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Prospects of Arctic governance:
critical analysis of current trends and future scenarios

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To my family.

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List of abbreviations

AC	Arctic Council
AIO	Arctic International Organisation
AMAP	Arctic Monitoring and Assessment Program
AMSA	Arctic Marine Shipping Assessment
Artt.	Articles
BEAC	Barents Euro-Arctic Council
BRC	Barents Regional Council
CBSS	Council of the Baltic Sea States
EBM	Ecosystem Based Management
EEZ	Exclusive Economic Zone
IMO	International Maritime Organisation
ICC	Inuit Circumpolar Council
NC	Nordic Council
NCM	Nordic Council of Ministers
ND	Northern Dimension
NEAFC	Northeast Atlantic Fisheries Commission
NF	Northern Forum
POPs	Persistent Organic Pollutants
PPs	Permanent Participants
SAR	Search and Rescue
SWOT	Strengths-Weaknesses-Opportunity-Threats
UNCLOS	United Nations Convention on the Law of the Sea
UNFCC	United Nations

The Arctic is not only the Arctic Ocean, but also the northern tips of three continents: Europe, Asia and America. It is the place where Eurasian, North American and Asian Pacific regions meet, where frontiers come close to one another and the interests of the states belonging to mutually opposed military blocs and nonaligned ones cross.

M. Gorbachev, Murmansk Speech, 1987

Introduction

Preliminary remarks

In the next few years, the Arctic is going to face new challenges and transboundary threats. Global climate change will bring deep changes to the Arctic ecosystem with economic, political, environmental, and social repercussions.

Prospects of expanded navigable routes constitute one of the greatest challenges to Arctic governance. According to the United States Arctic Research Commission, in 2012 the ice cap of the Arctic Ocean reached its lowest level since the first observation made by National Aeronautics and Space Administration (NASA) in 1979.¹ In September 2012, 40 percent of the Central Arctic Ocean was free from ice. In the next decade, sea ice reduction will expand navigable routes connecting the Arctic and the Pacific Ocean in summer time. Observations of lowering sea ice levels

¹ US Arctic Research Commission (USARC), 2013. Report on the Goals and Objectives for Arctic Research 2013-2014. Available at http://www.arctic.gov/publications/goals/usarc_goals_2013-14.pdf. [Accessed 19th April 2015].

and projections of further shrinkage suggest that by mid-century sea ice conditions will enable navigation along the Northern Sea Route, over the North Pole, and through the Northwest Passage. However, geophysical projections of the extent to which this change in sea ice will impact navigation are still lacking.² The Northern Sea Route is about 40 percent shorter than the route through the Suez Canal. The Northwest Passage saves nearly 5000 miles to connect Europe to Asia compared to the commonly used routes.³ Given the potential of these routes, it is important to make sure that navigation is regulated and that Arctic states reach an agreement regarding the legal status of these waterways.

Untapped and undiscovered natural resources represent another challenge to the governance of the Arctic. In 2008, the US Geological Survey stated that the area north of the Arctic Circle contains around 30 percent of the world's undiscovered gas and 13 percent of the world's undiscovered oil. The total undiscovered conventional oil and gas resources are estimated to amount to 90 billion barrels of oil, 1,669 trillion cubic feet of gas, and 44 billion barrels of natural gas liquids. About 84 percent of these resources are located offshore and gas is largely concentrated in

² Smith, L. C. and Stephenson, S. R., 2013. New Trans-Arctic Shipping Routes Navigable by Mid-century, Proceedings of the National Academy of Sciences of the United States of America (PNAS). Available at <http://www.pnas.org/content/early/2013/02/27/1214212110.abstract>. [Accessed 7th March 2015]; Voronkov, L. S., *forthcoming*. Thinning Ice and Imperatives for a Round a Year Human Activity in the Arctic. On this point, L. S. Voronkov (*forthcoming*) argues that “scientific research of reasons and mechanisms of global climate change and discussions on these matters among experts are going on [...]. Any fundamental scientific research on regularities of influence of global climate on the Arctic has not carried up until now”. In particular, Voronkov brings up the findings of one of the latest AMAP Report stressing that “over 30 feedback effects between the Arctic cryosphere and the overall climate system have now been identified. More work is needed to quantify the magnitude of individual feedbacks”. See Arctic Monitoring and Assessment Program (AMAP), 2011. Arctic Climate Issues 2011: Changes in Arctic Snow, Water, Ice and Permafrost, Arctic Monitoring and Assessment Program.

³ Isted, K., 2009. Sovereignty in the Arctic: an Analysis of Territorial Disputes and Environmental Policy Considerations. *Journal of Transnational Law & Policy*, Vol. 18 n° 2, p. 347.

Russia. Oil resources are mostly located offshore and are less consistently distributed.⁴ Until recently, harsh weather conditions, remoteness, abundance of low-cost petroleum, and new shale gas opportunities have made the Arctic less attractive.⁵ Still, the International Energy Agency estimates that investments in the oil and gas sector are expected to total \$20,000 USD between 2012-2038.⁶ For the future, Arctic states will be called to strengthen oil spill prevention mechanisms and, more generally, will have to face the challenges connected to resource exploration and development in one of the harshest places of the world. As we will see later, one step in this sense has already been taken with the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic.⁷

In addition to that, climate change will bring to the table the issue of fisheries regulation. Data on sea ice reduction cause major concerns regarding the area of the Central Arctic Ocean that will be potentially free from ice. At the moment, only about 8 percent of the Central Arctic Ocean is regulated and supervised by the Northeast Atlantic Fisheries Commission (NEAFC).⁸ Regulation is directed at preventing overfishing and illegal exploitation of living resources. For the remaining 92 percent of the Central Arctic Ocean, the United Nations Convention for the Law of

⁴ US Geological Survey, 2008. USGS Fact Sheet 2008. Available at <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>. [Accessed 7th March 2015].

⁵ Gautier, L. D. *et al.*, 2009. Assessment of Undiscovered Oil and Gas in the Arctic. *Science*, Vol. 324 n° 5931, pp. 1175-1179.

⁶ Tomasik, M., 2014. Future Trajectories for the Arctic Investments. *Arctic Portal*. Available at <http://arcticportal.org/features/775-arcticinvestmentfeature>. [Accessed 7th March 2015].

⁷ Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013. Available at <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>. [Accessed 7th March 2015].

⁸ PEW Charitable Trusts, Oceans North, 2014. Why an International Fisheries Agreement is Needed in the Central Arctic Ocean. Available at <http://www.oceansnorth.org/faq#sthash.7RKFDwwk.dpuf>. [Accessed 7th March 2015].

the Sea (UNCLOS) provides that states may conclude regional agreements between themselves to regulate fisheries. These waters are not regulated because they extend beyond the Exclusive Economic Zones (EEZs) of the coastal states and they have been covered with ice for centuries. Yet, these waters are deemed to be rich in fishing resources.⁹ An agreement to regulate fisheries is still not in place and cooperation is mostly needed to preserve this extremely vulnerable ecosystem from unregulated exploitation.

Together with these governance issues, other tensions have been spreading to the Arctic recently. These are mainly repercussions of geopolitical tensions between Russia and Western countries following the events occurred in Ukraine and Crimea. Despite the concern that widespread mistrust could spill to Arctic relations, cooperation seems to have reacted well to the latest tensions and open military confrontation in the Arctic is excluded.¹⁰ The Arctic Council Ministerial Meeting,

⁹ It is important to stress that data concerning fishing resources in the Central Arctic Ocean are not available to date. Yet, the issue still deserves international attention pursuant to the general principle of precautionary approach according to which states are called to take all necessary and cost-effective measures to prevent environmental damage in situations of scientific uncertainty.

¹⁰ In March 2014, Norway announced the suspension of bilateral military activities with Russia. Also, the US announced that they would not participate in the joint Northern Eagle exercise and suspended bilateral military activities with Russia. Another repercussion of on-going tensions in Ukraine was the suspension of joint military exercises in the Arctic and Canada's boycott of the Arctic Council Meeting held in Moscow in April 2014. See Pettersen, T., 2014. Norway Suspends all Bilateral Military Activities with Russia. *Barents Observer*. Available at <http://barentsobserver.com/en/security/2014/03/norway-suspends-all-bilateral-military-activities-russia-25-03>. [Accessed 7th March 2015]; Barnes, J., E., 2014. Cold War Echoes Under the Arctic Ice. *The Wall Street Journal*. Available at <http://online.wsj.com/news/articles/SB10001424052702304679404579461630946609454>. [Accessed 7th March 2015]. An interesting point of view has been recently provided by Rob Huebert, associate director of the Centre for Military and Strategic Studies at the University of Calgary and an expert of Arctic policy and defence. Commenting on the aftermath of the Crimean crisis, Huebert notes that "tensions with Russia in the Arctic could rise if Finland and Sweden joined NATO: if that happens, you're going to have a sense that Russia is going to say it is being encircled by the other Arctic nations [...]". Milazzo, E., 2014. Prospects for Cooperation in the Arctic: a Canadian Perspective, Interview with Rob Huebert. *Russian International Affairs Council (RIAC)*. Available at

held in Iqaluit at the end of April 2015, showed signs of on-going and productive international dialogue among the member states. For the future, it is important to avoid escalating tensions between the Arctic countries and preserve fruitful cooperation on issues of common interests.

The Arctic is a region that offers transboundary opportunities and, at the same time, it is a land that poses transboundary challenges. Resources extraction in harsh weather conditions requires advanced technology and infrastructures, huge investments, oil spill prevention, and recovery mechanisms. Moreover, the management of the navigable routes with immense economic potential, like the Northwest Passage and the Northern Sea Route, requires coordinated efforts of all Arctic states. In addition, fisheries are by definition resources that do not respect national borders and, therefore, call for agreed regulation to be lawfully exploited. Last but not least, climate change and its impact on the extremely fragile Arctic ecosystem is a trans-border threat to the equilibrium and the productivity of the region.

Interestingly, all these opportunities cannot be taken by one single country, just like these threats cannot be faced by one lonely power. Therefore, coordination is necessary. Arctic countries are well aware of the gains of multilateral cooperation. The Senior Arctic Officials Meeting held in Yellowknife in March 2014 and the last Ministerial Meeting held in Iqaluit in April 2015 are concrete examples of how, even in the midst of a crisis without precedents in Western-Russian relations, these powers have come to the table of negotiations achieving concrete results for the

development of the Arctic.¹¹ For all these reasons, we believe that it is of the outmost importance to study Arctic governance today.

Research structure and methodology

What are the prospects of Arctic governance for the future? The present work will strive to carry out a critical assessment of institutions that allow for international cooperation in the Arctic region. To achieve this, we will seek to conduct a detailed analysis of the present governance framework, including the demands of Arctic states and other stakeholders, in order to draw possible scenarios for the future.

In particular, our study aims at outlining the current pitfalls of Arctic governance, the main features of Arctic governance arrangements, and how stakeholders' interests and concerns come into this picture. Starting from current trends, we will also set out four possible governance scenarios. For each, we will take a close and critical look at advantages and drawbacks. Based on the results of our analysis, we will also investigate what scenarios are the most likely for future, and what further steps should be taken to strengthen Arctic governance.

The analysis will focus on the theoretical consultation of the most relevant literature on Arctic governance, as well as on the possibility of a new framework for Arctic governance. The leading approach of the study will be qualitative analysis of

¹¹ The main achievement of the Yellowknife meeting was the adoption of the document to facilitate the creation of the Arctic Economic Council (AEC). For an insight into the repercussion of the Crimean crisis on Arctic relations and on the Yellowknife meeting see Milazzo, E., 2014. Between Yellowknife and Crimea: Towards a Security Dilemma? Blog Arctic cooperation, *Russian International Affairs Council*. Available at http://russiancouncil.ru/en/blogs/arctic-cooperation/?id_4=1091. [Accessed 7th March 2015].

national policies, declarations, treaties, agreements, reports, and scholarly literature, combined with scenarios and SWOT evaluation analysis.

The thesis will consist of four chapters. Chapter I will give a comprehensive overview of the Arctic region by outlining all its aspects and defining key terms. Chapter II will introduce the concept of Arctic governance as well as the main Arctic governance arrangements. In addition, this chapter will conduct a preliminary analysis of the Arctic governance framework and derive main trends of its development. Chapter III will be devoted to scenario analysis. Building on the work conducted in the previous chapters, we will outline key governance prospects for the future, focusing on what type of governance demands could motivate them and speculating on the desirability of each. More specifically, for each of the four scenarios we will provide arguments in support and counter-arguments using the SWOT analysis approach. Chapter IV will derive conclusions and recommendations for the future of Arctic governance, summarising the main findings of the analysis.

Chapter 1

Introduction to the Arctic region

1.1 Definitions and key terms

The *Arctic* is conventionally defined as the land and marine areas extending north of the Arctic Circle (66°32'N), north of 62°N in Asia, and 60°N in North America. It also includes the marine areas north of the Aleutian chain, Hudson Bay, and parts of the North Atlantic Ocean, including the Labrador Sea.¹² Another definition of the Arctic takes as reference the 66.5° parallel and traces the borders of the Arctic along the

¹² Arctic Monitoring and Assessment Program (AMAP), 1997. Report on Arctic Pollution Issues: A State of the Arctic Environment.

