Introduction

Constitutional law is going through a period of transformation due to a wider approach to human rights. In particular, the strong link between a healthy environment and human rights is gaining ground internationally, especially in terms of sustainable development. New legal concepts come from increasingly multidisciplinary analyses combining jurisprudence, ethnology, politics, and psychology. Environmental constitutionalism aims to integrate principles, such as precaution, prevention, integration, and polluter pays into national legal frameworks. Due to its legal supremacy, constitutional law guarantees high protection of rights by building several kinds of dispute resolution mechanisms. Indeed, constitutional law is able to create the ground for a more inclusive decision-making process including by creating specific institutions such as ombudspersons and innovative legal interpretations. Relentless environmental concerns have underpinned a new political approach supporting the idea that the environment is a common good and that all stakeholders enjoy the right to meaningful participation, access to information and justice in environmental matters (according to the Aarhus Convention[1]). An ecological-orientated democracy offers a fairer distribution of environmental benefits and costs, avoiding the centralization of decision-making powers and recognizing the feeling of loss of Indigenous populations due to ecological degradation (e.g., ecological grief). This constitutional process has been reinforced by jurisprudence, such as the application of the principle *in dubio pro natura*, as a criterion of application of the principles of conservation of the ecosystem. As the English translation suggests, the *in dubio pro natura* approach aims to protect ecological conservation in case of events potentially harmful to the environment. The costs of ecological conservation and the impacts of mitigative measures on environmental degradation have highlighted inequalities among the most vulnerable social groups (as the ones at risk of poverty and social exclusion, including Indigenous Peoples). Furthermore, the long delay in the implementation of ecological policies presupposes greater pressure for future generations. Since the protection of Indigenous culture is closely connected to a healthy environment, the article investigates how intergenerational equity applies to Indigenous rights and the maintenance of their traditions for future generations.

The following analysis introduces the concept of environmental constitutionalism before briefly discussing constitutional provisions pertaining to the environment in Arctic jurisdictions. It then explains the *in dubio pro natura* principle and connects this to the

rights of Indigenous Peoples, in particular the right to culture as recognized in international instruments on human rights and on Indigenous rights. It reflects on examples from two jurisdictions: whaling, hunting and fishing in Alaska and windfarms in Sápmi (Norway) to assess the extent to which the *in dubio pro natura* principle is emerging in these jurisdictions. It argues that an *in dubio pro natura* approach can be a successful strategy to promote both environmental protection and rights of Indigenous Peoples. The methodology adopted includes legal theory, consultation of legal documents, reports, and the analysis of international instruments.

Environmental Constitutionalism

Environmental constitutionalism refers to a comprehensive and articulated legal framework of rights, duties and principles derived from the constitutions and international law on environmental matters. The rights included in environmental constitutionalism are divided into rights to a healthy environment, environmental rights, and procedural rights[2]. The 1992 Rio Declaration includes the precautionary principle, the prevention principle and the polluter pays principle.[3] The growing interest in environmental law has supported the human rights-oriented interpretation which argues that the protection of environmental rights guarantees sustainable social, economic and political development. It is no coincidence that some conventions, such as the European Convention on Human Rights (ECHR),[4] have been central to national debates to encourage governments to adopt more stringent measures against climate change and ecological degradation.[5] Principles such as intergenerational equity, integration and public participation are the results of the emergence of this new approach.[6]

Procedural rights are also guaranteed by the afore-mentioned Aarhus Convention, namely: the right of the public to participate in decision-making processes and the right of access to environmental justice. These rights are counterbalanced by duties of citizens and the State to protect the environment, setting specific targets, creating regulatory frameworks, and creating environmental agencies, ombudspersons, or specialized courts to enforce environmental laws.

According to Kotzé, the constitutional model appears more effective for implementing environmental principles from international sources. The first reason is that the constitutional system is more directionally actionable in domestic legal proceedings, reflecting the principles of subsidiarity typical in international systems, such as the UN, the EU and under the ECHR. Second, domestic legislation includes more of the *demos*, *i.e.*, the people of a political community, in decision-making processes as constitutional amendments generally require a qualified majority and, in some cases, a popular referendum.[7] Thus, constitutional approaches are both more accountable and more enforceable than international law which depends on diplomatic negotiations between State representatives and have weak dispute settlement procedures.

