knowledge”.

Article 20 of the UNDRIP reads: “Indigenous peoples have the right [...] to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.” By eliminating an important source of income for the Inuit, as is the case through the adoption on the trade limitation in seal products and the following crash of the market for seal products, Inuit in remote villages where no other possibility for income exists, lose this means of subsistence and development. “Having the right to hunt taken away from you is really devastating. Especially some of the more isolated settlements, they are still dependent 100% on seal hunting,” as pointed out by Ditte Sorknæs, former CEO of Great Greenland<sup>192</sup>. By removing the only possible source of income, the right to engage in economic activities – traditional or not – is lost. “The adoption of a Regulation on Seal Products represents a challenge for the rights of

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<sup>191</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

<sup>192</sup> Tamma, P. (2017, December 1-13). Great Greenland CEO: seal hunting ban ‘devastating’ for Inuit communities. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 6-8. Page 8.

indigenous peoples whose livelihood depends on sealing activities,” writes Cambou<sup>193</sup>. Further, an encroachment on this right to be secure in the enjoyment of own means of subsistence is not only an encroachment on Article 20 of the UNDRIP, but likewise of the EU’s own goals and principles. The EU Council Resolution from 1998, adopted prior to the UNDRIP, states: “[...] indigenous peoples have the same rights as everybody else to a secure livelihood, and the lifestyle of their choice, and should be treated equally in the legal framework; they should also have access, on a non-discriminatory basis, to the opportunities and natural resources required to achieve these aspirations (...)”<sup>194</sup>.

The right to self-determination, Article 3 of the UNDRIP, can be seen in relation to the right to development, the right to secure livelihood and the right to be secure in one’s own means of subsistence. Self-determination is about the indigenous peoples being able to decide their own path, their own development. When not being able to have the livelihood of their choice, not be able to pursue economic development and freely engage in economic activities of their choice because of the limitation of the sealskin market, their self-determination is weakened. In Greenland where the story of Inuk takes place, as well as other Arctic areas such as Nunavut where Aaju Peter lives, the seal has provided humans with food, clothing and utensils as long as humans have lived in the icy regions of the North. According to World Wildlife Fund (WWF), seals were and still are probably *the* most vital resource in the often very remote communities<sup>195</sup>. Today, the seal is still an economic basis for many people in Greenland, even the only one in some communities, with over two thousand full time hunters: seal hunting is still a central traditional, cultural and economic part of the Greenlandic people and their identity<sup>196</sup>.

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<sup>193</sup> Cambou, D. (2013, October). The Impact of the Ban on Seal Products on the Rights of Indigenous Peoples: A European Issue. *The Yearbook of Polar Law*, 5(1), pp. 389-415. Page 414.

<sup>194</sup> Council of the European Union. (1998, November 30). Council Resolution of 30 November 1998: Indigenous peoples within the framework of the development cooperation of the Community and the Member States. Retrieved May 2018, from European Commission - Development: [http://ec.europa.eu/development/lex/en/pdf/res\\_98\\_indigen.pdf](http://ec.europa.eu/development/lex/en/pdf/res_98_indigen.pdf). Recital 5, point 4.

<sup>195</sup> *Supra* note 189. Page 7.

<sup>196</sup> *Ibid.* Page 25.

#### 4.1.2 Protection provided by other human rights instruments?

All the rights and articles mentioned above are stated in the UNDRIP, but the UNDRIP is a declaration and is therefore not legally binding, as emphasized by the CJEU in paragraph 50 of the judgement of *ITK and Others v Commission*<sup>197</sup>. The UNDRIP is merely a declaration of “good intentions”. Another relevant human rights instrument that however is legally binding, is the *International Covenant on Civil and Political Rights* (ICCPR), adopted in 1966 and constituting the International Bill of Rights along with *Universal Declaration on Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Article 1(1) of the ICCPR states that: “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”<sup>198</sup>. Article 27 of the same document states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

According to the UN Human Rights Committee (HRC), there is an interconnectedness between a peoples’ right to subsistence and a peoples’ right to enjoy its culture. This can be seen in the Committee’s judgement in *Apirana Mahuika and Others v New Zealand*, paragraph 9.2, 1993: “the provisions of Article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular Article 27”. The case from the HRC is interesting in relation to the conflict within the EU Seal Regime, because the Maori blamed New Zealand for limiting their right to subsistence and their right to enjoy their culture through fishing legislation – in the same manner Inuit are blaming the EU for encroaching on their right to subsistence and practice of their culture through sealing legislation. The HRC acknowledged the importance of fishing for the Maori culture, and as a part of that the possibility of being able to enjoy economic and cultural development. The HRC, however, concluded that “the facts before it do not reveal a breach of any of the articles of the Covenant”<sup>199</sup>. The details of the two cases – the Maori and the fishing legislation on one side, and the Inuit and

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<sup>197</sup> *Inuit Tapiriit Kanatami and Others v Commission*, C-398/13 P (CJEU September 3, 2015).

<sup>198</sup> ICCPR, Art 1-1

<sup>199</sup> *Apirana Mahuika et al. v. New Zealand*, Communication No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000). Paragraph 10.

sealing legislation on the other side – are strikingly similar. In other words, the Inuit might have a difficulty of finding support for their case with the HRC – just like they did not find support with the CJEU in the judgement on *ITK and Others v Commission*. The case of the Inuit subsistence could seem rather hopeless.