Arctic Circle (Figure 1).¹³ For the purposes of this dissertation, we will take into consideration the last definition of the Arctic.

By *Arctic region* we mean the area around the North Pole, north of the Arctic Circle. It includes the Arctic Ocean and territories of the eight Arctic states: Canada, Denmark (through Greenland), Finland, Iceland¹⁴, Norway, Russia, Sweden, and the United States. It is estimated that around 4 million people live in the Arctic, 10 percent of which is indigenous.¹⁵

The Arctic region encompasses 21 million square kilometres. It is a region of strategic interest for the Arctic coastal states and for the international community as a whole. As a geopolitical space, it has witnessed deep changes over the last few years. Since the end of the Cold War, the Arctic has been regarded as one of the few areas where global leaders have been able to cooperate and address shared concerns.

¹³ Based on temperatures, the Arctic may also be defined according to the parameter of 10°C July isotherm. The tree line vegetation method defines the Arctic based on the presence of trees.

¹⁴ Iceland is the only Arctic state that does not have territories but only waters in the Arctic, that is, above the Arctic Circle (see Figure 1).

¹⁵ Adam, S., Koivurova, T., Gremsperger, A., and Niemi, H., 2014. Arctic Indigenous Peoples and the Challenge of Climate Change. In Tedsen, E., Cavalieri, S., and Kraemer, R. A., eds., 2014. *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*. Berlin: Springer.



Figure 1 AMAP Definition of the Arctic: comparison with the Arctic Circle boundaries

Source: www.amap.no

1.2 Legal framework

The Arctic is governed by a rich set of laws, norms, and practices that have shaped multilateral cooperation in the region. Rights and duties of the Arctic states are defined by the United Nations Convention on the Law of the Sea (UNCLOS) and by its implementation agreements, the Part XI Deep-Sea Bed Mining Agreement and the Fish Stock Agreement.

1.2 UNCLOS

UNCLOS is a cornerstone of international law at the global level as it defines and regulates territorial boundaries at sea, the right to enforce laws, and exploit

resources.¹⁶ UNCLOS was open for signature in Montego Bay in 1982, and entered into force in 1994. As of January 2015, UNCLOS has been ratified by 166 states and by the European Union, including all Arctic states except for the United States.¹⁷

UNCLOS sets the boundaries of territorial sovereignty from the coast to the high seas – including internal waters, territorial waters, contiguous zone, exclusive economic zone (EEZ), continental shelf limit, and international waters – and establishes the rights of coastal nations.¹⁸

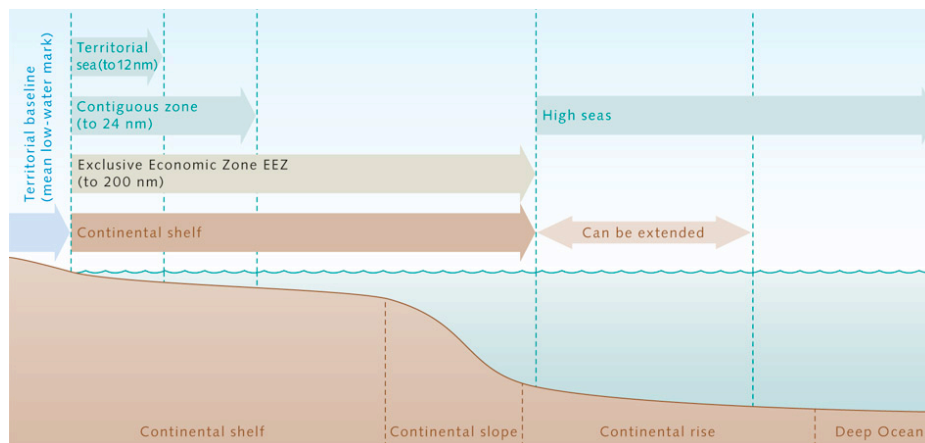


Figure 2 Maritime zones under UNCLOS

Source: <http://worldoceanreview.com/en/wor-1/law-of-the-sea/a-constitution-for-the-seas/>

Pursuant to UNCLOS, within the zone of internal waters the coastal state enjoys full sovereignty.¹⁹ It is free to regulate navigation and resource exploitation, while foreign nations do not have the right of passage.²⁰ From the baseline outward twelve nautical miles (territorial zone), the coastal state retains the right to regulate

¹⁶ Rynning, S., 2013. Arctic Security Order: Collective Security, Collective Defence, or Something New? *Journal of Military and Strategic Studies*, Vol. 15 n° 2, p. 4.

¹⁷ The European Union is a party to UNCLOS since April 1st, 1998.

¹⁸ Isted, K., 2009. Sovereignty in the Arctic: an Analysis of Territorial Disputes and Environmental Policy Considerations. *Journal of Transnational Law & Policy*, Vol. 18 n° 2, p. 349.

¹⁹ United Nations, 1982. Convention on the Law on the Law of the Sea, artt. 2-3.

²⁰ *Ibid.*, artt. 17, 18.1.

resource exploitation.²¹ In this territorial zone, foreign nations do have the right of innocent passage.²²

The twelve nautical miles past the territorial zone are defined as contiguous zone, where the coastal state has the right to enforce laws to prohibit smuggling and illegal immigration activities.²³

Between the contiguous zone and the continental shelf limit, the state has its EEZ where it enjoys special rights over natural resources “for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil”.²⁴ Within its EEZ (*e.g.* within 200 nautical miles from the coast baseline), the coastal state has the exclusive right to fish, drill oil, conduct scientific research, build structure, and conduct any economic activities, as well as enforcing the law protecting the ecosystem.²⁵

If the nation’s continental margin extends beyond 200 nautical miles, the continental shelf may be extended until the end of the continental margin but no more than 350 nautical miles from the coast baseline.²⁶ This provision is paramount because it gives to the coastal state the exclusive right to explore and exploit

²¹ *Ibid.*, artt. 2-3.

²² *Ibid.*, art. 17. UNCLOS defines “innocent passage” as the “continuous and expeditious” traversing of the territorial sea without entering internal waters (*ibid.*, artt. 18-19).

²³ *Ibid.*, art. 33.

²⁴ *Ibid.*, art. 56.1.a.

²⁵ *Ibid.*, artt. 57, 56.1.b.iii.

²⁶ *Ibid.*, art. 76.

resources within the continental shelf seabed and subsoil. At the same time, this right does not extend to the water column above the continental margin.²⁷

Interestingly, UNCLOS is a framework convention and does not contain substantive regulatory standards for issues such as safety and fishing restrictions. Regulation by single states cannot provide solutions to transboundary issues and, therefore, multilateral cooperation among Arctic states is essential.²⁸

1.2.2 Other agreements

The legal framework regulating the Arctic region is set out by two agreements implementing UNCLOS. The Agreement Relating to the Implementation of Part XI of UNCLOS, commonly referred to as Deep Seabed Mining Agreement, provides for a regime regulating minerals on the seabed outside any state's territorial waters or EEZ.²⁹ It also establishes an International Seabed Authority in charge of authorising seabed exploration, mining, and collection and distribution of seabed royalty.³⁰ The US refused to ratify UNCLOS on the ground that the provisions contained in Part XI were unfavourable to American economic and security interests.

The Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish

²⁷ *Ibid.*, artt. 77.4, 78.1.

²⁸ Molenaar, E. J., 2012. Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea. *The International Journal of Marine and Coastal Law*, Vol. 27 n° 3, p. 143.

²⁹ United Nations, Division for Ocean Affairs and the Law of the Sea, 1994. Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. Available at http://www.un.org/depts/los/convention_agreements/convention_overview_part_xi.htm. [Accessed 7th March 2015].

³⁰ *Ibid.*

Stocks, known as the Fish Stock Agreement, was adopted in 1995 by the UN Conference on Straddling and Highly Migratory Fish Stocks.³¹ It sets out principles for the conservation and management of straddling and migratory fish stocks in accordance with the principles of precautionary approach and best available scientific information.³² It is interesting to note that the Agreement elaborates on a fundamental principle established by UNCLOS, according to which all states should cooperate to ensure optimum utilization of fisheries within and beyond the EEZ.³³

The Arctic Aeronautical and Maritime Search and Rescue Agreement, known as SAR Agreement, is the first binding agreement concluded by the Arctic states under the auspices of the Arctic Council.³⁴ It was signed in May 2011 in Nuuk, Greenland. The SAR Agreement is a binding instrument that sets out measures to strengthen search

³¹ United Nations, Division for Ocean Affairs and the Law of the Sea, 1995. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish stocks. Available at http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm. [Accessed 7th March 2015].

³² The principle of precautionary approach is a general principle of international environmental law. According to this principle, all states are called to take cost-effective measure to prevent environmental damage in condition of scientific uncertainty. The mere lack of scientific certainty shall not constitute an excuse for the states not to regulate environmentally harmful activities. See generally Sands, P. and Peel, J., 2012. *Principles of International Environmental Law*. Cambridge: Cambridge University Press.

³³ *Ibid.*

³⁴ Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, 2011. Available at <http://www.ifrc.org/docs/idrl/N813EN.pdf>. [Accessed 7th March 2015]. It is important to stress that with the expression “under the auspices of” here we mean not by the Arctic Council but by the Arctic states independently. This disclaimer is particularly important because, as we will see in the next chapters, the Arctic Council is not an international organisation and, as such, it does not have power to conclude binding agreements, to create legally binding obligations upon its parties, or to enforce regulation.

and rescue coordination and cooperation in the Arctic by improving communication and division of responsibilities.³⁵

The Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic is the second binding agreement signed in 2013 by the eight Arctic states under the auspices of the Arctic Council.³⁶ The objective of the agreement is to strengthen cooperation, coordination, and mutual assistance among the parties on oil pollution preparedness and response in the Arctic with the aim of protecting the marine environment.³⁷

1.3 Arctic states and the Arctic Council

The Arctic states that extend on the fringes of the Arctic Circle are the leading actors of the region. When talking about the Arctic states, it is important to point out that they may be divided into two groups: the Arctic Eight, members of the Arctic Council (AC), and the Arctic Five, the Arctic coastal states.

The five Arctic coastal states to the Arctic Ocean are Canada, Denmark (via Greenland), Norway, the Russian Federation, and the US. These states together with Sweden, Finland, and Iceland are members of the AC. As discussed later, the AC is the main high-level forum of the region whose decision-making process is based on the principle of consensus. It was established in 1996 with the aim to promote

³⁵ *Ibid.*

³⁶ Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013. Available at <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>. [Accessed 7th March 2015]. See disclaimer *supra* note 33.

³⁷ *Ibid.*, art. 1.

cooperation, coordination, and interaction among the Arctic states, with the involvement of indigenous people on matters of sustainable development and environmental protection.³⁸ The set of rules regulating the AC envisages the possibility of admitting new Permanent Participants (PPs) and observers but it excludes the admission of new members. Therefore, the AC may be defined as a closed body.³⁹

1.3.1 The Arctic Five

The first meeting of the five Arctic coastal states was held in Ilulissat, Greenland, in May 2008. As noted by Voronkov, the Ilulissat Declaration adopted on that occasion stresses that the existing law of the sea provides a solid framework for responsible management of the Arctic Ocean through national implementation and enforcement of relevant provisions.⁴⁰

Another important meeting of the Arctic Five was held in Chelsea, Canada, in March 2010. At the meeting, the Arctic Five announced their commitment to cooperate closely on a number of issues, including the establishment of the outer limits of their continental shelves, the conclusion of a legally binding search-and-rescue agreement, and the establishment of mandatory shipping regulation for safety.⁴¹

1.3.2 The Arctic Eight and the Arctic Council

³⁸ Arctic Council, 1996. Ottawa Declaration, art. 1.

³⁹ Molenaar, E. J., 2012. Current and Prospective Roles of the Arctic Council System Within the Context of the Law of the Sea. *The International Journal of Marine and Coastal Law*, Vol. 27 n° 3, p. 159.

⁴⁰ Voronkov, L. S., 2013. The Arctic for Eight. *Russia in Global Affairs*. Available at <http://eng.globalaffairs.ru/number/The-Arctic-for-Eight-16058>. [Accessed 7th March 2015].

⁴¹ *Ibid.*

The Arctic Five together with Sweden, Finland, and Iceland form the AC. These are the eight Arctic states according to the Rules of Procedure.⁴² All of them are coastal states but only five, Canada, Denmark (via Greenland), Norway, the Russian Federation, and the US are coastal states to the Arctic Ocean.

As mentioned earlier, the AC's objective is to promote cooperation, coordination, and interaction among the Arctic states, with the involvement of indigenous people on matters of sustainable development and environmental protection.⁴³ Article 1 of the Ottawa Declaration also provides that the AC "should not deal with matters related to military security", explicitly excluding from the scope of competence hard security issues.⁴⁴ Most recently, it has been clarified in the Framework for the Strengthening of the Arctic Council that the AC adopts cooperative approaches to problem solving, including scientific assessments, policy statements, guidelines, recommendations, best practices, and legally binding instruments.⁴⁵

The set of legal rules regulating the AC envisages the possibility of admitting new PPs and observers. Indigenous peoples organisations are part to the AC with the unique role of PPs. The AC awarded the status of PP to six indigenous organisations, namely the Arctic Athabaskan Council, the Aleut International Association, the Gwich'in Council International, the Inuit Circumpolar Council, the Russian Arctic Indigenous Peoples of the North, and the Sámi Council. Despite the fact that participation to the decisions making process is reserved to the Arctic Eight, the six

⁴² Arctic Council, 1998. Rules of Procedure, Annex 1 to the SAO Report, rule 1. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

⁴³ Arctic Council, 1996. Ottawa Declaration, art. 1.