Environmental constitutionalism developed in three historical phases: the 1970s/80s in which nature played an instrumental role in the survival of human beings and their needs; the 1990s in which nature was perceived as a fundamental resource for the respect of human rights; and today's phase in which human rights are intrinsically connected to a healthy environment.[8] There are not many examples in the comparative constitutional panorama, but it is possible to investigate Arctic constitutions (from West to East: Alaska (US), Canada, Greenland (Kingdom of Denmark), Iceland, Norway, Sweden, and Russia) have implemented the principles of environmental law.

Environmental Provisions in Constitutions from Arctic Jurisdictions

Starting from the West, the Alaska State Constitution of 1959 recognises the importance of the conservation of natural resources and biodiversity.[9] Article 8 of the Constitution states that state natural resources such as waters, forests, wildlife, and minerals, shall be used and developed for the maximum benefit of the people, including Alaska Natives, while maintaining sustainability for future generations. Article 11 is dedicated to the conservation of natural resources declaring delegating the Parliament to provide specific provisions for their utilisation. Article 8 guarantees access to natural resources, prohibiting the deprivation of rights to use by any citizen or resident. However, the article does not recognise any exclusive rights of Alaska Natives to hunt or fish in rural or traditional areas and for cultural purposes.

The Canadian Constitution and integral Charter of Fundamental Rights and Freedoms do not provide specific articles on environmental principles, but the Constitution recognises the relationship between Indigenous Peoples and their lands by respecting the self-determination right in article 35.[10] Article 7 of the Charter on legal rights has recently been interpreted as including the right to a healthy environment (*Carter v Canada*[11]).[12]

The Constitution of the Kingdom of Denmark does not make direct reference to environmental principles.[13]

Like other jurisdictions, the Icelandic Constitution has no specific reference to environmental principles but delegates the legislation of these to the Parliament. However, this topic has been much discussed in the context of proposed constitutional reform.[14]

The Constitution of Norway includes article 112, addressing the right to a healthy environment. It emphasises the responsibility to ensure sustainable development for present and future generations. Article 108 [ex.110a] affirms that the Sami people have the right to preserve and develop their language, culture, and way of life.[15] The Norwegian constitution guarantees every person's right to a healthy environment in order to maintain productivity and diversity (in the future). Differently from Alaska, the Norwegian constitution recognises the exclusive right of the Saami to practice reindeer herding in light of their cultural rights and livelihood.

Article 2, section 4 of the Swedish constitution states that the "public institutions shall promote sustainable development leading to a good environment for present and future generations."[16]

Like Norway, Finland recognises Saami cultural and linguistic rights (article 17) and respects the right to cultural self-government (article 121). While it does not provide any mention of environmental principles *per se,* article 20, section 1 states that nature is the "responsibility of everyone" and "public authorities shall endeavour to guarantee for everyone the healthy environment".[17]

Finally, the Russian Constitution does not specifically deal with environmental issues, but the art. 69 "guarantees the rights of small indigenous peoples in accordance with the

generally accepted principles and standards of international law and international treaties of the Russian Federation."[18]

Sweden, Finland, Norway and Alaska have all integrated intergenerational equity into their constitutions. These constitutions recognise the intergenerational equity in force of the public trust doctrine, whereby the state is responsible for environmental protection.[19]

In Dubio Pro Natura and the Rights of Indigenous Peoples

"When in doubt, in favor of nature." With this Latin *brocardo*, we mean a solution method that tends to safeguard ecological well-being in the event of activities that are potentially harmful to the environment.[20] Although this concept recalls the precautionary principle, it differs significantly from it. The precautionary principle is activated in case of scientific uncertainty at the potential risk of ecological degradation and, as per the Rio Declaration, invites States to take precautionary measures to the extent these are "cost-effective."[21] The precautionary principle does not shift the burden of proof to prove that a proposed activity is innocuous.[22] *In dubio pro natura*, on the other hand, applies to already existing regulatory frameworks as a tool in case of conflicts of interests in favor of nature and shift the burden of proof in environmental disputes.