#### 4.1.3 Sub-conclusion: Inconsistent protection and double-standard by the EU

By drastically limiting the seal market, the EU Seal Regime causes obvious encroachment on Arctic indigenous peoples' rights: the right to practice their culture, the right to maintain and develop their cultural heritage and traditional knowledge, the right to self-determination, the right to economic development and the right to be secure in their own means of subsistence. The question is, though, if the EU seal legislation can be characterized as a direct violation of indigenous rights. The legislation does include an exemption for Inuit products, an intention to spare the Inuit and other indigenous communities of the Arctic from the consequences of the legislation, but as described through the dissertation, in particular section 3.2.1.2 of the analysis, the indigenous peoples of the Arctic do not remain unharmed by the consequences of the legislation. "They [the EU and the MEPs] are not stupid, they knew the consequences we had suffered from the 1983-ban when adopting the new Regulation in 2009," says Aaju Peter<sup>200</sup>.

One could argue that every piece of legislation has consequences, and that all consequences cannot be taken into account when drafting a legislative act. But who, then, if not the EU, bears the responsibility for the weakening of the Inuit subsistence? The well-meaning intention of the *subsistence*-exemption of the EU seal legislation is undermining itself: undermining the subsistence of the Inuit communities by removing an important element upon which their subsistence is based, thus reducing the possible economic development of Inuit communities and Inuit culture to a status-quo. "They [The EU] threaten our aboriginal cultures. Not only do we have the right to live the way nature dictates living conditions in the Arctic, but we also have a right to market our products. Entire nations are now beginning to deny us this right"<sup>201</sup>. When consequences of a legislation so strongly

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<sup>200</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

<sup>201</sup> Lynge, F. (1995). Indigenous Peoples between Human Rights and Environmental Protection - An Arctic Perspective. *Nordic Journal of International Law*, 64, pp. 489-494. Page 490.

affect the human rights of a people, can the claim of violation of human rights then merely be rejected because it is consequences and not the legislation as such?

It is clear that the EU Seal Regime encroaches on indigenous peoples' rights; the affected rights are many. "The imposed ban, with its ambiguous exception [...], undermine internationally recognized human rights standards insofar as the regulations make it difficult for the concerned indigenous groups to enjoy their right to economic subsistence"<sup>202</sup> states Hossain. The EU lacks consistency in its protection of indigenous peoples: the indigenous peoples' rights should be protected, and their livelihood secured, but only as long as it does not interfere with the goal of increased animal welfare. The EU would seem to have a double standard. The alleged good intentions of the EU in its support of the UNDRIP and in matters of the protection of indigenous peoples' rights are contradicted by the non-negligible consequences of the EU Seal Regime upon the indigenous peoples of the Arctic. In the movie *Angry Inuk*, a small delegation of Inuit travelled to Brussels to argue their case. In a conversation<sup>203</sup> with Belgium MEP Bart Staes, who explains that the Inuit Exemption is meant to "preserve the people of the Inuit", Aaju Peter responds: "For me, the exception is of no use, because once the commercial hunt goes down, once the price goes down, we won't, he [an Inuit hunter standing beside] won't be able to make any money of the seals on which he depends, on which he and his wife depends. So, whether the exception is there or not we are affected". Referring back to the quote by Sellheim in the introduction of the discussion, it seems indeed fair to say that the EU Seal Regime is not supporting Arctic indigenous populations of the Arctic, nor safeguarding their interests, and, as shown, the legislation contradicts Arctic-related documents that include references to Inuit.

## 4.2 Some ways forward

Despite the good intentions of the Inuit Exemption, the derogation to the EU seal legislation does not fulfill its purpose of protecting Inuit and other indigenous communities from being "adversely

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<sup>202</sup> Hossain, K. (2012, March 28). The EU ban on the import of seal products and the WTO regulations: neglected human rights of the Arctic indigenous peoples? *Polar Record*, 49(2), 154-166. Page 163.

<sup>203</sup> Arnaquq-Baril, A., Thompson, B. (Producers), Arnaquq-Baril, A. (Writer), & Arnaquq-Baril, A. (Director). (2016). *Angry Inuk* [Motion Picture]. Canada. At 00:33:03.

affected”. As shown in the section above, the EU seal legislation results in the encroachment of a series of indigenous peoples’ rights. The first Directive was adopted 35 years ago in 1983, the following Regulation on the subject was adopted 9 years ago in 2009, followed by further amendments and specifications. The limitation on the trade in seal products has thus been in function for many years, with important consequences for the Inuit and other indigenous communities of the Arctic. This section will discuss the possible legislative solutions, meaning possible changes to the existing legislation, taking into account the “moral considerations” of the European citizen, the EU’s policies and goals, as well as the interests of Inuit. The proposed avenues will not remedy for the damage already occurred, but are rather possible options forward. The discussion will be on the basis of the existing legislation.

#### 4.2.1 Status quo: Keeping legislation as it is

The first possibility is to keep the EU seal legislation as it is – with no amendments to neither the ban nor the Inuit Exemption. This would indeed be the “easy” solution. The moral concerns of European citizens<sup>204</sup> would continuously be safeguarded, as well as the EU’s intention that “the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals” as stated in Article 13, Title II of the TFEU. For the sake of Inuit, however, the change would evidently be minimal, and the current encroachment of indigenous peoples’ rights would prevail. The consideration for the EU’s objectives and the moral concerns of EU citizens would prevail over the considerations for the Inuit with the implementation of this first solution. Or rather: the EU’s objective would be safeguarded in the short run. In the long run the EU’s stated intentions that “indigenous peoples have the same rights as everybody else to a secure livelihood, and the lifestyle of their choice”<sup>205</sup> and the EU’s image as a front runner for human rights both within the EU and worldwide<sup>206</sup> would be strongly contradicted by the continued encroachment on indigenous peoples’ rights. As explained in the previous section, section 4.1, the EU is already contradicting

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<sup>204</sup> The seal legislation was drafted and adopted to meet this moral concern of EU citizens. The presumption in this section, and the dissertation in general, is that this moral concern is the same as when the legislation was adopted. It is outside of the scope of this dissertation to make an analysis or questionnaire on the subject.

<sup>205</sup> *Supra* note 194. Recital 5, point 4.

<sup>206</sup> European Union. (2018, 25 05). Human Rights. Retrieved May 2018, from The European Union - EU by topic: [https://europa.eu/european-union/topics/human-rights\\_en](https://europa.eu/european-union/topics/human-rights_en)

itself. If the EU wants to maintain its good reputation, the solution of keeping the seal legislation as it is will not be a viable option.

#### 4.2.2 Revoking ban in its totality

The second option is radically opposite to the first one. In order to let the consideration for Inuit and other indigenous communities prevail and meet their concerns, the EU seal regime could be revoked in its totality. The Inuit would then again be able to sell their products as they wish through the re-opening of the market for seal products. The question is, though, if a re-opening of the market in itself would equal an increase in the sale of sealskin products so as to restore the economic possibilities the Inuit had in the sale of seal products prior to the ban.



The EU seal regime was initiated through intense anti-sealing campaigns in the 1970's and 1980's. Around 2007, when the intentions of adopting further limitations of the trade in seal products resurfaced, the anti-sealing campaigns were re-ignited. The Europeans have not forgotten these campaigns: re-opening the seal products market would not change the opinion of European citizens that seal hunt is cruel and unnecessary. IFAW and Brigitte Bardot, in cooperation with all the other activists and NGOs fighting for animal rights, would yet again stand up behind the megaphone and resume their handing out of baby seal puppets to the Parliamentarians of the EU.



The Inuit would yet again feel the consequences of being too few and too far, and despite the revoke of the ban, the strong opposition would be clearly felt. The solution of revoking the EU Seal Regime in its totality might thus be counterproductive and prove to be rather a disadvantage than an advantage for the Inuit and other indigenous communities: through the campaigns and the lobbying by the anti-sealing people the Inuit would find themselves isolated and misunderstood. Revoking the seal ban would simplify the access to the market, but it is not equal to a strengthening of the market for seal skin products. It might help, though, when younger generations, who have not been contaminated by the anti-sealing campaigns, grow up and perhaps look at the issues not separately but relatively in a more global environmental and ecosystem perspective.



#### 4.2.3 Informing the public

A solution that would take consideration of all aspects – EU citizens, EU policies and Inuit alike – would be increased information about the indigenous peoples of the EU as well as increased information about the Inuit Exemption. Information to the public and custom authorities is mentioned within the current seal legislation, Article 5a: “The Commission shall inform the public, with a view

to raising their awareness, and competent authorities, including customs authorities, of the provisions of this Regulation and of the rules under which seal products resulting from hunts conducted by Inuit or other indigenous communities can be placed on the market”. Taking the crash of the seal market into account, and the important economic loss for Inuit, it seems as the Commission has not complied with its own objective. In their report on seals in Greenland, the WWF Denmark states that “[...] the exemption is not well-known to the public and the impact of the ban has been devastating, undermining the entire market for sealskin products – not only the intended products stemming from commercial sealing”<sup>207</sup>. To compensate for what the Commission has omitted to do in the past I would propose a future information campaign in relation to Inuit, seal hunt and the import of seal skin products.

A proper information campaign by the EU Commission would serve more than one purpose: first of all, it would explain the seal legislation and the Inuit Exemption, but it would also raise the knowledge and the awareness of the indigenous peoples that live in relation to the EU. A serious information campaign by the EU Commission on the Inuit and their way of life would increase the mainstream European’s knowledge about one of the indigenous peoples that live in relation to EU member states. This part of the information campaign should not focus on the seal legislation, but rather explain who the Inuit are, how they live, their cultural practices, along with the importance of the seal for their subsistence. The second part of the information campaign would focus on the seal legislation and, most importantly, the Inuit Exemption within. In connection to the first part of the campaign, this second part would pick up on the importance of the seal hunt and the following selling of seal products for Inuit. The Exemption would be explained, so as to make it clear for the European citizens that the import of seal products is perfectly legitimate – of course in line with the conditions set by the Inuit Exemption. Such an information campaign should also replace Arctic sealing in an environmental and ecological context, as an activity with little environmental cost – as long as it is kept sustainable – in order to de-demonize the use of seal products, which has been the result of the mis-information of NGOs and the ban as such.

The information on where the seal skin products come from need, of course, to be clear and easily accessible. First of all, the above described information should be available on the Commission web

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<sup>207</sup> *Supra* note 189. Page 39.

page. With a Google-search on “trade in seal products” one is led to a page called *Trade in seal products – Scope of the EU Seal ban*<sup>208</sup>. It briefly explains the legislation. With a few clicks one is led to the folder of the Commission titled the *EU Seal Regime*<sup>209</sup> – which is more inviting and clearer and more informative than the previous page. It should be noted, however, that this document was not published until September 2016, one year after the entry into force of Regulation 2015/1775 requiring accessible information to the public, and that the previous regulations did not require information about the ban and the Exemption to be transmitted to the public. In addition to being clear and accessible, the information needs to be readily available on the products to be purchased such that the consumer need not to worry about where the products originate from – in respect of the moral concerns of the European consumer. Great Greenland, a Greenlandic public company trading in sealskins since 1977, in 2017 proposed a QR code-system: “So the whole idea of the QR code labelling is that it follows the skin as well, but it can be sewn into the final product. So if you, as a consumer, go into a store, look at a jacket, you like it but you have doubts – is this legal or illegal? You can scan the QR code and see it is legal because it has been hunted by Inuit,” explains Ditte Sorknæs, former CEO of Great Greenland<sup>210</sup>.

A strengthening of the information on the Inuit and the EU Seal Regime as provided by the European Commission leaves the seal legislation as it is, thus preserving the moral interests of the EU citizens and the policies of the EU, while at the same time enabling Inuit to regain a bit of the market for seal products. The intention of informing the public and diverse authorities on the Inuit Exemption is already included in Article 5a of the Regulation 2015/1775. Taking the crashing of the seal products market into account, questions can legitimately be raised so as to the implementation of this article by the Commission. Much harm to the Inuit and other indigenous communities could have been avoided had the information been sufficient and adequate. According to Aaju Peter, the Commission will not be able to do an adequate information campaign: “The Commission cannot, and does not have the will to, make such a campaign: it would mean that they would have to speak against their

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<sup>208</sup> European Commission. (2017, October 04). Trade in seal products - Scope of the EU Seal ban. Retrieved June 2018, from European Commission - Environment:

[http://ec.europa.eu/environment/biodiversity/animal\\_welfare/seals/seal\\_hunting.htm](http://ec.europa.eu/environment/biodiversity/animal_welfare/seals/seal_hunting.htm)

<sup>209</sup> European Commission. (2016). The EU Seal Regime. Retrieved June 2018, from European Commission:

[http://ec.europa.eu/environment/biodiversity/animal\\_welfare/seals/pdf/factsheet/EN.pdf](http://ec.europa.eu/environment/biodiversity/animal_welfare/seals/pdf/factsheet/EN.pdf)

<sup>210</sup> *Supra* note 192. Page 7.

own legislation. A non-governmental organization would be able to do it much better”<sup>211</sup>. Article 7(2) of Regulation 2015/1775 states that the Commission shall submit a report on the implementation of the Regulation by 31 December 2019 – it will be interesting to see the Commission’s comments on the implementation of Article 5a and the information to the public and the authorities.

#### 4.2.4 Sub-conclusion: the best way forward

Taking into consideration the important encroachments on the indigenous peoples’ rights of the Inuit, keeping the EU seal legislation as it is – with no changes whatsoever – is not an option. On the other hand, revoking the ban in its totality is not doable either because of the moral concerns of EU citizens along with the EU policies of animal welfare. Besides, revoking the ban would most likely not restore the seal products market for the Arctic indigenous peoples because of the continued opposition to seal hunt. The best solution, that takes into consideration both the moral concerns of EU citizens, the policies of the EU along with the interest of Inuit, is an information campaign by the Commission. Such a campaign would of course increase the knowledge of the legislation and the reason behind it, but it would also increase the general knowledge of the Inuit – one of only two indigenous peoples living in relation to the EU. This increased knowledge might not only help Inuit regain some of their lost market for sealskin products, but it would also strengthen the general European awareness of their existence and the Inuit way of life. For the EU to strengthen the general protection of the intra-EU indigenous peoples, knowledge and education of European citizens is an important tool.

### 4.3 EU and indigenous peoples’ rights: universality vs. relativism

When dealing with human rights and moral values, there are two concepts that are highly relevant: universalism and relativism. Universalism means, as the name conveys, that some moral values are universal – applying to everyone: “Moral universalism (...) maintains that there are some moral values that are valid across the world”<sup>212</sup>. Relativism, on the other hand, is the notion that values are relative to a culture. An example of a relative value would be that eating pork is considered profane

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<sup>211</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

<sup>212</sup> Caney, S. (2005). *Justice Beyond Borders: A Global Political Theory*. New York: Oxford University Press.

in Saudi Arabia, whereas it is considered a delicacy in Denmark – a difference that is due to culture and religion. In relation to this dissertation, an example of relativism would be the fact that wearing a sealskin coat in Denmark is completely acceptable and worn by Queen Margrethe II and important politicians in public as seen in the pictures below, whereas it is an absolute no-go in Great Britain<sup>213</sup>. What is common between all these cultures is the value of respect for animals; they have, however, each their way of implementing it. Even though seal hunting is not a human right as such, it is a question of values. The conflict between the EU and the Inuit on whether to hunt seals or not is therefore a conflict between universalism and relativism: an intention to make an opinion on seal hunt universal is conflicting with a specific culture's perception on the same seals and the same hunt.



The justification of a seal ban cannot be made from a scientific point of view, because the seals hunted around Greenland are in no way threatened with extinction<sup>214</sup>. The argument for the seal legislation is *moral reasons*. The EU Seal Regime was adopted following intense campaigning from especially NGOs specialized in the fight for animal rights and animal welfare, arguing for welfare of the seals that are hunted and caught, which, according to them, was morally wrong. The moral reasons also

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<sup>213</sup> Hoskins, T. (2013, December 20). Fur is not back in style - Britain won't stand for it. Retrieved June 2018, from The Guardian: <https://www.theguardian.com/commentisfree/2013/dec/20/fur-style-britain-cruel-crude-unsustainable-wealth>

<sup>214</sup> *Supra* 189. Page 21.

stem from the fact that Europeans do not like the thought of the cute seal being slaughtered: “It is said that these trends are based on the will of the people. But the term “people” used here refers, in reality, to a small vociferous group of campaign-makers who go crazy when they see a seal vest like the one I like to wear,” states Lynge<sup>215</sup>. “The bambi syndrome will be the winner”<sup>216</sup>.

By promoting this value to the entire EU by making it a legislative act, the value is rendered universal – applying to all of EU and all EU citizens. Killing seals – and even hunting – is not part of the mainstream European culture: most Europeans are farmers, eating cultivated crops and raised meat. But up North, almost at the end of the world, lives a people called Inuit: Inuit are, and have always been, hunters. The intended universal value of the EU of not killing seals clashes with this Northern culture: by forcing through the mainstream European opinion of “save the cute, cuddly seals”, by attempting to universalize this point of view, the Inuit, who have always depended on the seal hunt for food, clothing and survival, are overturned. “This is not an ordinary debate between alternative opinions. It is a struggle between cultures, wherein one – earnestly and with a great deal of self-righteousness – believes itself to have a natural authority to dictate how things ought to be”<sup>217</sup>.

In the end, the conflict about the seal hunt boils down to a cultural misunderstanding. Inuit do not catch seals out of pure fun, but because they need the meat and the skins to survive, to assure the subsistence of themselves and their culture. And an important part of this subsistence is the following trade of the seal skins, as explained in the analysis. The Inuit depend on the seal – both culturally and economically. “For me, the proposed seal-products ban is a very one-sided proposition. Hunting is our way of life. We have depended on the seal for as long as Inuit have occupied the Arctic regions. In fact, the seal made it possible for us to survive there. Seal harvesting provided for many, sometimes all, of the needs of our people and our dogs for millennia” states Peter<sup>218</sup>. Through the EU seal legislation, the Inuit culture is victim of an intention of rendering a relativist moral value universal thus oppressing the Inuit perception, but also an encroachment of the rights of the Inuit as an

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<sup>215</sup> *Supra* note 201. Page 490.

<sup>216</sup> *Ibid.* Page 494.

<sup>217</sup> Lynge, F. (1992). *Arctic Wars, Animal Rights, Endangered Peoples*. (M. Stenbaek, Trans.) Hanover & London: University Press of New England. Page 35.

<sup>218</sup> Peter, A. (2010, May/June). The European Parliament Shuts Down Seal-Product Imports - Again. *Arctic Journal*, 39-43. Page 40.

indigenous people: “The aboriginal rights of these peoples to their lands and resources must be formally recognized, including the right to harvest the animals on which their ways of life depend”<sup>219</sup>.

If the project of human rights is taken to its fullest, human rights are to be universal and apply to everyone – hence the Universal Declaration of Human Rights. But is universality an achievable goal? The EU Seal Regime can be seen as an intention to universalize – at least within Europe – the moral position that it is wrong to kill seals. The clash with the Inuit culture shows that universality is a goal hard to achieve. The relevant question here is, is it a goal worth achieving? Universalism is equivalent to a homogenization of values, of culture, and in this particular case the achievement of the common value implies a degradation of an indigenous culture who so far has survived for thousands of years. “This culture has been pushed into a corner and sacrificed to forces it does not understand and by which it is not understood. It is the casualty of a war in which it has never wished to participate”<sup>220</sup>. The goal of universality, of worldwide common values, is beautiful: that all of human kind share the same values. But if we really want to preserve the indigenous peoples, preserve their culture and their way of living, then we must give up on at least part of this dream of universality – at least we have to keep to the fundamental values and not their application. What characterizes indigenous peoples is precisely that they are different than the majority: by conforming them to the majority’s culture and values their peculiarity will be lost and their culture will vanish. EU should be a symbol of a common struggle for human rights and multiculturalism – not a symbol of fitting everyone into one single box.

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<sup>219</sup> *Supra* note 217. Page 99.

<sup>220</sup> *Ibid.* Page 9.

## 5 Conclusion

The debate concerning the EU Seal Regime is still vivid and will probably be so for many more years to come. In accordance with Article 7(3) of Regulation 2015/1775, the Commission shall by 31 December 2019 submit a report assessing “the functioning, effectiveness and impact” of the Regulation 1007/2009 with its amendments from Regulation 2015/1775. Through this dissertation I have investigated the protection of indigenous peoples’ rights by the EU through the case of the EU Seal Regime. The seal legislation contains a so-called Inuit Exemption, but does this Exemption in reality protect the indigenous people? Some will argue yes, others will argue no. This is what I have investigated through the following research question:

Does the EU adequately protect the rights of those indigenous peoples living in or in relation to EU Member States?

- ➔ How are indigenous peoples’ rights protected within the EU?
- ➔ Does the EU Seal Regime, with its Inuit Exemption, support or weaken this protection?
- ➔ How could this protection be further reinforced?

The three regional human rights systems have different manners of protecting indigenous peoples’ rights. Within the European regional system, consisting of both the Council of Europe and the EU, there are no documents relating specifically to those indigenous peoples living in the European region. Two indigenous peoples are nationally recognized within member states of the EU, namely the Inuit and the Saami, but no EU policies concern them specifically even though they are mentioned in policies concerning the Arctic region where they live.

In 1983, the EEC adopted a limitation in the trade in seal products, and further limitations were adopted in 2009, 2010 and 2015. Inuit have, however, depended on the seal for millennia, why a derogation to the limitation was included in order to protect them and their culture. Through the work



of my analysis I have however found that the Exemption does not protect the interests and the rights of the indigenous people of the Inuit adequately. “In the industrialized centers, as hearts bleed for the baby seal, the large whales and the fur bearing animals of the world, the world’s last hunting societies are in danger of extinction”<sup>221</sup>. The EU Seal Regime may not legally constitute a violation of indigenous rights, but the seal ban and its consequences – primary as well as secondary – constitute a threat to the survival and subsistence of the indigenous peoples of the Arctic. And the rights to life, the right to subsistence, is the center-part of human rights.

John Bowis, member of the European Parliament, calls the seal hunt “brutal, unnecessary and wasteful”<sup>222</sup>. The alleged brutality of the seal hunt and the efficiency of hunting methods used has indeed been at the center of many discussions concerning the seal hunt on the Northern hemisphere; although the EFSA concluded that only some of the hunting methods could be qualified as crucial, this alleged brutality and the wish for increased animal welfare was the main cause of the adoption of the Regulation 1007/2009 and the following regulations. Whether the seal hunt is brutal is outside of the scope of this dissertation as it is a scientific and veterinary matter. When it comes to the necessity of the seal hunt, it has been shown, in the analysis above, that the hunt is anything but unnecessary. Considering the fact that the Inuit traditionally use almost the whole caught seal for either human consumption, household or clothes, Arctic sealing is utmost resource efficient<sup>223</sup> and the seal hunt can therefore neither be said to be wasteful. At least originally, as with the EU Seal Regulation in place, the seals are still killed, as the Inuit’s primary object of food for human consumption, but many of the skins are not used any longer. The sale of seal skin has become difficult and the skins too time consuming for the hunter to process compared to the price they are sold for; many skins are now simply discarded<sup>224</sup>. At a time when reducing waste is high on the EU’s agenda, and trying to be applied in all spheres of activities, the EU’s acceptance of this is completely

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<sup>221</sup> Lynge, F. (1992). *Arctic Wars, Animal Rights, Endangered Peoples*. (M. Stenbaek, Trans.) Hanover & London: University Press of New England. Cover.

<sup>222</sup> Bowis, J. (2009, March 16). Stop the ice turning red. Retrieved May 2018, from The Guardian: <https://www.theguardian.com/commentisfree/cif-green/2009/mar/13/wildlife-eu>

<sup>223</sup> Tamma, P. (2017, December 1-13). Greenland gets EU’s support for Inuit seal products. EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 4-5. Page 4.

<sup>224</sup> Desportes, G. (2017, December 1-13). Which is more blue, Arctic sealing or the EU seal ban? EURACTIVE Special Report - Seal of Approval: Greenland Fights Stereotypes on Inuit Hunt, pp. 9-11. Page 11.

incomprehensible to Aaju Peter. She calls the EU Seal Regime pure arrogance: “The EU knows better, but they ignore the facts. They turn the blind eye and they are getting away with it”<sup>225</sup>.

If the EU cannot be directly charged for violating indigenous peoples’ rights because of the existing Inuit Exemption, the clear tremendous negative economical and psychological impact the seal ban has had on Inuit communities must be acknowledged. The EU can definitely be blamed for not living up to its own intention of informing the public of the elements of the seal ban, as stated in Article 5a of Regulation 2015/1775. Likewise, the EU can rightfully be accused of not living up to its own policy that “[...] indigenous peoples have the same rights as everybody else to a secure livelihood, and the lifestyle of their choice (...)”<sup>226</sup>. When asked whether she thinks that the EU protects the indigenous peoples living in relation to member states adequately, Aaju Peter answers<sup>227</sup>: “I do not know enough about EU policies to answer that, but I don’t trust them [the EU]: they are arrogant, ignorant and unwilling to learn.” She goes as far as calling the EU Seal Regime “a cultural genocide”.



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<sup>225</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

<sup>226</sup> Council of the European Union. (1998, November 30). Council Resolution of 30 November 1998: Indigenous peoples within the framework of the development cooperation of the Community and the Member States. Retrieved May 2018, from European Commission - Development: [http://ec.europa.eu/development/lex/en/pdf/res\\_98\\_indigen.pdf](http://ec.europa.eu/development/lex/en/pdf/res_98_indigen.pdf). Recital 5, point 4.

<sup>227</sup> Interview with Aaju Peter July 11, 2018. See Appendix III.

Continuing with the current seal legislation is not an option if the indigenous peoples' rights of the Inuit are to be respected and protected. Revoking the ban in its totality is not an option either, however, since this would be contradictory to the "moral" interests of the EU. The most viable option seems to be for the Commission to engage in a real information campaign about the Inuit and their way of life on one side, including the true ecological realities of Arctic sealing, and the EU Seal Regime and the Inuit Exemption on the other side. This would not only increase the knowledge about the existing possibilities of importing seal skins into the EU, but it would likewise increase the knowledge of, and likely the understanding for, the Inuit and their culture; this may in turn increase the demand for seal products. Through knowledge and understanding future encroachments on the rights of the Inuit would be prevented. The EU should take care so as not to lose its otherwise good reputation concerning the protection of indigenous peoples' rights outside of the EU; EU has a long way to go to restore the trust of the indigenous communities living in relation to its member states. This exemplified in the reluctance of the Arctic Council since 2009<sup>228</sup> to grant a permanent observer status to the EU<sup>229</sup>. As a Canadian statement noted: "as long as [the] European Union doesn't have the required sensitivity to the needs of northerners, I see no reason why they should be [...] a permanent observer of the Arctic Council"<sup>230</sup>.

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<sup>228</sup> Phillips, L. (2009, April 30). Arctic Council rejects EU's observer application. Retrieved from euobserver: <https://euobserver.com/environment/28043>

<sup>229</sup> Arctic Council. (2018, January 17). Observers. Retrieved July 2018, from Arctic Council: <https://arctic-council.org/index.php/en/about-us/arctic-council/observers>

<sup>230</sup> Depledge, D. (2015, April 20). The EU and the Arctic Council. Retrieved July 2018, from European Council on Foreign Relations - Wider Europe Forum: [https://www.ecfr.eu/article/commentary\\_the\\_eu\\_and\\_the\\_arctic\\_council3005](https://www.ecfr.eu/article/commentary_the_eu_and_the_arctic_council3005)

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## 6.7 Pictures

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**Ban Seal Trade/HSI (2009)**  
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**Great Greenland (2017)**  
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## *Appendix I:*

### *Complete EU Seal Regulation: Regulation (EC) No 1007/2009 & Regulation (EU) 2015/1775*

HAVE ADOPTED THIS REGULATION:

#### **Article 1 – Subject matter**

This Regulation establishes harmonised rules concerning the placing on the market of seal products.

#### **Article 2 – Definitions**

For the purposes of this Regulation, the following definitions shall apply:

1. ‘seal’ means specimens of all species of pinnipeds (Phocidae, Otariidae and Odobenidae);
2. ‘seal product’ means all products, either processed or unprocessed, deriving or obtained from seals, including meat, oil, blubber, organs, raw fur skins and fur skins, tanned or dressed, including fur skins assembled in plates, crosses and similar forms, and articles made from fur skins;
3. ‘placing on the market’ means introducing onto the Community market, thereby making available to third parties, in exchange for payment;
4. ‘Inuit’ means indigenous members of the Inuit homeland, namely those arctic and subarctic areas where, presently or traditionally, Inuit have aboriginal rights and interests, recognised by Inuit as being members of their people and includes Inupiat, Yupik (Alaska), Inuit, Inuvialuit (Canada), Kalaallit (Greenland) and Yupik (Russia);

- 4.a. *“other indigenous communities” means communities in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions;’.*
5. ‘import’ means any entry of goods into the customs territory of the Community.

### Article 3 – Conditions for placing on the market

- ~~1. The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products.~~
- ~~2. By way of derogation from paragraph 1:~~
- ~~a. the import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of such goods shall not be such as to indicate that they are being imported for commercial reasons;~~
  - ~~b. the placing on the market of seal products shall also be allowed where the seal products result from by-products of hunting that is regulated by national law and conducted for the sole purpose of the sustainable management of marine resources. Such placing on the market shall be allowed only on a non-profit basis. The nature and quantity of the seal products shall not be such as to indicate that they are being placed on the market for commercial reasons.~~

~~The application of this paragraph shall not undermine the achievement of the objective of this Regulation.~~

- ~~3. The Commission shall, in accordance with the management procedure referred to in Article 5(2), issue technical guidance notes setting out an indicative list of the codes of the Combined Nomenclature which may cover seal products subject to this Article.~~
- ~~4. Without prejudice to paragraph 3, measures for the implementation of this Article, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(3).~~

1. *The placing on the market of seal products shall be allowed only where the seal products result from hunts conducted by Inuit or other indigenous communities, provided that all of the following conditions are fulfilled:*

- a. the hunt has traditionally been conducted by the community;*
- b. the hunt is conducted for and contributes to the subsistence of the community, including in order to provide food and income to support life and sustainable livelihood, and is not conducted primarily for commercial reasons;*
- c. the hunt is conducted in a manner which has due regard to animal welfare, taking into consideration the way of life of the community and the subsistence purpose of the hunt.*

*The conditions set out in the first subparagraph shall apply at the time or point of import for imported seal products.*

1a. *At the time of its being placed on the market, a seal product shall be accompanied by a document attesting compliance with the conditions set out in paragraph 1 (“attesting document”).*

*An attesting document shall, upon request, be issued by a body recognised for that purpose by the Commission.*

*Such recognised bodies shall be independent, competent to carry out their functions and subject to an external audit.*

- 2. *By way of derogation from paragraph 1, the import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of those goods shall not be such as to indicate that they are being imported for commercial reasons.*
- 3. *The application of paragraphs 1 and 2 shall not undermine the achievement of the objective of this Regulation.*
- 4. *The Commission shall adopt implementing acts to further specify the administrative arrangements for the recognition of bodies that may attest to the*

*compliance with the conditions set out in paragraph 1 of this Article and for the issuance and control of attesting documents, as well as the administrative provisions necessary for ensuring compliance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2).*

- 5. If there is evidence that a seal hunt is conducted primarily for commercial reasons, the Commission shall be empowered to adopt delegated acts in accordance with Article 4a in order to prohibit the placing on the market or limit the quantity that may be placed on the market of seal products resulting from the hunt concerned. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.*
- 6. The Commission shall adopt implementing acts to issue technical guidance notes setting out an indicative list of the codes of the Combined Nomenclature which may cover seal products subject to this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2).*

#### **Article 4 – Free movement**

Member States shall not impede the placing on the market of seal products which comply with this Regulation.

#### **Article 4a – Exercise of the delegation**

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The power to adopt delegated acts referred to in Article 3(5) shall be conferred on the Commission for a period of five years from 10 October 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
- 3. The delegation of power referred to in Article 3(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an*

*end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
5. *A delegated act adopted pursuant to Article 3(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’.*

## **Article 5 – Committee procedure**

- ~~1. — The Commission shall be assisted by the committee established under Article 18(1) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein<sup>231</sup>. That committee may call upon other existing regulatory committees as necessary, such as the Standing Committee on the Food Chain and Animal Health established by Article 58(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>232</sup>.~~
  - ~~2. — Where reference is made to this paragraph, Article 4 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~
  - ~~3. — Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~
1. *The Commission shall be assisted by the committee established pursuant to Article 18(1) of Council Regulation (EC) No 338/97 (\*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (\*\*).*

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<sup>231</sup> OJ L 61, 3.3.1997, p. 1.

<sup>232</sup> OJ L 31, 1.2.2002, p. 1.

2. *Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*
3. *As regards implementing acts to be adopted pursuant to Article 3(4), where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.*

*(\*) Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).*

*(\*\*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

#### **Article 5a – Information**

*The Commission shall inform the public, with a view to raising their awareness, and competent authorities, including customs authorities, of the provisions of this Regulation and of the rules under which seal products resulting from hunts conducted by Inuit or other indigenous communities can be placed on the market.*

#### **Article 6 – Penalties and enforcement**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those provisions by 20 August 2010, and shall notify it without delay of any subsequent amendment thereto.

#### **Article 7 – Reporting**



~~1. By 20 November 2011 and thereafter every 4 years, Member States shall submit to the Commission a report outlining the actions taken to implement this Regulation.~~

~~2. On the basis of the reports referred to in paragraph 1, the Commission shall report to the European Parliament and to the Council on the implementation of this Regulation within 12 months of the end of each reporting period concerned.~~

1. *By 31 December 2018 and every four years thereafter, Member States shall submit to the Commission a report outlining the actions taken to implement this Regulation.*
2. *The Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation within 12 months of the end of each reporting period referred to in paragraph 1. The first report shall be submitted by 31 December 2019.*
3. *In its reports submitted in accordance with paragraph 2, the Commission shall assess the functioning, effectiveness and impact of this Regulation in achieving its objective.*

## **Article 8 – Entry into force and application**

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 3 shall apply from 20 August 2010.

## *Appendix II:*

### *Request for articles supporting the EU seal legislation*

The following email has been sent to the organizations mentioned below in an attempt to locate academic, legal and scientific articles supporting the EU Seal Legislation:

>>>>

*Dear XX,*

*I'm currently writing a master thesis on the EU Seal Legislation, the prohibition on import of seal products into the European Union.*

*I have read many articles condemning the legislation – academic and legal as well as scientific articles – but I'm having difficulty locating articles arguing more positively for the trade limitation. So far, I have found two articles justifying public morality as an argument for trade restrictions within the WTO (WTO Compatibility of the EU Seal Regime: Why Public Morality is Enough (but May not Be Necessary) by Pitschas & Schloemann, and Sealing the Deal: The WTO's Appellate Body Report in EC – Seal Products, by Howse, Langille and Sykes). I was wondering whether you could send me some references for legal as well as scientific articles that speak in favor of and praises the EU seal legislation?*

*Thank you very much,*

*I'm looking forward to hearing from you.*

*All the best,*

*Marie Yvonne Rasmussen*

ORGANIZATION	SECTION/PERSON	MAIL-ADRESSE	RESPONSE?	ARTICLES?	SUPPORT OF EU SEAL LEGISLATION
Greenpeace	Denmark	<a href="mailto:Info.dk@greenpeace.org">Info.dk@greenpeace.org</a>	<i>no</i>		
	European Unit	<a href="mailto:European.unit@greenpeace.org">European.unit@greenpeace.org</a> <i>(response from Saskia Richartz)</i>	<i>yes</i>	<i>no</i>	<i>yes</i>
Humane Society International (HSI)	Canada	<a href="mailto:info@hsicanada.ca">info@hsicanada.ca</a>	<i>no</i>		
	Europe	<a href="mailto:info@hsieurope.org">info@hsieurope.org</a> <i>(response from Jo Swabe)</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>
International Fund for Animal Welfare (IFAW)	Europe	<i>(form online)</i>	<i>no</i>		
	Director of Wildlife Campaigns in Canada: Sheryl Fink	<i>(through secretary Res Krebs)</i> <a href="mailto:akrebs@ifaw.org">akrebs@ifaw.org</a>	<i>yes</i>	<i>yes</i>	<i>yes</i>
Sea Shepherd	Global	<a href="mailto:info@seashepherd.org">info@seashepherd.org</a>	<i>no</i>		
World Wildlife Fund (WWF)	Senior Specialist in Arctic Species: Melanie Lancaster	<a href="mailto:mlancaster@wwfcanada.org">mlancaster@wwfcanada.org</a>	<i>no</i>		
	Head of European Policy Office, European Marine Policy: Samantha Burgess	<a href="mailto:sburgess@wwf.eu">sburgess@wwf.eu</a>	<i>no</i>		
	Denmark	<a href="mailto:wwf@wwf.dk">wwf@wwf.dk</a> <i>(response from Mette Frost)</i>	<i>yes</i>	<i>yes</i>	<i>no</i>
European Parliament	David Martin, MEP	<a href="mailto:David.martin@europarl.europa.eu">David.martin@europarl.europa.eu</a>	<i>no</i>		

## Appendix III:

### Interview guide for interview with Aaju Peter 11-07-2018

(The interview was realized on a bad phone connection why transcription was not possible)

#### QUESTIONS

What are the first three words that come to mind when I say: “EU seal legislation”?

#### *Consequences of the legislation:*

What have been and are the consequences of the seal ban for the Inuit community?

Which consequences have you felt personally?

How do you define the *subsistence* of Inuit?

#### *The EU seal legislation:*

What is your opinion on the seal legislation?

Why do you think the EU adopted/the MEPs voted for this legislation?

Which were the EU/MEPs concerns for the Inuit community?

What lies behind the decision, in your opinion?

#### *The way forward?*

What could be the way forward from now?

- Keep the legislation as it is?
- Revoke the ban in its totality?
- An intense information campaign on both Inuit and the details of the seal legislation (the Inuit Exemption)?
- Other solution?

#### *EU's protection of indigenous peoples' rights*

Does the EU protect the indigenous peoples' rights of the indigenous peoples living in relation to the EU adequately?

Do you feel protected by the EU as a member of an indigenous people?

How could the EU strengthen its protection of the indigenous peoples living in relation to the EU?