⁴⁴ *Ibid.*

⁴⁵ Senior Arctic Officials (SAO), 2011. Report to Ministers, Nuuk, Greenland, p. 49.

PPs are entitled to actively participate in all meetings and activities of the AC, and have the right to be fully consulted by the Arctic states.⁴⁶

Concerning AC observers, pursuant to Rule 36 of the Rules of Procedure of the AC, non-Arctic states, inter-governmental and inter-parliamentary organisations, and NGOs may be awarded the status of observers to the AC.⁴⁷ As mentioned earlier, observers are not formally involved in the decision-making process, as this is reserved to the Arctic states on the basis of consensus.

Overall, the work of the AC revolves around the bi-annual Ministerial Meeting where the annual output is approved and other important decisions are taken. The Chair of the AC and the Senior Arctic Officials are in charge of organising the Ministerial as well as running the daily work of the AC. Nevertheless, the substantive work of the AC is conducted through its six Working Groups that operate independently.⁴⁸

1.4. EU, NATO, and non-Arctic states involvement in the Arctic

1.4.1 The European Union Arctic policy

⁴⁶ Arctic Council, 1998. Rules of Procedure, Annex 1 to the SAO Report, rule 5. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

⁴⁷ *Ibid.*, rule 36.

⁴⁸ Molenaar, E. J., 2012. Current and Prospective Roles of the Arctic Council System Within the Context of the Law of the Sea. *The International Journal of Marine and Coastal Law*, Vol. 27 n° 3, p. 174. The six Working Groups of the AC are as follows: Arctic Contaminants Action Programme (ACAP); Arctic Monitoring and Assessment Programme (AMAP); Conservation of Arctic Flora and Fauna (CAFF); Emergency Prevention, Preparedness and Response (EPPR); Protection of the Arctic Marine Environment (PAME); Sustainable Development Working Group (SDWG).

The European Union (EU) has recently begun developing an Arctic Policy. Over the last few years, the Council of Ministers, the European Commission, and the Parliament have all presented documents on the issue. The link of the EU to the Arctic is twofold, expressed both in terms of geographical proximity through Finland, Sweden and Denmark which are EU member states, and at the policy level, since EU policies on environment, climate, fisheries etc. all have an impact in the Arctic region.

In 2008, the EU High Representative and the Commission presented a joint report on Climate Change and International Security suggesting the drafting of a EU Arctic Policy.⁴⁹ Following this input, in November 2008, the Commission released a Communication on the EU and the Arctic region.⁵⁰

The EU supported its interest in the Arctic with the claim that the EU is linked to the region by historical, geographical, economic, and scientific ties.⁵¹ In particular, three Member States – namely Denmark, Finland, and Sweden – have territories in the Arctic region. Two other Arctic states – Iceland and Norway – are member of the European Economic Area.⁵² Canada, the US, and – at least until the Ukrainian crisis –

⁴⁹ EU High Representative and Commission, 2008. Climate Change and Security: Recommendations of the High Representative on Follow-up to the High Representative and Commission Report on Climate Change and International Security. Available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/104895.pdf. [Accessed 7th March 2015].

⁵⁰ EU Commission, 2008. Communication from the Commission to the European Parliament and the Council “The European Union and the Arctic Region”. Available at http://eeas.europa.eu/arctic_region/docs/com_08_763_en.pdf. [Accessed 7th March 2015].

⁵¹ *Ibid.*

⁵² The European Economic Area (EEA) provides for the free movement of persons, goods, services, and capital in three of the four member states of the European Free Trade Association (EFTA) – Iceland, Liechtenstein, and Norway – and 27 of the 28 member states of the EU (Croatia applied to

Russia are strategic partners of the EU. Moreover, the Arctic is a strategic priority in the EU Northern Dimension policy.⁵³

Most recently, the High Representative and the Commission released a joint communication on Developing a “European Union Policy towards the Arctic Region: progress since 2008 and next steps”. The joint Communication makes the case for increased EU engagement in the Arctic region, following the application of the Commission for permanent observer status in the AC. The joint communication also points to the fact that since 2008, the year of the first communication, the EU has established its key role in the Arctic region by raising awareness on the importance of sustainable development of the Arctic.⁵⁴

The EU requested full observer status in the AC at the Ministerial Meeting held in Kiruna, Sweden, in 2013. To date, the status of observer has not been granted because of the EU ban on seal products imposed in 2009. The ban is an issue of crucial importance for Canada, since seal hunting constitutes an important source of income for its indigenous populations.

In 2014, the European Parliament approved a resolution on the EU strategy for the Arctic, reiterating its call for a united EU policy and a coherent EU strategy for the

the EEA Agreement). Pursuant to the EEA Agreement full participation of EEA countries is ensured, allowing cooperation in fields like environment, civil protection, tourism, research.

⁵³ As we will see later, the Northern Dimension is a shared policy among four partners: the EU, Iceland, Norway, and Russia. It was established in 1999 and renewed in 2006 with the aim to promote concrete cooperation, stability, prosperity and sustainable development in Northern Europe. In addition to its members, participants are also the Arctic Council, the Barents Euro-Arctic Council, the Council of the Baltic Sea States, and the Nordic Council of Ministers.

⁵⁴ EU High Representative and Commission, 2012. Joint Communication “Developing an EU Policy towards the Arctic Region: Progress Since 2008 and Next Steps”. Available at http://eeas.europa.eu/arctic_region/docs/join_2012_19.pdf. [Accessed 7th March 2015].

Arctic. In particular, the resolution emphasised the need to focus on socio-economic and environmental issues.⁵⁵

In May 2014, the European Council published its Conclusions on Developing a European Union Policy towards the Arctic Region. In the document, the Council expressed its support to the investments that the EU is already making in the region in cooperation with several partners. The Council also advised to strengthen EU action in the region by supporting research; acting with responsibility; and intensifying the EU constructive engagement with the Arctic states, indigenous peoples' organisations, and other international partners. The Council stated that the EU should strengthen its support for the protection of the Arctic environment through its policies addressing climate change, air pollutants, biodiversity, and fisheries. To conclude, the Council urged the EU and Canada to work towards the resolution of the seal products ban in order to allow for a final decision on the EU observer status.⁵⁶

1.4.2 Non-Arctic states involvement

Twelve non-Arctic states have been admitted as AC observers. These are France, Germany, The Netherlands, Spain, United Kingdom, People's Republic of China, Italy, Japan, Republic of Korea, Singapore, and India. Of these, China, India, Italy, Japan, Republic of Korea, and Singapore were welcomed as observers at the Kiruna

⁵⁵ European Parliament, 2008. European Parliament resolution of 9 October 2008 on Arctic governance. Available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0474&language=EN>. [Accessed 10th May 2015].

⁵⁶ Council of the European Union, 2014. Council Conclusions on Developing a European Union Policy Towards the Arctic Region. Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142554.pdf. [Accessed 7th March 2015].

ministerial meeting in May 2013. For the first time, Asian countries were admitted as observers in the AC.

The decision of the AC to admit new non-Arctic nations reflects the growing involvement of these countries in the Arctic. Just to mention one example, China has actively engaged in polar research since the 1990s, participating in several polar research projects. China's scientific cooperation with Norway in Svalbard is particularly meaningful.⁵⁷ Moreover, China is investing in natural resources development in the Russian Arctic. Last but not least, China is highly dependent on shipping for energy and good imports. Therefore, the opening up of new transport routes in the Arctic would benefit the Chinese economy.⁵⁸

1.4.3 The Arctic and NATO: active engagement?

Four of the five Arctic coastal states, excluding Russia, are members of the North Atlantic Treaty Organisation (NATO). Possible membership of other two AC members – Finland and Sweden – has been discussed at the national level but with no concrete prospect of membership, at least in the medium term.

Far from being a militarised region, the Arctic is still of crucial interest for NATO members. Most NATO's Cold War-era military structures in the Arctic are intact and military exercises are conducted on a regular basis by single countries or jointly.⁵⁹ The alliance is deploying radars and tracking stations for missile defence in Alaska,

⁵⁷ All countries that signed the Svalbard treaty (also known as Spitsbergen Treaty) are given equal rights to undertake economic activities in the islands.

⁵⁸ Campbell, C., 2012. China and the Arctic: Objectives and Obstacles. *US-China Economic and Security Review Commission Staff Research Report*.

⁵⁹ Voronkov, L. S., 2013. The Arctic for Eight. *Russia in Global Affairs*. Available at <http://eng.globalaffairs.ru/number/The-Arctic-for-Eight-16058>. [Accessed 7th March 2015].

Greenland, and Northern Canada.⁶⁰ In general, NATO presence in the Arctic is viewed as guarantee of assistance in case of security emergencies in the region.

In January 2009, the Icelandic government hosted in Reykjavik the NATO seminar on security prospects in the High North. The seminar focused on the need to counter new challenges emerging from global warming and sea ice retreat, concluding that the Alliance is called to address mainly soft security threats in the region. In 2010, NATO members adopted the new Strategic Concept “Active Engagement, Modern Defence”.⁶¹ That is the latest strategic concept of the alliance and, interestingly, no mention is made to the Arctic.

In this respect, the analyst Helga Haftendorn has noted that in the Arctic national actions are replacing joint alliance intervention.⁶² Even more than that, it is apparent that, in general, Arctic states are not interested in recurring to NATO as dispute resolution mechanism for bilateral disputes. Moreover, the AC explicitly singles out security from the range of issues that it deals with. Taking all this into account, it may be concluded that it is important to include NATO in a preliminary introduction to the Arctic region because of overlapping membership between the AC and NATO. Yet, NATO by itself cannot be considered a key player in the Arctic for the reasons mentioned above.

⁶⁰ *Ibid.*

⁶¹ NATO, 2015. New Strategic Concept. Available at <http://www.nato.int/strategicconcept/index.html>. [Accessed 7th March 2015].

⁶² Voronkov, L. S., 2013. The Arctic for Eight. *Russia in Global Affairs*. Available at <http://eng.globalaffairs.ru/number/The-Arctic-for-Eight-16058>. [Accessed 7th March 2015].

1.5 Resources and potential

As a region, the Arctic is extremely rich in resources and has a promising potential from the point of view economic development. In particular, fishing, mining, and hydrocarbons are the main sectors of the economy of the High North.

1.5.1 Ownership of resources

The rights over natural resources in the Arctic are set out by UNCLOS. As mentioned before, like anywhere else, UNCLOS defines rights and duties of the states at sea, including the Arctic maritime areas.

As already shown in the previous section, the coastal state's sovereign rights over maritime areas are restricted as we proceed from the coastline to the high seas. In its territorial water, the coastal state enjoys full sovereignty over sea, seabed, and airspace. Foreign vessels may only exercise the right of innocent passage. Within its EEZ, a coastal state enjoys sovereign rights to the management and exploitation of resources of the continental shelf and to living resources in the water column. In a proven case of extended continental shelf, the rights to the continental shelf are therefore extended.

It follows that, unlike territorial waters, in the EEZ and in the waters of the continental shelves, the sovereign rights of the coastal state are limited. In the EEZ, other states may exercise their right to shipping and scientific activity. In the high seas areas, beyond the EEZ, waters and airspace are open to all countries. The seabed of the high seas (the Area) is subject to a separate regime and the exploitation of its resources is administered by the International Seabed Authority.

1.5.2 Fisheries

Despite the fact that the total amount of Arctic fisheries represents only a minor share of the global catch, fisheries constitute a very relevant share of northern income. In particular, fisheries in the Arctic account for 90 percent of export earnings of Greenland, 33 percent of Iceland, 6 percent of Norway, and less than 1 percent of those of Russia. Arctic fisheries are concentrated in the Arctic marine area (extending north of the Atlantic) and in the Central Arctic Ocean. The fish stock presents a rich diversity in species.⁶³

The general framework regulation of Arctic fisheries capture is provided by the UNCLOS and the 1995 UN Fish Stock Agreement. As seen before, Arctic coastal states are granted rights over living resources within their maritime zone, and other states in the high seas. Severe obligations derive from these rights, including bycatch regulation and duty to cooperate with other states on transboundary stocks management. UNCLOS provisions are aimed at avoiding the risk of overexploitation and to optimum utilisation of fish stocks.⁶⁴

Beside this general framework, detailed fisheries regulation is provided by regional regimes and fisheries management organisations. These regimes set out collaborative research, joint regulation, and provide for instruments to verify rule compliance. Regional or bilateral bodies include, for example, the Norwegian-

⁶³ Lloyd's, 2012. Arctic Opening: Opportunity and Risk in the High North, Arctic Risk Report, p. 27. For a full overview of Arctic fisheries see Lindholt, L., 2006. Arctic Natural Resources in a Global Perspective. In Glomsrød, S. & Aslaksen, I., eds., 2006. *The Economy of the North*. Oslo-Kongsvinger: Statistics Norway, pp. 33-34.

⁶⁴ Molenaar, E.J., 2014. Status and Reform of International Arctic fisheries law. In Tedsen, E., Cavalieri, S., and Kraemer, R. A., eds., 2014. *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*. Berlin: Springer.

Russian Fisheries Commission and the North-East Atlantic Fisheries Commission (NEAFC). The mandate of these two bodies extends to include part of the Arctic Ocean.⁶⁵

The area north of the Bering Strait constitutes a significant exception. An area of 2.8 square kilometres, it is covered with ice all year round and no fisheries operate there. The NEAFC regulation does not extend to this area that, therefore, presents a gap in high sea regulation. Nevertheless, at the moment it seems unlikely that commercial fisheries will occur in this portion of high seas in the short term.

1.5.3 Mining

The mining industry constitutes an important sector of the circumpolar economy. Mining in the Arctic covers several countries and many different base or precious metals, from iron to diamonds. As for the regulatory framework, there is no international binding agreement regulating mining in the Arctic, and therefore mining is subject to domestic regulatory regimes of the Arctic states.⁶⁶

1.5.4 Shipping

The Arctic has been witnessing a steady increase in the volume of shipping, as shown by the Arctic Shipping Assessment Progress Report.⁶⁷ This increase is undoubtedly connected to changing weather conditions. In the last few years, the

⁶⁵ *Ibid.*

⁶⁶ Arctic Portal, 2015. Mining in the Arctic. Available at <http://portlets.arcticportal.org/mining-projects/123-mining-in-the-arctic>. [Accessed 7th March 2015]; Ondotimi Songi, LL. B., 2010. Current Legal Regime Governing the Arctic Region and Investment by Oil and Gas Companies. *International Energy Law and Policy Research Paper Series*, n° 8. Centre for Energy, Petroleum & Mineral Law & Policy, University of Dundee.

⁶⁷ Arctic Council, 2009. Arctic Marine Shipping Assessment Report.

level of summer sea ice was considerably lower and remained so for longer periods than usual. In the future, this trend is likely to bring down the costs of navigation and cause an increase in vessel traffic.

The Arctic Marine Shipping Report estimated that around 6.000 vessels cross the Arctic every year, half of which navigate along the Great Circle Route in the North Pacific, crossing the Aleutian Islands. Most of Arctic shipping is destinational and answers to the need of community re-supply and resource transportation. Despite the fact that transit shipping remains quite modest in numbers, for the future it is believed that the volume of traffic will transform passages like the Northern Sea Route and the North West Passage in true competitors of the Suez Canal and vital transportation corridors.⁶⁸ At the moment, the Northern Sea Route stretches along the Russian coast from Novaya Zemlya to the Bering Strait. Russia charges passage fees to international vessels crossing the sea-lanes. The US objects to the current status of the Strait, claiming that it should be recognised as an international strait.

As far as regulation of Arctic shipping is concerned, framework provisions for vessels transit regulation are set out by UNCLOS. In particular, UNCLOS provisions regard rights and duties of coastal and flag states, transit regulations, and vessel source pollution regulation. The International Maritime Organisation (IMO) sets out other provisions concerning Arctic marine shipping. In particular, the 2009 IMO guidelines for ships operating in polar waters paved the way for further agreements to be concluded. Most importantly, in November 2014, IMO Maritime Safety Committee adopted a mandatory International Code for Ships Operating in Polar

⁶⁸ Østreng, W., 2012. Shipping and Resources in the Arctic Ocean: A Hemispheric Perspective. *Arctic Yearbook*.

Waters, known as Polar Code. The Polar Code will regulate vessel standards and address issues ranging from design to equipment, training, search and rescue, and pollution. The Polar Code will enter into force on January 1st, 2017.⁶⁹

In addition, following a set of policy recommendations drafted by the Arctic Council and included in the Arctic Marine Shipping Assessment Report, the Arctic states concluded the Arctic Aeronautical and Maritime Search and Rescue Agreement (SAR). As anticipated earlier in this chapter, this is the first binding agreement adopted under the auspices of the AC. It aims at strengthening search and rescue effort in the Arctic.

1.5.5 Oil and gas sector

The US Geological Survey (USGS) estimated in 2008 that the area north of the Arctic Circle contains around 30 percent of the world undiscovered gas and 13 percent of the world's undiscovered oil. Around 70 percent of undiscovered resources is estimated to be located in Arctic Alaska, the Amerasian Basin, East Greenland's Rift Basins, East Barents Basins, and West Greenland-East Canada. Most of these basins are expected to be located offshore.⁷⁰

The framework provisions for this sector of Arctic economy are defined by UNCLOS. UNCLOS regulates offshore activities, and it grants coastal states sovereign rights to the exploration and management of natural resources of their continental shelves. It also establishes states' duty of environmental preservation and compliance with

⁶⁹ International Maritime Organization (IMO), 2014. Shipping in polar waters. Official Website.

⁷⁰ US Geological Survey, 2008. USGS Fact Sheet 2008. Available at <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>. [Accessed 7th March 2015].

international standards (*e.g.* those provided by international organisations like IMO).⁷¹

It is interesting to note that, according to USGS findings, the deep ocean basin areas that are contested in terms of extended continental shelf are not expected to contain considerable hydrocarbons resources. Instead, these resources are considered to lie on the continental shelf or onshore where boundaries are not contested.⁷²

Other provisions addressing oil and gas development in the Arctic are the International Convention for the Prevention of Pollution from Ships (MARPOL Convention) that covers ships and mixed platform; and the International Convention on Oil Pollution Preparedness, Response, and Cooperation. In addition, as mentioned earlier, in May 2013 the Arctic states signed the Agreement on Cooperation on Marine Pollution Preparedness and Response with the goal of “strengthen[ing] cooperation, coordination and mutual assistance among the Parties on oil pollution preparedness and response in the Arctic in order to protect the marine environment from pollution by oil”.⁷³

⁷¹ Det Norske Veritas and Fridtjof Nansen Institute, 2012. Arctic Resource Development. Risks and Responsible Management. Joint report prepared for the ONS Summit 2012; Arctic Climate Change Emerging Leaders (ACCEL), 2014. Official website: <http://accelfellowship.wordpress.com>.

⁷² Johnston, P. F., 2010. Arctic Energy Resources and Global Energy Security. *Journal of Military and Strategic Studies*, Vol. 2 n°2.

⁷³ Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013. Available at <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>. [Accessed 7th March 2015].

Chapter 2

Arctic governance: settings, trends, and challenges

So far, we tried to introduce the Arctic region in broad terms. In the following chapter, we will focus on defining the concept of Arctic governance. In order to do so, we will first provide working definitions of *governance* and *Arctic governance*. Our analysis will focus on international, regional, and national governance settings. The ultimate goal of this chapter will be to answer to three key research questions: what does *governance* mean? Why should one deal with Arctic governance today? What type of governance settings can be retrieved in the Arctic and what trends do they show?

2.1 Governance: definition, key features, and challenges

2.1.1 Defining the concept of governance

Governance is widely understood as *the act of governing* and the way organisations, institutions, businesses, and governments manage their affairs. According to the UN, the notion of global governance refers to the way global affairs are managed and, in particular, to “the existing set of collective agreements and arrangements to set norms, make decisions, solve problems, and monitor outcomes at the global level in the absence of a world government”.⁷⁴

From Weiss and Thakur’s perspective, governance is “the sum of laws, norms, policies, and institutions that define, constitute, and mediate trans-border relations between states, cultures, citizens, intergovernmental and nongovernmental organisations, and the market”.⁷⁵ Therefore, the concept of governance includes all institutions, policies, rules, practices, norms, procedures, and initiatives by which states and citizens strive to bring more predictability, stability, and order to their responses to transnational challenges, ranging from climate change to terrorism.⁷⁶

One of the most telling definitions of governance is provided by Bötzel and Risse. They define governance as “the various institutionalised modes of social coordination to produce and implement collectively binding rules or to provide collective goods”.⁷⁷ According to their definition, governance is both a structure

⁷⁴ United Nations Intellectual History Project, 2009. The UN’s Role in Global Governance. Briefing Note No. 15. August. Available at www.unhistory.org/briefing/15GlobalGov.pdf. [Accessed 19th April 2015].

⁷⁵ Weiss, T. G. and Thakur, R., 2010. *Global Governance and the UN: an Unfinished Journey*. Bloomington, Ind.: Indiana University Press.

⁷⁶ *Ibid.*

⁷⁷ Bötzel, T. A. and Risse, T., 2010. Governance Without a State: Can it work? *Regulation & Government*, Vol. 4, p. 114.

made up by institutions and actors, and a process constituted by modes of social coordination.⁷⁸ Coordination is crucial in absence of an overarching authority as it allows for cooperative solutions to conflicts, voluntary commitments, and compliance with rules. Ultimately, governance serves the function of solving conflicts and fostering cooperation.

In absence of a world government, a broad range of actors at the international, national, and regional level comes into play to regulate problems of transnational nature. Interdependent relations among these actors may be regulated informally through shared practices and guidelines, or according to temporary units (*e.g.* coalitions). Forms of regulation may be also defined more formally through laws, norms, codes of conduct enforced by institutions, such as state authorities, intergovernmental organisations, civil society organisations, or private entities. Through enforcement of these arrangements, be they legally binding or not, shared interests are collectively and effectively managed.

2.1.2 Global governance: key features

Taking this into consideration, it is possible to give a preliminary account of the main features of global governance. First of all, it comprises both hard law instruments and soft law arrangements. Secondly, global governance is increasingly characterised by the participation of non-state actors, including intergovernmental organisations, multinational corporations, and civil society groups. New governance settings have been emerging, namely public-private and private partnerships, alongside traditional forms of organisation based on international agreements.

⁷⁸ *Ibid.*

In this respect, Haftendorn notes that governance may involve state and non-state participants depending on the context and the specific matter.⁷⁹ She argues that issues like environmental, economic, and human security in the Arctic depend mostly on the activities and inter-relations of private sector actors and non-governmental organisations.⁸⁰

We follow Haftendorn in stating that it is paramount to focus on intergovernmental structures in order to study the need for political coordination, rule making, conflict resolution, and risk reduction. For the same reason, our analysis will focus on intergovernmental and national governance arrangements, without taking into account non-state actors.

Another distinguishing feature of global governance is that rule making and rule-implementation are clustered in various layers, both horizontally (*e.g.* between parallel systems) and vertically (*e.g.* on supranational, international, national, and subnational layers), according to a multilevel system.

Last but not least, Slaughter points out that global governance does not involved regulating states in the same way as states regulate their citizens.⁸¹ Rather, it means addressing issues and solving problems that arise in a globalised world. Therefore, a key feature of global governance arrangements is that solutions are achieved

⁷⁹ Haftendorn, H., 2013. The Case for Arctic Governance: the Arctic Puzzle. *Institute for International Affairs*, Centre for Arctic Policy Studies, University of Iceland, p. 12.

⁸⁰ *Ibid.*

⁸¹ Slaughter, A. M., 2004. *A New World Order*. Princeton: Princeton University Press, p. 16.

through developing and agreeing on best practices and codes of conduct through information exchange.⁸²

2.1.3 Global governance: challenges and objectives

Governance as a process of consensus formation has a considerable impact at the level of national governments and local non-state actors. Ultimately, global governance arrangements affect people.

The UN Intellectual History Project refers to three gaps in the governance debate: a jurisdictional gap, an incentive gap, and a participation gap.⁸³ The jurisdictional gap refers to the increasing need for global governance in new areas and the absence of a jurisdiction that can take action. The incentive gap points at the need of international cooperation and how to provide impetus to cooperation. The participation gap refers to the fact that civil society groups are usually left in the background of policy-making and that international cooperation is still a prerogative of governments, despite the fact that globalisation is significantly facilitating inclusion.⁸⁴

Taking this into account, we argue that today global governance settings are called to face three challenges. The first challenge relates to growing interdependence in the international arena. All actors of the international arena are interdependent on several levels. In this respect, economic interdependence is the most striking

⁸² *Ibid.*

⁸³ United Nations Intellectual History Project, 2009. The UN's Role in Global Governance. Briefing Note No. 15. August. Available at www.unhistory.org/briefing/15GlobalGov.pdf. [Accessed 19th April 2015].

⁸⁴ *Ibid.*

example and the latest financial crisis demonstrated that. States' actions as well as interests and priorities are increasingly seen through the lenses of interdependence with other external factors that are usually beyond the states' control.

Secondly, the complexity of the international arena is accompanied by the emergence of a growing number of new non-state actors (*e.g.* civil society organisations, just to mention one example). This means that more actors come into play in the decision-making process and are able – or try – to influence it.

Thirdly, we state that, in the international arena, interdependence regards also the nature of challenges and opportunities. All actors in the international arena are called to act collectively in response to challenges that have an intrinsically transboundary nature. As we will discuss at length later, climate change is one of these challenges. To complete the picture, just like new challenges do not respect national boundaries, opportunities are also trans-boundary. To take these new opportunities, concerted action and solid regulatory framework are indispensable. Considering this, we conclude that the effectiveness of good governance arrangements depends on the capacity to answer the challenges outlined above.

2.2 Arctic Governance: definition, key features, and challenges

After having defined the concept of governance, we will now turn to the Arctic region and focus on Arctic governance more in details.

2.2.1 Defining the concept of Arctic governance

In the context of the Arctic, the concept of *governance* has been defined as a key social function centred on generating collective outcomes that are beneficial to the society.⁸⁵ The core function of governance arrangements in the Arctic is addressing regional societal needs. Therefore, we may move the meaning of governance clarified earlier, *the act of governing*, to the regional level and task it with region-specific objectives.

2.2.2 Arctic governance: key features

Arctic governance arrangements are highly fragmented and diversified, ranging from informal to more formal settings, and involving a complex web of multilateral bodies and non-state actors.

In order to understand the peculiarity of the Arctic governance framework, we may reflect on the fact that this fragmented multilevel system differs deeply from the Antarctic governance framework.

Contrary to the Arctic, the Antarctic is a *terra firma*, *e.g.* a continental landmass. In 1959, the year of adoption of the Antarctic Treaty, the Antarctic was considered *terra nullius*, *e.g.* land not belonging to any state and, therefore, subject to traditional methods of acquisition such as, for example, discovery (like claimed by France, United Kingdom, and Norway), geographical proximity (like asserted by Chile and Argentina), exploration, and effective occupation.

Seven states (called *the claimants*) laid territorial claims to the Antarctic, namely Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom. Of these, Argentina, Chile, and the United Kingdom presented overlapping claims to

⁸⁵ Corell, H. *et al.*, 2010. Arctic Governance Project Report, p. 4.

the Antarctic. Other states (*the potential claimants*), including the former USSR and the US, rejected the claims of the first group but claimed for themselves the right to lay territorial claims. A third group of states did not accept any of the previous stances, and a fourth group maintained that the Antarctic was common heritage of mankind and, therefore, to be owned in common to the benefit of all.⁸⁶

During the International Geophysical Year, twelve governments negotiated the Antarctic Treaty, signed in Washington in 1959 and entered into force in 1961, after the twelve participating states had ratified it.

Unlike the Antarctic, the Arctic is not subject to one encompassing international treaty regime. However, this does not mean that the Arctic is an unregulated region. On the contrary, as outlined in Chapter 1, there is no such a thing like a legal vacuum in the Arctic. The Arctic maritime space is subject to the exclusive rule of Arctic coastal states whose territorial rights are enforced pursuant to international law.

2.2.3 Arctic governance: challenges and objectives

The challenges that Arctic governance has been facing in the last decade are mostly connected to climate change and potential intensive development connected to that.⁸⁷ These two factors combined together pose considerable threats to the equilibrium of the circumpolar region and call for a coordinated response.

⁸⁶ Sciso, E., 1990. *Le risorse dell'Antartide e il diritto internazionale*. Padova: CEDAM; VV. AA., 1993. *Science and Stewardship in the Antarctic*. Washington D.C.: National Academy Press, p. 32.

⁸⁷ Climate change is defined as an alteration in the climate consisting in variations that persist over time. The UN has further specified that climate change is a stable or permanent change of climate that is caused by human activity. See Intergovernmental Panel on Climate Change (IPCC), 2007. IPCC

2.2.3.1 Climate change impacts in the Arctic

Recent data concerning average temperatures in the Arctic show a worrisome scenario. Annual average temperatures in the Arctic have rose at almost twice the average rate for the world in the last 100 years.⁸⁸ According to the US Arctic Research Commission, in 2012 the ice cover of the Arctic Ocean reached its lowest level since 1979 when the National Aeronautics and Space Administration (NASA) first observations were made.⁸⁹ The average decrease for the period 1979-2012 is estimated to range 3.5 percent to 4.1 percent per decade. This rate grows between 9.4 percent and 13.6 percent per decade for perennial sea ice. In 2012, 40 percent of the sea ice covering the Central Arctic Ocean had melted.⁹⁰

These observations bring up at least two issues. The first issue concerns the effects of climate change *per se*. Rising temperatures are causing drastic changes in the Arctic ecosystem and Arctic peoples' livelihood. An analysis of climate change effects in the Arctic would go beyond the aims of our analysis. Yet, we may summarise the effects of climate change as follows:

- permafrost thaw resulting in release of carbon dioxide (CO₂) and methane (CH₄) with impacts on wildlife, vegetation, harvesting activities, and traditional transportation routes;

Fourth Report: Climate Change; United Nations, 1992. United Nations Framework Convention on Climate Change.

⁸⁸ Intergovernmental Panel on Climate Change (IPPC), 2007. IPCC Fourth Report: Climate Change.

⁸⁹ US Arctic Research Commission (USARC), 2013. Report on the Goals and Objectives for Arctic Research 2013-2014. Available at http://www.arctic.gov/publications/goals/usarc_goals_2013-14.pdf. [Accessed 19th April 2015].

⁹⁰ *Ibid.* See also Milazzo, E. 2014. Climate Change and Arctic ecosystems. Arctic Climate Change Emerging Leaders (ACCEL) Blog. Available at <https://accelfellowship.wordpress.com/climate-change-and-arctic-ecosystems-2/>. [Accessed 23rd March 2015].

- increase in short-lived climate pollutants;
- ocean acidification caused by increased levels of CO₂ in the atmosphere and changing marine ecosystem;
- overall change in precipitation patterns, causing more extreme weather conditions.⁹¹

2.2.3.2 Economic development implications for the Arctic

The second issue brought on the table by rising temperatures in the Arctic is connected to the risks of intensive development. The High North is becoming more attractive to local and foreign investors who, as a result of rising temperatures, see the precious potential of the region becoming more accessible than it used to be in the past.

Development is, first of all, an opportunity for the peoples of the High North. Nevertheless, environmental and social challenges connected to development should not be undermined. On the one hand, rising temperatures are opening up new prospects for development. On the other, environmental hazard remains high, and indigenous peoples risk to be cut out of potential benefits. We may try to summarise the complex links between climate change, economic development, and environmental and social risk as follows:

- fishing activity will be affected by changes in species composition and harvesting sites. Some species will migrate, some will have an increase in stock productivity, and others will decline or disappear from Arctic

⁹¹ *Ibid.*

waters. This will have an impact on the fisheries and on indigenous food habits;

- mineral industry could suffer from increased production and management costs due to permafrost thaw and erosion;
- oil and gas production will benefit from thinner ice for offshore exploration. Nevertheless, costs will remain high due to weather unpredictability and wave force offshore. Similarly, costs of on-shore production will stay high due to thawing frozen ground;
- as far as shipping is concerned, sea ice shrinkage in summer could open up new navigable routes connecting the Arctic Ocean and the Pacific Ocean along the Northern Sea Route, and through the Northwest Passage. This could imply cutting the price of trans-ocean shipping by finding an alternative to the Suez Canal, with benefits across all sectors of the economy. At the same time, intensification of icebergs and extreme weather phenomena cast doubts on the actual viability of these new routes.⁹²

2.2.3.3 Arctic governance objectives

Development in the Arctic is not a bad thing *per se*, nor is climate change.⁹³

Nevertheless, the fragile ecosystem of the region calls for additional consideration

⁹² Eskeland, G. S. and Flottorp, L. S., 2006. Climate change in the Arctic: a Discussion of the Impact on Economic Activity. In Glomsrød, S. and Aslaksen, I., eds., 2006. *The Economy of the North*. Oslo: Statistics Norway.

⁹³ For an overview of why climate change in the Arctic could be also an opportunity, see Milazzo, E. 2014. Opportunities and challenges: Economic, Social, and Political Impacts of Climate Change in the Arctic. Arctic Climate Change Emerging Leaders (ACCEL) Blog. Available at <https://accelfellowship.wordpress.com/opportunities-and-challenges-economic-social-and->

of the harmful effects that climate change and economic development may have. According to the findings of the Corell *et al.*, governance bodies in the Arctic are called to fulfil the following goals:

- production of public goods by ensuring the right level of living resources for human subsistence;
- avoidance of public bads, namely preventing climate change disasters and ecosystems degradation;
- internalisation of externalities (*e.g.* limiting cross-border pollution);
- protection of indigenous peoples' rights.⁹⁴

In absence of an overarching authority, multilateral governance in the Arctic should strive to achieve these goals through devising political coordination, rules for conflict resolution, and appropriate regulations for risk reduction.⁹⁵

2.3 Arctic governance settings

Any definition of *Arctic governance* cannot depart from an assessment of governance settings at the international, regional, and national level. These governance settings appear fragmented and often overlap, both in terms of memberships and functions.⁹⁶ Therefore, as we approach Arctic governance, it is important to bear in mind the inherent fragmentation of the regime.⁹⁷

political-impacts-of-climate-change-in-the-arctic/. [Accessed 23rd March 2015].

⁹⁴ Corell, H. *et al.*, 2010. Arctic Governance Project Report, p. 4.

⁹⁵ Haftendorn, H., 2013. The Case for Arctic Governance: the Arctic Puzzle. *Institute for International Affairs*, Centre for Arctic Policy Studies, University of Iceland, p. 12.

⁹⁶ Figure 4 gives an idea of overlapping membership in some governance arrangements.

2.3.1 Overview of Arctic governance settings

Throughout its history, the Arctic region has dealt successfully with different governance challenges by providing effective responses. Indigenous peoples developed the first forms of governance in the High North to administrate living and non-living resources in extremely harsh conditions.

Over time, following the expansion of national and international presence in the region, the web of governance settings has become increasingly more complex. Arctic governance as we know it today includes global framework agreements, multilateral environmental and economic agreements, regional arrangements, sub-regional arrangements, and national policies. It follows that a very wide range of institutions and bodies is involved across these levels.

Figure 3 represents a tentative simplified scheme of Arctic governance. This simplified outline includes three levels of governance and few examples of actors and governance bodies. Though reductive, the table may prove helpful to delimit the range of analysis.

⁹⁷ On Arctic governance fragmentation see Humrich, C. and Wolf, K. D., 2012. From Meltdown to Showdown? Challenges and options for governance in the Arctic. *Peace Research Institute Frankfurt*.

Figure 3 Arctic governance arrangements

Int'l level	Regional level	National level
<ul style="list-style-type: none"> - UNCLOS - IMO - Sectorial regulation 	<ul style="list-style-type: none"> - Arctic Council - Inter-governmental bodies (BEAC, NCM, ND, CBSS) - Inter-parliamentary bodies (NC) - Sub-regional bodies (BRC, Northern Forum, Sámi Parliamentary Council) - Bilateral arrangements (Norwegian/Russian fisheries regime for the Barents Sea) - BRC, Northern Forum - Indigenous peoples' bodies (Sámi Parliamentary Council) 	<ul style="list-style-type: none"> - Arctic Five - Arctic Eight - AC observers

At the international level, UNCLOS is the main regulatory framework for the Arctic. As mentioned in the previous chapter, UNCLOS is compounded by a wide range of agreements dealing with specific sectors of marine and terrestrial regulation. Examples of these agreements are the two agreements implementing UNCLOS, namely the Deep-seabed Mining Agreement and the Fish Stock Agreement. Another international rule-making body that pertains to the Arctic is the International Maritime Organisation (IMO), with its conventions on Safety of Life on Sea (SOLAS), Prevention of Marine Pollution (MARPOL), Oil Pollution Preparedness, Response and Cooperation (OPRC), Prevention of Marine Pollution by Dumping of Wastes and Other Matter, and Protection of Arctic Flora and Fauna (ICRW).⁹⁸ Other multilateral agreements tackle sector-specific issues (*e.g.* fisheries, energy,

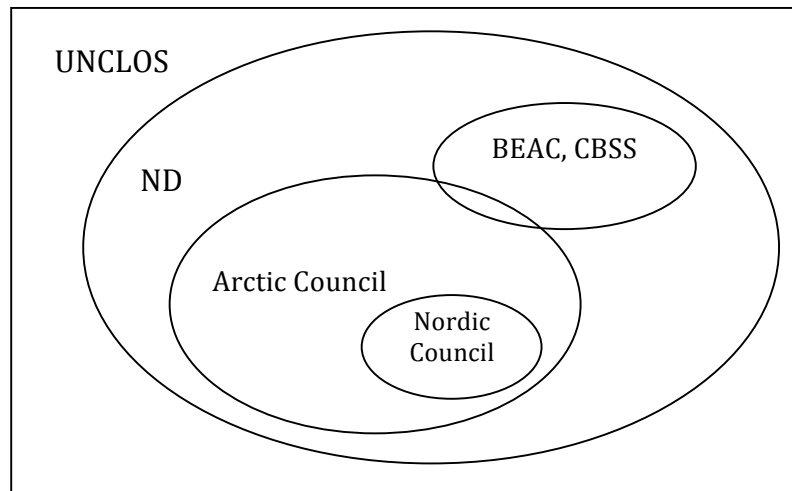
⁹⁸ Proelss, A., and Muller, T., 2008. The Legal Regime of the Arctic Ocean, Available at <http://arcticgovernance.custompublish.com/>. [Accessed 19th April 2015].

pollution, mammals), including environmental agreements such as the Stockholm Convention on Permanent Organic Pollutants (POPs), and the United Nations Framework Convention on Climate Change (UNFCCC).

At the regional level, the AC is the main high-level forum of the region. Beside the AC, we may mention other inter-governmental arrangements representing northern countries and addressing region-specific issues. These bodies have regional scope but their reach covers the Arctic only in part. In particular, for the purposes of our analysis we will take into consideration the Barents Euro-Arctic Council (BEAC), the Nordic Council of Ministers (NCM), the Northern Dimension (ND), and the Council of Baltic Sea States (CBSS) as meaningful examples of inter-governmental arrangements that shape Arctic governance. In addition, the Nordic Council (NC) will be presented as a case of inter-parliamentary cooperation. Also, it is worth mentioning bilateral agreements on specific issues (*e.g.* the Norwegian-Russian fisheries regime for the Barents Sea), broader arrangements that involve subnational and regional governments, like the Barents Regional Council (BRC) and the Northern Forum (NF), and indigenous peoples organisations, *e.g.* the Sámi Parliamentary Council.

As outlined in the previous chapter, the main actors of the region at the national level are the Arctic states, divided in Arctic Five and Arctic Eight. Other non-Arctic states are gaining more influence in the region, mostly for economic reasons. Some of them have been recently awarded the status of observers in the Arctic Council.

Figure 4 Arctic governance arrangements and overlapping state membership



2.3.2 International governance of the Arctic

2.3.2.1 UNCLOS: Articles 76 and 234

UNCLOS is a global framework arrangement that does not apply to the Arctic region only, but also to all signatories of the Montego Bay Convention. Ratified by 166 of the 193 UN member states, UNCLOS is regarded to have a virtually universal scope. As a binding document, it sets out obligations upon all states operating in the Arctic marine areas and having signed the Montego Bay Convention. UNCLOS plays a core governance function by setting and regulating territorial boundaries at sea, and defining the right to enforce laws and exploit resources.

UNCLOS absolves to an important governance function through Article 76.⁹⁹ As we outlined in Chapter 1, this article provides that all states may claim an extend continental shelf up to the outer limit of 350 nautical miles, if they prove that the

⁹⁹ United Nations, 1982. Convention on the Law on the Law of the Sea, art. 76.

outer limits of the continental shelf on the seabed extend that far. In order to solve potential conflicts arising from overlapping claims in the polar region, Article 76 also establishes that any submission for an extended continental shelf must be endorsed by the UN Commission on the Limits of the Continental Shelf.¹⁰⁰

UNCLOS establishes the duty of all signatories to cooperate under Article 123(b).¹⁰¹

An important exception to this principle is provided by Article 234 that sets out a polar-specific norm. Article 234 establishes enhanced regulation of marine pollution prevention and reduction by authorising any coastal state "to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the EEZ, where particularly severe climate conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance".¹⁰²

2.3.3 Regional governance of the Arctic

2.3.3.1 The Arctic Council governance framework: from Ottawa to Kiruna

Regionally, the most well known Arctic governance arrangement is the AC. As argued by Wang, the importance of the AC has been growing with the geostrategic

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, art. 123(b).

¹⁰² *Ibid.*, art. 234.

importance of the Arctic.¹⁰³ Being the main intergovernmental forum of the region, the AC addresses core interests of Arctic states and Arctic stakeholders in general.

Ottawa Declaration

The establishment of the AC and its latest evolution set out a peculiar governance regional framework. As we mentioned in the introductory chapter, the AC is an intergovernmental forum established in 1996 by means of a non-legally binding instrument, the Ottawa Declaration (the Declaration). According to Molenaar, the choice of a non-binding, soft law instrument for the establishment of the AC clearly indicates that the AC is not meant to be an international organisation.¹⁰⁴ In fact, the Declaration does not create an obligation to undertake efforts under AC mandate, and the AC may not adopt legally binding agreements. The Rules of Procedure adopted two years after the Declaration provide that decisions within the AC are taken on the basis of consensus of all eight Arctic states.¹⁰⁵

Ilulissat Declaration

The Ilulissat Declaration, adopted by the Arctic Five in 2008, is another fundamental document for the definition of Arctic regional governance.

With the Ilulissat Declaration, the Arctic Five convened that the combination of hard law (*e.g.* UNCLOS) and soft law (*e.g.* Ottawa Declaration) is sufficient to meet their

¹⁰³ Wang, N., 2013. Arctic Security - An Equation with Multiple Unknowns. *Journal of Military and Strategic Studies*, Vol. 15 n° 2, p. 1.

¹⁰⁴ Molenaar, E. J., 2012. Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea. *The International Journal of Marine and Coastal Law*, Vol. 27 n° 3.

¹⁰⁵ Arctic Council, 1998. Rules of Procedure, Annex 1 to the SAO Report, rule 7. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

governance duties.¹⁰⁶ The Ilulissat Declaration states that the present system is a “solid foundation for responsible management by the five coastal states, and other users of this Ocean, through national implementation and the application of relevant provisions”.¹⁰⁷

Therefore, the Ilulissat Declaration stresses that the existing law of the sea framework provided by UNCLOS, together with customary law of the sea, constitutes a solid framework for responsible and sustainable management of the Arctic Ocean. The Arctic Five declared that there is “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean”, and that the existing framework is enough to settle disputes. The Ilulissat Declaration also reaffirms the right of the Arctic Five to their lands, seas, seabed, and resources. Disputes arising thereof shall be settled in accordance with UNCLOS.¹⁰⁸ To conclude, the Ilulissat Declaration declared the intention of the Arctic Five to preserve the fragile ecosystem of the region.

Nuuk meeting

In May 2011, the AC met in Nuuk, Greenland, to draft an agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (SAR Agreement).¹⁰⁹

The SAR Agreement is the first binding document signed by the Arctic states under

¹⁰⁶ Eichbaum, W. M., 2013. Arctic Stewardship: The Evolution of a New Model for International Governance. *Environmental Law Institute*, Vol. 43, p. 10864.

¹⁰⁷ Arctic Ocean Conference, 2008. Ilulissat Declaration. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

¹⁰⁸ *Ibid.*

¹⁰⁹ Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, 2011. Available at <http://www.ifrc.org/docs/idrl/N813EN.pdf>. [Accessed 7th March 2015].

the auspices of the AC.¹¹⁰ The main achievement of the agreement is the definition of zones of responsibility among the parties. It also provides that the signatories may resort to assistance from non-affiliated states, if needed. The SAR Agreement aims at ensuring effective intergovernmental cooperation in case of accidents in the Arctic.

During the Nuuk meeting, the Arctic states committed to conclude a similar agreement on oil spill preparedness and response, which they did few years later. On the same occasion, the Arctic states also established an expert group to define parameters for the Arctic Ecosystem Based Management (EBM) system by governments. Other decisions made at the meeting include the establishment of a Permanent Secretariat for the AC with permanent government funding.

As argued by Eichbaum, even if each of these developments does not amount to a dramatic change for the AC structure, taken all together they signal that Arctic states are moving towards a new direction, that of creating a new international institution.¹¹¹

Kiruna "Vision for the Arctic"

The Ministerial meeting held in Kiruna in 2013 confirms this intuition. During the meeting, the Kiruna Vision for the Arctic Declaration (Kiruna Declaration) was issued with the goal of informing future international cooperation, especially in the field of environmental protection.

¹¹⁰ As explained earlier, the AC *as such* does not have power to conclude agreements.

¹¹¹ Eichbaum, W. M., 2013. Arctic Stewardship: The Evolution of a New Model for International Governance. *Environmental Law Institute*, Vol. 43, p. 10865.

In the Kiruna Declaration, the Arctic states stressed their commitment to strengthening the AC leadership. As noted by Voronkov, the members of the AC thereby expressed their commitment to work “to strengthen the Arctic Council to meet new challenges and opportunities for cooperation, and pursue opportunities to expand the Arctic Council’s roles from policy-shaping into policy-making”.¹¹²

In addition, the Kiruna Declaration supported the idea that Arctic governance shall be based on the principle of territorial sovereignty and on international law.¹¹³ Even more than that, the Kiruna Declaration openly stated that the Arctic states “have made this region into an area of unique international cooperation”, where problems can be solved through a cooperative relationship and on the basis of international law and goodwill.¹¹⁴

In the course of the same meeting and under the auspices of the AC, a second binding agreement, the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (Oil Pollution Preparedness and Response Agreement) was signed.¹¹⁵ Eichbaum points out that the agreement contains important substantive and procedural provisions, *e.g.* a mandatory national

¹¹² Voronkov, L. S., 2013. The Arctic for Eight. *Russia in Global Affairs*. Available at <http://eng.globalaffairs.ru/number/The-Arctic-for-Eight-16058>. [Accessed 7th March 2015]; Arctic Council, 2013. Kiruna Vision for the Arctic.

¹¹³ This idea was stressed especially in the Ilulissat Declaration, signed in May 2008. According to the Declaration, the Arctic Five shall lay claim to the sea territorial rights according to the UNCLOS and shall settle their disputes within the framework of international law. See also Wang, N., 2013. Arctic Security - An Equation with Multiple Unknowns. *Journal of Military and Strategic Studies*, Vol. 15 n° 2.

¹¹⁴ Arctic Council, 2013. Kiruna Vision for the Arctic.

¹¹⁵ Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013. Available at <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>. [Accessed 7th March 2015].

contingency plan for oil spill response, public reviews of joint oil spill responses, and regular AC assessment of the implementation status of the agreement.¹¹⁶

On that occasion, the AC also granted permanent observer status to China, India, Japan, Singapore, South Korea, and Italy. The admission of the new Observers came about after a lengthy discussion on the conditions for non-Arctic states involvement in the AC. In the course of the meeting, revised AC Rules of Procedure were approved, updating status, rights, and duties of AC Observers. The Observer Manual, adopted by the Senior Arctic Officials, further elaborated on the matter.¹¹⁷

Two binding agreements

As we mentioned with reference to the legal framework of the Arctic region, two binding agreements were concluded by the Arctic states under the auspices of the AC. The first agreement of this kind was concluded in May 2011 in the course of the Nuuk meeting. It is commonly known as the Arctic Aeronautical and maritime Search and Rescue Agreement or SAR Agreement, aiming at strengthening search and rescue coordination and cooperation in the Arctic by improving communication and division of responsibilities.¹¹⁸ The second agreement, the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, was signed by the Arctic Eight at the Kiruna meeting. The objective of the agreement is to strengthen cooperation, coordination, and mutual assistance among the parties

¹¹⁶ Eichbaum, W. M., 2013. Arctic Stewardship: The Evolution of a New Model for International Governance. *Environmental Law Institute*, Vol. 43, p. 10865.

¹¹⁷ Russian International Affairs Council (RIAC), 2013. International Cooperation in the Arctic. Report.

¹¹⁸ Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, 2011. Available at <http://www.ifrc.org/docs/idrl/N813EN.pdf>. [Accessed 7th March 2015].

on oil pollution preparedness and response in the Arctic in order to protect the marine environment.¹¹⁹

2.3.3.2 Other inter-governmental and inter-parliamentary bodies

Broader access to the Arctic region and its natural resources is bringing new actors into play and, most importantly, is producing a denser web of governance arrangements in the Arctic.¹²⁰ These new and deeply interconnected governance settings have an impact on the authority of individual states and on regional interdependence. In the following section, we will offer an overview of some of these settings.

Barents Euro-Arctic Council

The Barents Euro-Arctic Council (BEAC) is the only other Arctic intergovernmental body along the AC. It was launched officially in 1993, in the framework of Barents Euro-Arctic cooperation with the Kirkenes Declaration.¹²¹ Ever since, cooperation has developed on two levels: on the intergovernmental level with the BEAC, and at the interregional level with the Barents Regional Council (BRC).¹²² The members of the BEAC are Denmark, Finland, Iceland, Norway, Russia, Sweden, and the European

¹¹⁹ Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013, art. 1 Available at <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>. [Accessed 7th March 2015].

¹²⁰ Young, O. R., 2010. Arctic Governance - Pathways to the Future. *Arctic Review on Law and Politics*, Vol. 1 n° 2.

¹²¹ Kirkenes Declaration, 1993. Available at barentsinfo.fi/beac/docs:459_doc_KirkenesDeclaration.pdf. [Accessed 19th April 2015].

¹²² The BRC is formed by the leaders of the County Councils and a representative of the indigenous peoples. Thirteen counties or similar sub-national entities are part to it. The representatives of the three indigenous peoples, the Sámi, the Nenets and the Vepsians, cooperate in the Working Group of Indigenous Peoples (WGIP) that has advisory role.

Commission. The chair is held on rotating basis by Finland, Norway, Russia and Sweden.

It is interesting to note that the founding aim of BEAC is to establish close cooperation in an area of military confrontation during the Cold War, thus reducing tensions.¹²³ More generally, today the main objective of BEAC is to promote sustainable development, taking into account the principles and recommendations contained in the Rio Declaration and Agenda 21 of the United National Conference on Environment and Development.¹²⁴ The environmental tasks are performed through the BEAC Working Group on Environment. For certain projects, cooperation with the ACAP Working Group of the AC is envisaged. Other initiatives, like the development of a network of protected areas in the Barents Regions, are to be developed in cooperation with the AC.¹²⁵ Nevertheless, Weidemann underlined that more coordination between BEAC and AC is needed as the current division of competences still lacks clarity.¹²⁶

Nordic Council and Nordic Council of Ministers

The Nordic Council (NC) is an inter-parliamentary body covering the Nordic Region. Established in 1952, it currently counts 87 elected members from Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands, Greenland, and Åland. The

¹²³ Barents Euro-Arctic Council (BEAC), 2013. The Barents Cooperation. Available at www.barentsinfo.fi/beac/docs/Barents_Cooperation_information_English_October_2013.pdf. [Accessed 23rd March 2015].

¹²⁴ Kirkenes Declaration, 1993. Available at barentsinfo.fi/beac/docs:459_doc_KirkenesDeclaration.pdf. [Accessed 19th April 2015].

¹²⁵ Weidemann, L., 2014. *International Governance of the Arctic Marine Environment: With Particular Emphasis on High Seas Fisheries*. Springer Science & Business Media.

¹²⁶ *Ibid.*

Helsinki Treaty signed by the NC members in 1962 outlines the workings of the Council. Party groups within each national parliament nominate its members. At the meetings of the NC, held twice a year, the Nordic parliamentarians take decisions on issues that they call on Nordic governments to implement.¹²⁷ Therefore, despite the fact that the NC does not have powers on its own, each country's government is called to implement the NC's decisions, granting effectiveness.¹²⁸

The NC also advises the Nordic Council of Ministers (NCM). The NCM, founded in 1971, is a forum tasked with intergovernmental cooperation between the Nordic Countries. It was established with an amendment to the Helsinki Treaty. The purpose of the NCM is to work toward joint Nordic action in various fields, including climate change and energy issues, achieving a greater impact on European and global decision-making.¹²⁹

In 1996, the NCM launched the "Arctic Cooperation Programme", tasked with boosting cooperation with other regional bodies, namely AC, BEAC, and EU.¹³⁰ To complete the picture, the NCM seats as observer in the AC.

Council of Baltic Sea States

The Council of the Baltic Sea States (CBSS) is an intergovernmental forum for cooperation in the Baltic. It was established in 1992 in response to the geopolitical changes that followed the end of the Cold War. Its members are the eleven states of

¹²⁷ Nordic Council, 2015. Official Website. <http://www.norden.org/en/nordic-council/bag-om-nordisk-raad/the-nordic-council>. [Accessed 23rd March 2015].

¹²⁸ The NC is not involved in any kind of military cooperation (Denmark and Norway are NATO members but Finland and Sweden are neutral).

¹²⁹ Weidemann, L., 2014. *International Governance of the Arctic Marine Environment: With Particular Emphasis on High Seas Fisheries*. Springer Science & Business Media.

¹³⁰ Bock, N., 2010. Nordic Council of Ministers – Arctic Cooperation. *Nordic Council of Ministers*.

the Baltic Sea Region and the European Commission, represented by their Ministry for Foreign Affairs and by a member of the European Commission respectively.¹³¹ The core long-term objectives of CBSS are to strengthen regional identity, sustainability, prosperity, and security in the region, serving as a driving force for multilateral cooperation. Being a flexible and demand driven forum of regional cooperation, the CBSS is in charge of the overall coordination of all aspects of intergovernmental cooperation.¹³²

Northern dimension of the EU

The EU Northern Dimension (ND) is a joint policy between EU, Russia, Norway, and Iceland started in 1999 and renewed in 2006 (with effect from January 2007). Apart from the members, the ND counts as participants AC, BEAC, CBSS, and NCM. Its policy goal is to promote dialogue and stability in the region, allowing for greater economic integration, development, health, and social issues. The ND policy covers a very broad area spanning from the European Arctic to northern Russia and Iceland, building on geographic proximity, economic interdependence and common heritage, in order to address common challenges.¹³³

As a policy concept, it strives to draw attention to Northern Europe and enhance cooperation, particularly with Northwest Russia.¹³⁴ Weidemann stresses that, in a

¹³¹ The states of the Baltic Sea Region are the Denmark, Estonia, Finland Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia, and Sweden.

¹³² Council of Baltic Sea States (CBSS), 2015. Official Website: <http://www.cbss.org/council/history/>. [Accessed 23rd March 2015].

¹³³ Northern Dimension Political Declaration, 2006. Available at http://www.eeas.europa.eu/north_dim/docs/nd_political_declaration_2006_en.pdf. [Accessed 23rd March 2015].

¹³⁴ *Ibid.*

more practical sense, the ND encompasses “partnerships and all-cross-border and trans-regional activities pursued in the area: EU projects, as well as the work of individual countries, groups of countries, the European Commission, organisations, provinces, and local players”.¹³⁵ In a nutshell, the Arctic and sub-arctic areas are top priorities for the ND. This includes the commitment not to duplicate the work of the AC and of the BEAC when dealing with Arctic-specific issues.¹³⁶

2.3.4 National governance: Arctic states policies

In the following section, we will strive to give a broad overview of Arctic states priorities in the region by analysing their national strategies and policies.

2.3.4.1 Russian Federation

The Russian Federation is the largest circumpolar country and the one with the longest coastline. The Arctic has been for centuries an integral part of the economic and political interests of Russia, as well as the home to many Russian citizens. The history of the development of the Russian polar region dates back to more than eight centuries ago.¹³⁷ Russia has always attached considerable importance to the Arctic, for both security and economic reasons.

¹³⁵ Weidemann, L., 2014. *International Governance of the Arctic Marine Environment: With Particular Emphasis on High Seas Fisheries*. Springer Science & Business Media; Heikkilä, M., 2006. The Northern Dimension. *Europe Information*. Ministry for Foreign Affairs of Finland. Available at <http://www.eurooppatiedotus.fi/public/download.aspx?ID=21875&GUID=%7B4B7A9DB6-5A3E-41AF-B007-05DADB6D4C56%7D>. [Accessed 8th April 2015].

¹³⁶ Northern Dimension Progress Report, 2010. Available at eeas.europa.eu/north_dim/docs/pol_dec_1106_en.pdf. [Accessed 23rd March 2015]; Weidemann, L., 2014. *International Governance of the Arctic Marine Environment: With Particular Emphasis on High Seas Fisheries*. Springer Science & Business Media.

¹³⁷ Воронков, Л., 2012. Интересы России в Арктике. *Российский Совет По Международным Дела́м*. Available at http://russiancouncil.ru/inner/?id_4=732#top. [Accessed 7th March 2015].

During the Cold War, the Soviet Union closed the Arctic to all Western activity for national security interests. Nevertheless, with the collapse of the USSR and the emergence of the Russian Federation as new subject of international law, the causes for military confrontation in the Arctic came to an end and Russia made an open commitment to international law by joining UNCLOS in 1997.¹³⁸

In 2008, the Russian government adopted a new Arctic strategy entitled “The Fundamentals of state policy of the Russian Federation in the Arctic in the period up to 2020 and beyond”.¹³⁹ In the official document, it is emphasised the importance of the Arctic region to Russian economy, especially in terms of energy production and shipping. One of the main goals of Russia is to make of the Arctic a strategic hub for resource development by 2020, and enhance the country’s leadership as Arctic power. More broadly, Russia views the Arctic as crucial to its socio-economic development in the global market. Therefore, emphasis is put also on the necessity of developing key infrastructure for transport and communication, namely the Northern Sea Route. Security concerns are also part of Russia’s Arctic strategy for 2020. In fact, Russia’s goal is to establish a special Arctic military formation to protect national interests, combat terrorism, and counter other soft security threats (*e.g.* human trafficking and pollution). To conclude, the document underlines the commitment to cooperation and preservation of the Arctic as a zone of fruitful and peaceful cooperation.¹⁴⁰

¹³⁸ *Ibid.*

¹³⁹ Original title in Russian: Основы государственной политики Российской Федерации в Арктике на период до 2020 года и дальнейшую перспективу.

¹⁴⁰ Совет Безопасности Российской Федерации, 2008. Основы государственной политики Российской Федерации в Арктике на период до 2020 года и дальнейшую перспективу.

In 2001, Russia was the first Arctic nation to submit the claim for an extended continental shelf. In particular, Russia claimed sovereignty over two underwater mountain chains, the Lomonosov and the Mendeleev Ridges, arguing that these were part of the Russian continental shelf. The UN Commission on the Limits of the Continental Shelf required Russia to submit additional information to substantiate the claim and, therefore, the case is still pending.

2.3.4.2 Canada

Canada is the second largest circumpolar country. Canada views the Arctic as integrant part of its national identity and history. Not only the Arctic is home to many Canadians, including indigenous peoples. It is also deeply rooted in the Canadian culture.

To the aim of protecting and promoting its Arctic identity, in 2009 the Government of Canada launched the Northern Strategy. The pitfalls of the strategy are the promotion of a new vision of the North through exercise of sovereignty over the Arctic, protection of the environmental heritage, promotion of social and economic development in the region, improvement and devolution of Northern governance to indigenous and locals.¹⁴¹ The Statement of Arctic Foreign Policy that followed the strategy clarified what efforts Canada is committed to undertake in order to advance its national interests in the Arctic. In particular, Canada sees the

Available at <http://www.scrf.gov.ru/documents/98.html>. [Accessed 7th March 2015]. See also Zysk, K., 2009. Russian national security strategy to 2020. Geopolitics of the High North. http://www.geopoliticsnorth.org/index.php?option=com_content&view=article&id=84:arctic-strategy-documents&catid=52&showall=&limitstart=2. [Accessed 7th March 2015].

¹⁴¹ Government of Canada, 2009. Strategy for the North: Our North, Our Heritage, Our Future. Available at http://www.international.gc.ca/arctic-arctique/northern_strategy-strategie_nord.aspx?lang=eng. [Accessed 7th March 2015].

enforcement of its sovereignty rights over the Arctic as a top foreign policy priority and a precondition to the realisation of the Strategy for the North.¹⁴²

Canada is involved in several territorial disputes with other Arctic nations. In fact, Canada has drawn straight baselines around its Arctic archipelago. Therefore, it claims that the straits between these islands, which are an essential route along the Northwest Passage, are internal waters and, as such, not subject to the right of innocent passage.¹⁴³ The Northwest Passage could become a crucial hub for Arctic trade in the future. Until today, the US and other countries have opposed Canada's claim to the nationalisation of the Northwest Passage.¹⁴⁴ Other core motives of Canada's Arctic policy are the disagreement with the US over the division of the Beaufort Sea, the dispute with Denmark over sovereignty of the Hans Islands, and the claim to an extended continental shelf that could potentially conflict with the shelves of Russia, Denmark, and the US.

2.3.4.3 United States

Traditionally, the US focused its Arctic interests mainly on research and environmental issues. More recently, the US has been increasingly emphasising its

¹⁴² Government of Canada, 2010. Statement on Canada's Arctic Foreign Policy: Exercising: Sovereignty and Promoting Canada's Northern Strategy Abroad. Available at http://www.international.gc.ca/arcticarctique/arctic_policycanadapolitique_arctique.aspx?lang=en. [Accessed 7th March 2015].

¹⁴³ Isted, K., 2009. Sovereignty in the Arctic: an Analysis of Territorial Disputes and Environmental Policy Considerations. *Journal of Transnational Law & Policy*, Vol. 18 n° 2, p. 354.

¹⁴⁴ Isted (*ibid.*) notes that UNCLOS at Art. 36 provides that internal borders of bordering coastal nations are not normally part of international straits, except where a coastal nation used the straight baseline method. Therefore, waters that would have been within territorial or contiguous zones become part of the nation's internal waters. In the case considered, the US claims that the waters of the Arctic Archipelago constitute an exception and are an international strait through which all nations possess the right of innocent passage.

role in the Arctic and investing on its image of *Arctic steward*. The country is therefore strengthening its engagement also at the policy level.

The US government released its Arctic Region Policy in January 2009. The document reflects a growing interest in the Arctic stemming from new challenges connected to climate change, new security needs, and resource potential of the region.¹⁴⁵ In the National Security Strategy published in May 2010, the US defined itself as “an Arctic Nation with broad and fundamental interests in the Arctic region”.¹⁴⁶ In May 2013, the US President signed the National Strategy for the Arctic region that articulates the priorities of the US in the context of a changing Arctic and in the spirit of responsible stewardship of the region. In particular, the strategy identifies three lines of effort: advancing US security interests, pursuing the responsible Arctic region stewardship, and strengthening international cooperation.¹⁴⁷ In November 2013, the US department of Defence released the Arctic Strategy and, in January 2014, the Implementation Plan for the National Strategy for the Arctic Region. Most recently, the US has taken over the rotating chairmanship of the AC for the period 2015-2017.

¹⁴⁵ President of the US, 2009. National Security Presidential Directive and Homeland Security Presidential Directive. Available at <http://georgewbush-whitehouse.archives.gov/news/releases/2009/01/20090112-3.html>. [Accessed 7th March 2015].

¹⁴⁶ President of the US, 2010. National Security Strategy. Available at http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf. [Accessed 7th March 2015].

¹⁴⁷ President of the US, 2013. National Strategy for the Arctic Region. Available at http://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf. [Accessed 7th March 2015].

The US lacks the right of making an extended continental shelf claim because it has not ratified UNCLOS.¹⁴⁸

2.3.4.4 Norway

The High North has been one of Norway's highest foreign policy priorities since 2005. The Norwegian government released the High North Strategy in December 2006.¹⁴⁹ The overall goal set out in the strategy is the creation of sustainable growth across several socio-economic sectors according to three principles of presence, activity, and knowledge. In addition, the strategy stresses the need to strengthen international cooperation on resource exploitation, environmental protection, and active dialogue with all partners, especially with Russia.

In March 2009, the report "New Building Blocks in the North" was released. In the report, the main policy goal is the same but this time the Norwegian government outlines specific measures to be taken in seven priority areas, namely, climate and environment, emergency preparedness and security, sustainable development of offshore petroleum and renewable marine resources, land-based business development, infrastructure development, assertion of sovereignty and cross-border cooperation, preservation of the culture and livelihoods of indigenous peoples.¹⁵⁰ The Report published in November 2014 by the Norwegian Government

¹⁴⁸ As mentioned earlier in this chapter, many countries including the US objected the provisions dealing with deep seabed mining. Opponents to ratification in the US argue that UNCLOS constitutes an infringement on national sovereignty and security interests.

¹⁴⁹ Norwegian Ministry for Foreign Affairs, 2006. The Norwegian Government's High North Strategy. Available at <https://www.regjeringen.no/globalassets/upload/ud/vedlegg/strategien.pdf>. [Accessed 7th March 2015].

¹⁵⁰ Norwegian Ministry for Foreign Affairs, 2009. New building blocs in the North. Available at https://www.regjeringen.no/globalassets/upload/ud/vedlegg/nordomradene/new_building_blocks_in_the_north.pdf. [Accessed 7th March 2015].

outlines the priorities of this Arctic nation for the coming years. The emphasis is put, once again, on the need to boost international cooperation in the region, and the socio-economic development of North Norway.¹⁵¹

In 2006 Norway submitted an extended continental shelf claim to extend its continental shelf by 250.000 square kilometres, as to include the area called Banana Hole, beneath the Norwegian Sea, and the Loop Hole, lying beneath the Barents Sea. The areas are still disputed between Russian and Norway and the Commission has not ruled on the matter yet.

2.3.4.5 Denmark

Denmark is an Arctic coastal nation through its relationship with Greenland and the Faroe Islands. The Government of Denmark released the Kingdom of Denmark Strategy for the Arctic in August 2011. The document acknowledges the sweeping changes that are occurring in the region and the huge economic potential that is unveiling in the High North. The strategy also expresses a commitment to promote sustainable growth and social sustainability, as well as to guarantee that the development occurs to the benefit of the inhabitants of the Arctic and in respect of the environment.¹⁵²

The purpose of the strategy is to reinforce the engagement of Denmark in international cooperation to achieve these objectives. In a nutshell, the strategy sets

¹⁵¹ Norwegian Government, 2014. Norway's Arctic Policy for 2014 and beyond - a Summary. Available at https://www.regjeringen.no/en/dokumenter/report_summary/id2076191/. [Accessed 7th March 2015].

¹⁵² Ministries for Foreign Affairs of Denmark, Greenland, and the Faroe Islands, 2011. Kingdom of Denmark Strategy for the Arctic 2011-2020. Available at <http://um.dk/en/~media/UM/English-site/Documents/Politics-and-diplomacy/Greenland-and-The-Faroe-Islands/Arctic%20strategy.pdf>. [Accessed 7th March 2015].

out four core objectives, namely enhanced peace and security, self-sustaining growth, protection of the environment and biodiversity, and enhanced regional and international cooperation.¹⁵³

Thanks to its provinces, Denmark has potentially extensive claims to the Arctic. Denmark asserts that its Arctic territory extends from Greenland up to the North Pole via the potentially oil-rich Lomonosov Ridge. In December 2014, the Danish government filed a claim for an area of 895.000 square kilometres, extending from Greenland past the North Pole to the Russian continental shelf.¹⁵⁴

2.3.4.6 Other Arctic countries (Finland, Sweden, Iceland)

Finland and Sweden have many commonalities as Arctic nations. Neither of them has borders with the Central Arctic Ocean. Both are EU member states, and both have Sámi population. In 2010, Finland presented its first Arctic strategy.¹⁵⁵ The strategy puts emphasis on the country's external relations with respect to the Arctic. The strategy deals also with security, environment, economy, infrastructure, indigenous peoples, international cooperation, the EU Arctic Policy, and measures to strengthen the AC. In particular, the document proposed that AC meetings be held regularly and that the EU Arctic policy be developed also by giving the European Commission observer status.

¹⁵³ *Ibid.*

¹⁵⁴ United Nations, Division for Ocean Affairs and the Law of the Sea, 2014. Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines. Available at http://www.un.org/depts/los/clcs_new/submissions_files/submission_dnk_76_2014.htm. [Accessed 7th March 2015].

¹⁵⁵ Prime Minister of Finland, 2010. Finland's Strategy for the Arctic Region 2010. Available at http://www.arcticportal.org/images/stories/pdf/J0810_Finlands.pdf. [Accessed 19th April 2015].

Sweden published its Strategy for the Arctic region in 2011. Swedish priorities for the Arctic revolve around four key areas, namely climate and the environment, economic development, human dimension, and gender perspective. In the document, Sweden commits to strengthening cooperation and security in the region, calling for a stronger role of the AC as multilateral forum.¹⁵⁶

Iceland's main goal in the Arctic is to secure its status as coastal state and strengthen its influence over international decision-making. In particular, Iceland wishes to "strengthen the Arctic Council as the main cooperative body on Arctic issues and press for decisions to be made within the Council". For the future, EU membership could represent an additional tool for Iceland to push forward its interests, and it would also give the EU a stronger geographical presence in the High North.¹⁵⁷

2.4 Arctic governance: latest trends in governance settings

Taking into account our analysis of Arctic governance levels, we will proceed by summing up the main trends emerged in Arctic governance.

¹⁵⁶ Swedish Ministry for Foreign Affairs, 2011. Swedish Strategy for the Arctic region. Available at <http://www.government.se/content/1/c6/16/78/59/3baa039d.pdf>. [Accessed 7th March 2015].

¹⁵⁷ *Ibid.*

Figure 5 Main features of international and regional governance settings

	UNCLOS	AC	BEAC	NC	CBSS	ND
Type	Int'l convention	High level regional intergov'l forum	Forum for intergov'l cooperation	Forum for inter-parl. cooperation	Forum for intergov'l cooperation	EU joint policy
Hard law	Legally binding convention	Two agreements concluded under (not by) the AC	-	Helsinki Treaty	-	-
Soft law	-	Ottawa Declaration, other non-binding documents	Kirkenes Declaration, Kirkenes II	Recommendations to national governments	Copenhagen Declaration, non-binding decision	Non-binding initiative
AC members	All AC members signed UNCLOS.	-	DE, FI, ICE, NO, RU, SW	DE, FI, ICE, NO, SW + Faroe Islands, Greenland, Aland	DE, FI, ICE, NO, RU, SW	RU, NO, ICE
Non-AC members	166 countries (including all Arctic states except for the US) in total signed UNCLOS.	Observers	EU Commission	Observers-	EST, GE, LAT, LIT, PO EU Commission	EU AC, BEAC, CBSS, NCM
Indigenous members	No	6 indigenous organisations seat as PPs	No	No	-	-
Main achievements/objectives	Definition and regulation of territorial boundaries at sea and rights thereof.	Promote cooperation, coordination, and interaction among Arctic states, with the involvement of indigenous peoples.	Boost cooperation, encourage sustainable development of the region.	Direct through recommendations government action.	Strengthen regional identity, safety and security, sustainability, prosperity.	Enhance cooperation in northern Europe and with Northern Russia.

2.4.1 Arctic international governance: exploring trends and features

2.4.1.1 A constitution of the Oceans?

The governance setting provided by UNCLOS has been working well since its establishment, devising an effective instrument to solve global challenges and administrate resources. In the case of the Arctic, the successful functioning of the mechanism for extended shelf claims has provided the Arctic and the global community with a universal framework of dispute resolution.

Undoubtedly, UNCLOS has contributed to clarifying the nature of sovereign rights over marine areas, as well as duties of ocean conservation. This is also why Jarashow, Runnels, and Svenson call for universal adherence to UNCLOS as the most efficient mechanism to balance all Arctic states' interest.¹⁵⁸

Despite this, UNCLOS provides a rather fragmented and incomplete regulation. In fact, it separates the rule on prevention, reduction, and control of marine pollution from the rules to manage living resources. Moreover, it does not cover marine-related issues such as the conservation of marine ecosystems in areas beyond national jurisdiction.¹⁵⁹

In this respect, Sands and Peel argue that UNCLOS has not turned out to be "the constitution of the oceans" envisaged in 1982.¹⁶⁰ In 1992, Agenda 21 expressed the awareness that UNCLOS provided an international basis for marine protection and sustainable development but recognised also the necessity to take integrative approaches to management and development of marine and coastal areas.¹⁶¹ This is

¹⁵⁸ Jarashow, M. Runnels, M.B., and Svenson, T., 2006. UNCLOS and the Arctic: the Path of Least Resistance. *Fordham International Law Journal*, Vol. 30 n° 5, p. 1589.

¹⁵⁹ Sands, P., and Peel, J., 2012. *Principles of International Environmental Law*. Cambridge University Press.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

even more compelling in the case of the Arctic since, being a global treaty, UNCLOS does not set out Arctic specific rules apart from Article 234.¹⁶²

2.4.2 Arctic regional governance: exploring trends and features

2.4.2.1 Consolidation of AC role

Since the Ottawa Declaration was signed in 1996, Arctic regional governance has witnessed a process of progressive expansion of the AC role. The AC has substantially consolidated its operation and organisation development through the practice of adopting regional agreements, financial support given to the AC, and new observers admitted.¹⁶³

By defining the AC as the “pre-eminent high-level forum of the Arctic region”, the Kiruna Declaration shows the will of AC members to strengthen the AC so to cover policy making, going beyond mere policy shaping. The emphasis is put also on the possibility of solving conflict through cooperation relationships.¹⁶⁴

As a matter of fact, by elaborating a growing agenda for action through the AC, the Arctic states have promoted an expanding concept of their responsibility. Their action is pushed forward *through* the AC, but the Arctic states continue to view the AC as a policy-making entity *by itself*.¹⁶⁵ In this sense, as argued by Eichbaum, the impact that collaborative governance has had in the region is way greater than

¹⁶² See above.

¹⁶³ Russian International Affairs Council (RIAC), 2013. International Cooperation in the Arctic. Report.

¹⁶⁴ Arctic Council, 2013. Kiruna Vision for the Arctic.

¹⁶⁵ Eichbaum, W. M., 2013. Arctic Stewardship: The Evolution of a New Model for International Governance. *Environmental Law Institute*, Vol. 43, p. 10866.

expected.¹⁶⁶ As recently argued, the AC is a remarkable example of how regional arrangements and consensus-based agreements can play an important role in building trust and fostering cooperation, just as in the case of treaty-based international organisations.¹⁶⁷

Nevertheless, despite the positive trend in terms of effectiveness shown by the ministerial meetings, there are many gaps that require action. In particular, Eichbaum mentions persistent gaps in short-lived climate pollutants regulation, uniform standards for oil and gas development, and more advanced fishing regulation.¹⁶⁸

2.4.2.2 A new model of governance?

The conclusion of the two binding agreements under the auspices of the AC suggests the possible development of a new model of governance. As we will see later, potentially this model could be based upon an informal institution playing the part of a high-level forum to negotiate binding agreements.¹⁶⁹ This trend may have important implications in the future, especially if we think of the importance of the two agreements signed under AC auspices. To mention one example, the Oil Spill Preparedness and Response Agreement sets out substantive requirement for governments and requires public effort for implementation, assigning to the AC an important role in the monitoring process.

¹⁶⁶ *Ibid.*

¹⁶⁷ Russian International Affairs Council (RIAC), 2013. International Cooperation in the Arctic. Report.

¹⁶⁸ Eichbaum, W. M., 2013. Arctic Stewardship: The Evolution of a New Model for International Governance. *Environmental Law Institute*, Vol. 43, p. 10867.

¹⁶⁹ *Ibid.*

2.4.2.3 Limit to the AC expansion

Another important element to be taken into account is the Arctic states' commitment to limit the current expansion of the AC role. Eichbaum underlines that it is not in the intentions of the Arctic states to develop a comprehensive legally binding agreement that could replace the Ottawa Declaration. Accordingly, there's no intention from the side of the Arctic states to cede to the AC Secretariat the power to implement decisions taken by the AC.¹⁷⁰

2.4.2.4 Inclusiveness v. exclusiveness

The growing number of non-Arctic states that demand observer status confirm the prestige of the AC as a regional forum. The accession of non-Arctic states as observers to the AC was saluted as an unprecedented opening to non-Arctic nations. