This paper explores how indigenous peoples have been included in some of the prominent mechanisms relevant to Arctic management, focusing on the transnational and international instruments and processes that affect subsistence marine resources. The Arctic has been home to indigenous peoples for thousands of years. In extreme and often life-threatening conditions, indigenous populations have developed the skills, knowledge, and experience to subsist off the terrestrial and marine resources around them. Yet the Arctic is undergoing rapid change, both ecologically, as a changing climate alters long-established patterns and conditions, and economically, as greater accessibility leads to growing commercial interest. From vast resources under the seabed to shortened shipping routes, and from tourism opportunities to potential new fisheries, increasing activities may affect the fish and wildlife that provide the nutritional and cultural foundation for many Arctic coastal communities.

As access and interest in the region has grown, so have the national, transnational, and international debates about how best to manage the region. Discussions have included questions about the potential effects on subsistence. Yet the role of indigenous peoples in the legal and policy institutions created, and thus these discussions, varies widely.

* Jordan Diamond is currently the Executive Director of the Center for Law, Energy, and the Environment and the Academic Coordinator for the Law of the Sea Institute at the University of California, Berkeley, School of Law. This article was written while she was the Co-Director of the Ocean Program at the Environmental Law Institute, and draws upon the Institute's work in the Arctic. She wishes to extend particular thanks to Dr. Kathryn Mengerink, her collaborator on numerous projects and initiatives in the region. For more information on the Environmental Law Institute's Arctic research, please visit www.eli-ocean.org/arctic.
I Introduction

Conventional international law traditionally has been composed of instruments concluded between independent and equal sovereign States. The Vienna Convention on the Law of Treaties is phrased in terms of the relations among States, clearly distinguishing intergovernmental organizations as separate entities, and explicitly defines a treaty as an “international agreement concluded between States.” The Convention does not apply to international agreements concluded between States and “other subjects of international law,” or exclusively between such other subjects, except to the extent it governs relations between State members to such agreements. It does, however, apply to treaties formed or adopted by intergovernmental organizations.

This traditional viewpoint of international law as the exclusive domain of States is increasingly challenged, however, by the emergence of identities beyond simply sovereign and subordinate. One of the key elements has been the growth of transnational indigenous identities within the past century.

Today, the majority of international fora are still led by State representatives. Yet there is increasing consideration of how non-State participants may or should be included in the proceedings. A key aspect is the emerging recognition of the distinct position of indigenous peoples. The role of indigenous peoples is frequently recognized in binding measures at the national level, with the special rights of indigenous peoples differentiated from those of stakeholders,

---

1 The major sources of international law include treaties between and among States, as well as customary international law, decisions by courts and tribunals, and writings of publicists. See Article 38(1)(a)(b) and (c), Statute of the International Court of Justice (ICJ Stat.) 26 June 1945, 59 Stat. 1055, 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 Am. J. Int’l L. Supp. 215 (1945).
3 Ibid., Article 3.
4 Ibid., Article 5.