The Latin American jurisdictions are the ones that implemented this principle first. In 2002, the constitutional court of Colombia established "the precautionary principle must be followed, a principle that can be rendered by the expression *'in dubio pro ambiente''*. *In dubio pro natura* can be expressed in many legal cases concerning Indigenous rights and land claims. In particular, *in dubio pro natura* can be applied in the case of territorial disputes, the protection of sacred sites, the conservation of biodiversity and participatory rights in decisions concerning the exploitation of natural resources. Indeed, this principle can be an important tool to demonstrate how Indigenous traditional ecological knowledge can limit environmental degradation in light of the importance of the environment for their cultural heritage. The affirmation of *in dubio pro natura* means recognising the Indigenous cosmovision including the strong relationships between nature and cultural, spiritual and traditional practices. As far as participation in decision-making processes involving natural

resources is concerned, *in dubio pro natura* can be applied to ensure that the potential environmental impacts and risks are thoroughly assessed and mitigated. It can also advocate for Indigenous communities' right to free, prior, and informed consent and meaningful consultation in resource development projects.[23] In case of Indigenous traditional knowledge, *in dubio pro natura* intrinsically affirms the principle of intergenerational equity, recognizing the right of future generation to get access to natural resources equally in terms of quantity, quality and accessibility.[24] Brown-Weiss identifies three elements of intergenerational equity, namely: conservation of the diversity of natural and cultural resources, conservation of environmental quality, and indiscriminate access to resources. As regards the first element, Weiss states that environmental and cultural conservation is essential to not limit future generations to satisfying their needs and values. This is by virtue of the fact that one generation does not have the right to decide how culture should develop in the future.[25] Intergenerational equity finds its roots in the 1972 Stockholm Declaration.[26]

Constitutional law includes intergenerational equity mainly through the aforementioned public trust doctrine – which considers natural resources the responsibility of the State acting as a trustee on behalf of its citizens and beneficiaries. Intergenerational equity *per se* does not include a distinction between Indigenous or non-Indigenous communities, especially because environmental obligations appear universal. However, a presumption of universality fails to reflect all possible visions as Indigenous populations have different socio-ecological goals and priorities.[27] These are in part based on the right to self-determination of Indigenous peoples, including the right to choose their own political and economic structure and decide how to develop their culture.

The right of self-determination has been underlined by several international instruments and in particular for Indigenous Peoples under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[28] General human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination also protect, *inter alia* and rights to culture for Indigenous Peoples.[29]

To date, however, there are few sources that define the relationship between nature and Indigenous culture at an international level, which weaken Indigenous negotiating power in

licensing processes and in environmental and social assessments of environmental exploitation projects.

In Dubio Pro Natura: Case Studies from Alaska and Norway

The inclusion of intergenerational equity in constitutional provisions is not an indicator of a sustainable country. At a procedural level, intergenerational equity within constitutions still remains a very vague principle. Furthermore, most constitutional texts are based on public trust doctrine, rather than an obligation under the civil responsibility of the individual citizen. Therefore, without adequate operation of the judicial and legislative system regarding environmental protection, reporting an ecologically harmful action can be very complicated.[30]

Although Alaskan and Norwegian constitutions include the intergenerational equity principle, their approaches to Indigenous cultural rights present substantial differences. It is necessary to investigate their historical background to understand their effective application on Indigenous rights and weather the *in dubio pro natura* approach enhances the conservation of their culture for future generations.

This part of the paper compares the two different constitutional approaches to intergenerational equity in light of Indigenous right to practice one's own culture, highlighting the main complexities regarding the recognition of Aboriginal subsistence fishing and hunting in Alaska and the protection of the exclusive right to reindeer herding of Saami people in Norway.

Whaling, fishing and hunting in Alaska

The population density of Alaska has periodically fluctuated as the historical phases have followed one another. The first unofficial census of all of Alaska was made by a Russian Orthodox missionary, Father Ioann Veniaminov and it took place in 1839. He calculated a

population of 39,813 natives, including an estimated 17,000 people from native communities still uncontacted.[31] With the acquisition of Alaska by the United States, there was an increase in immigration, while initially maintaining the Indigenous majority (33,426 of which 430 were white, based on the first official census made in 1880). During the gold rush and the beginning of the first mines and the arrival of the canned salmon companies, the Indigenous population of Alaska became a minority for the first time (46% of the total population).[32] Between 1867 (the year of American acquisition) and 1924, native populations had no rights to acquire land, vote or file any claims for mining concessions.[33] Some exemptions from harvesting restrictions and the right of Aboriginal communities not to be disturbed were included in the federal law.[34].

By the time of statehood in 1959, 4 out of 5 people in Alaska identified as white. On November 8, 1955, 55 elected delegates from across Alaska met to create the new document at a constitutional convention. Frank Peratrovich, the mayor of Klawock, was the only Alaska Native among the delegates.

Thus, the Constitution of Alaska, drafted in only 75 days, was drafted with minimum native participation. The constitution focuses on future economic prospects and strengthening its institutional weaknesses. The preamble still does not acknowledge the presence of Alaska Natives.[35]

In 1971, the Alaska Native Claims Settlement Act addressed native land claims but ultimately abolished all Aboriginal title to land and rights to subsistence hunting and fishing.[36] The Alaskan Constitution includes article 8, which recognises the right of every citizen and resident to get access to natural resources.[37] Article 8 then reflects the public trust doctrine as the state must promote the development of natural resources and the equitable access to all citizens without any discrimination (i.e., there are no specially reserved rights for native Alaskan in the state constitution).

The constitution of Alaska engages intergenerational equity for environmental protection. However, the case of whaling by native Alaska demonstrates the complexities of multiple and sometimes competing layers of domestic and international law affecting Indigenous Peoples. Whaling is regulated internationally by the International Whaling Commission (IWC) according to the 1946 Convention for the Regulation of Whaling.[38] The commission

sets further regulations and monitors compliance by contracting states (now 88). The Preamble of the International Convention for the regulation of whaling recognizes "the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks," i.e. a nod to intergenerational equity. The International Whaling Commission distinguishes Aboriginal Subsistence Whaling (ASW) from commercial whaling and the current moratorium applies only to the latter. Four IWC member countries lead the ASW, including United States. The IWC recognizes the cultural and nutritional importance of this activity while maintaining the objectives of sustainability. ASW is monitored by the Scientific Committee and the national governments must inform about the needs and priorities of Indigenous populations to continue whaling.[39] In Alaska, eleven small Inuit communities conduct ASW. The hunt is not commercial (the meat is not sold on an open market) but the catches are divided among the members of the communities according to traditional principles and custom (Indigenous law).

Aboriginal whaling concessions reflect the right of self-determination, which means the right of Indigenous people to decide on the development of their culture even if it involves environmentally contested activities. However, as Indigenous people are subjects of international law and their quotas must be approved at multiple levels within the IWC and these in practice reflect ecological sustainability principles, including intergenerational equity.

Despite Indigenous provisions for ASW within the IWC, the Alaska Constitution itself does not provide any exclusive rights to traditional fishing or hunting for Alaska Natives. Article 8 guarantees equitable access to natural resources, or "common good" for all Alaska citizens and residents. The article guarantees ecological conservation for the indiscriminate use of resources. For this reason, Article 8 does not provide for any exclusive right to use resources and might limit to conduct activities potentially harmful to the environment (including flora and fauna).

Whaling aside, the following jurisprudence developed a new interpretation of article 8 as source of the intergenerational equity. However, the inclusion on article 8 in Alaska State Constitution on the use of natural resources served to avoid any interferences of the federal government. The article uses the term 'common use' without special provisions on Alaska Native cultural rights. It was not until the 1980s and 90s that the Supreme Court started to

interpret article 8 as related to subsistence hunting and fishing rights. In *McDowell v. The State of Alaska*,[40] the court interpreted article 8 as guaranteeing equal access to natural resources regardless of residency. This way, it did not recognize special rights to rural areas, even less the substantial rights to fish and hunt for Indigenous peoples living outside the cities. In *Kanaitze Indian Tribe v. State*,[41] state law interpreted article 8 as the right to substantial hunting and fishing only for who lives close to resources. However, the Alaska Supreme Court then declared the state law in violation of article 8 of the constitution as it limited the equal access to resources. In the court's view, "residence" and "proximity" are considered a mere convenience compared to the right to access traditional territories. Recently, the Supreme Court recognized the right to subsistence fishing and hunting in the *Manning* case[42] holding that the subsistence statute protects "traditional culture and a way of life". It is noteworthy to point out that this positive outcome was based on state laws instead of the Constitution.[43] Although constitutional law does not provide exclusive rights to traditional practices and does not mention subsistence fishing and hunting, there is a management framework that guarantees exemptions regarding mammal fishing quotas (Marine Mammal Protection Act[44]) and hunting of polar bears (U.S. – Russia Agreement on Conservation and Management of Alaska- Chukotka Polar Bear Population)[45] and species at risk (Endagered Species Act, ESA).[46]

The exclusive right of Saami to herd reindeer in Norway

There are approximately 40,000-60,000 Sami within the State frontiers of Norway. The Norwegian constitution recognizes Indigenous rights in article 108, establishing "the authorities of the state shall create conditions enabling the Sami people to preserve and develop its language, culture and their way of life". Norway also has obligation to the Sami population pursuant to international conventions, particularly article 27 of the ICCPR and ILO Convention 169 concerning Indigenous and Tribal Peoples.[47] It is notable that Norway is the only State with a Sami Population to have ratified the ILO convention. After the 2014 reform, article 110b was introduced with the aim to provide rights and duties – not merely principles – on the concept of the right to a healthy environment. The first reason for doing so was to ensure that this provision enjoyed constitutional supremacy over other legislation. Second, constitutional implementation enables courts to enforce these principles

of environmental protection. The article was then replaced by article 112 which reinforced the state duty to adopt protective measures with room for political discretion. Nowadays, article 112 can be interpreted under the legal framework of the current intergeneration equity. The Reindeer Grazing Act of 1978[48]held that Sami have exclusive right to herd in Norway on the basis of time immemorial use an as to preserve their identity.[49] This act has been later repealed by the Reindeer Herding Act of 2007.[50]The Court also held that Sami reindeer herders resident primarily in Sweden can cross border to Norway according to the Saami reindeer act of 2007.[51] The Sami Council, which represents Sami across Sápmi, has expressively declared how climate change represent a double burden to Sami as they are the most affected by the ecological degradation and also by the mitigative strategies- as wind power farm or mining to extract minerals used for electric cars.[52] This is visible in Norwegian Lapland where a joint venture wind power farm is interfering with Saami reindeer herding, making it impossible for Saami in the area to continue their herding practices since time immemorial. The energy company has constructed and continues to operate over 200 turbines as part of Norway's ambitions for a "green transition" but also producing a significant economic profit. In fact, *Stakraft*, the state-owned renewable energy company responsible for the turbines, made over 1 billion the last quarter of 2022 alone, nearly 15 million dollars in profit a day. It is said to be the biggest Eolic Park, and many roads connecting the different constructing areas.[53]

The Fosen windfarm project is also the major source of energy for the nearby town of Fosen and other nearby settlements. Construction of the wind farm started in 2016, with energy production starting in 2018. However, the Fosen Vind project has received much criticism regarding the environmental and landscape impact of wind turbines on local fauna, flora and Saami communities. Moreover, the project is located in the centre of the country where the southernmost Saami population resides, which has the lowest number of members and reindeer herders. Among other concerns, environmental activists have denounced the project's negative effects on bird migration, bat flight paths and the visual appearance of the landscape. As early as 2010, the Norwegian Water Resources and Energy Directorate (NVE) had granted licenses to some wind power plants to be built on the Saami pastures. Some Saami organizations in the area (South-Fosen sitje and North-Fosen siida) initiated several legal paths to stop the non-construction of the wind farm.[54] The various legal proceedings demonstrated the limits and difficulties of applying international human rights law with regard to the protection of cultural and minority rights. The South Fosen sitje

based its requests mainly on article 27 ICCPR, article 1 Protocol 1 of the ECHR, and article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination. Although the ICCPR had been ratified in 1972 by Norway through the Human Rights Act, at the time of the Fosen case the jurisprudence on Indigenous rights was still rather undeveloped. Before the Fosen case, in fact, the Norwegian Supreme Court had expressed itself only on three other cases from which it tried to reconstruct the tolerance threshold to establish the circumstances in which article 27 could be defined as having been violated. Article 27 of the ICCPR declares that:

> *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.*

The ICCPR establishes both negative obligations (not to limit the enjoyment of cultural rights to minority communities) and positive obligations on the State (to take measures to guarantee these rights). Article 108 of the Norwegian Constitution opens the door to a new interpretation of article 27 of the ICCPR, establishing that "the authorities of the state shall create conditions enabling the Sami people to preserve and develop their language, culture and way of life. Article 105 of the Norwegian Constitution also provides that the person affected by land expropriation must receive full compensation, even in the event that the expropriation takes place "for more benefit than damage". Despite the economic and compensatory benefits, if the expropriation violates the right of ethnic, religious, or linguistic minorities to practice their culture (e.g., Sami reindeer husbandry) it will not be legally valid.[55]

In the *Fosen* case, the Norwegian Court had to intervene to define when the expropriation should be considered a violation of human rights and of article 27 of the ICCPR. The threshold established by the Supreme Court of Norway is based on international jurisprudence, in particular the three *Länsman v Finland* Views and the *Poma Poma* View of the Human Rights Committee (para.119)[56].

In the three *Länsman v Finland* cases, the Human Rights Committee confirmed that economic activities should come within the ambit of Article 27 without the state' party of

ICCPR margin appreciation on the development of Indigenous culture. Activities should be planned with the minority's consent.[57] In the second Länsman case, the Human Rights Committee stated that also the cumulative effects of the activities must be taken into account.[58]

The *Poma Poma v Peru* case concerns the construction of wells in Peru that source water from the mountains, lands inhabited by the Aymara people, and divert it to the city.[59] This diversion not only limited the Aymaras' access to water but had drastic repercussions on the llama pastures. The Human Rights Committee decided in favor of the complainant, Ms Poma Poma, who is a member of the affected Aymara people.[60] Indeed, the Human Rights Committee considered that the claimant and her community were deprived of their right to participate in the decision-making process regarding the wells construction and the state party did not obtain the free and prior informed consent of Poma Poma.

Following these views, that are themselves technically non-binding, the Norwegian Supreme Court establishes the right to consultation that, in the cases of Indigenous Peoples, can include a right to Free, Prior and Informed Consent (e.g., in *Poma Poma*). The right to meaningful consultation, and a requirement of consent if the interference crosses the threshold of severity, is not subject to a margin of appreciation, a proportionality test or balancing test. In other words, States cannot disapply the right to Free, Prior and Informed Consent because of countervailing interests of the majority population or even global goods such as the green transition.

The Supreme Court stated that the mitigation plans – *i.e.,* fencing in and artificial feeding of reindeer was not a sufficient "mitigation" to override the interference with their cultural rights. Nowadays, the windfarms continue to operate unlawfully, the Saami cannot herd and they still do not even get compensation.[61]

Discussion: Indigenous Rights in Light of *in dubio pro natura*

The *in dubio pro natura* principle suggests an alternative way to solve uncertainty in environmental conservation. It recognises traditional knowledge and sustainable practices

when it is applied to Indigenous rights[62]. Theoretically, *in dubio pro natura* guarantees Indigenous rights and knowledge by prioritising the protection on nature in case of ambiguity. However, *in dubio pro natura* doesn't grant Indigenous rights to use the land since it might prompt conservation measures encouraging alternative and more sustainable practices. Commonly, national legal systems address Indigenous rights and environmental conservation on different levels.

In these situations, cooperation between authorities, environmental experts and Indigenous communities is crucial in the application of more inclusive decision-making process and culturally- sensitive environmental strategies[63].

The coexistence of environmental principles like *in dubio pro natura* and legal provisions for Indigenous rights involves negotiation to balance environmental conservation and cultural diversity. This approach can lead to a more inclusive constitutional revision process which guarantee the right to a healthy environment. In this sense, *in dubio pro natura* can lead to several inclusive instruments to include Indigenous peoples in environmental matters as: co-management of natural resources, adoption of contraindicative provisions, political polycentricity, innovative interpretation of pre-existing articles. In this way, the protection of ecological diversity could promote the conservation of traditional practices and knowledge.

For example, co-management suggests a cooperation between Indigenous communities and the authorities on natural resources in traditional land. It has been applied in Sweden in the World Heritage site of Laponia[64]. However, this approach has been criticised, raising strong ethical concerns that co-management of Indigenous cultural heritage with the state does not support the right of self-determination.[65] On the same matter, Daes denies the co-management by introducing the term "collective heritage" to cover Indigenous cultural and property rights. Daes understands "heritage" as "everything that belongs to the distinct identity of a people and which is theirs to share, if they wish, with other peoples. It includes [..] inheritances from the past and from nature, such as human remains, the natural features of the landscape, and naturally occurring species of plants and animals with which a people has long been connected."[66]

Finally, *in dubio pro natura* can also promote innovative interpretation of pre-existing article

(as article 8 of Alaska constitution) which suggests a stronger connection between human rights and nature.

Conclusions

Environmental constitutionalism represents an important process for strengthening compliance with international obligations regarding the conservation of biodiversity. *In dubio pro natura* jurisprudential applications support the dynamism of the law which is gradually moving from an anthropocentric approach of environmental law to an ecocentric perspective in which nature must be preserved for the future. Intergenerational equity inspires a partnership between generations through the preservation of a healthy environment for a dual purpose: ensuring the right of future generations to access natural resources and the right to practice their culture. Indigenous populations share a great attachment to nature by virtue of traditional activities (fishing, hunting, traditional knowledge). It is very difficult to determine whether intergenerational equity or the *in dubio pro natura* approach better supports access to cultural heritage for future generations or even how the two approaches can be integrated. This is firstly because intergenerational equality has not been sufficiently explored jurisprudentially to have an exhaustive definition. Secondly, intergenerational equity, together with the *in dubio pro natura* principle address predominantly environmental protection goals rather than the conservation of cultural diversity. This creates a strong disconnect between environment and culture that differs from Indigenous perspectives (for example, views of nature and humankind as part of the same "continuum"). Alaska and Norway are among the Arctic jurisdictions to have implemented the principle of intergenerational equity in their constitutions. Nonetheless, the tendency for courts to rule *in dubio pro natura* for the maintenance of a healthy future environment does not necessarily strengthen the rights of Indigenous peoples to practice traditional activities, which are essential to the preservation of their traditional knowledge for future generations. These conflicts can arise whether the constitution itself includes exclusive Indigenous rights to traditional practice (for example in Norway) or whether it excludes them by virtue of fair and indiscriminate access to natural resources (for example in Alaska). It is also important to analyse the etymology of the texts, especially of the individual articles, to determine whether the constitutional text contributes to a colonial

narrative (as in the case of Alaska). Clearly this refers to constitutional law, as the objective of this article, without excluding the presence of a different legal framework that dispute moratoriums, exemptions, or rights to support Indigenous practices on traditional territories.

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[36] Ibid.

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[55] Ibid, 163-164.

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[59] *Poma Poma v Peru,* Human Rights Committee, Communication No. 1457/2006 (27 March 2009) CCPR/C/95/D/1457/2006.

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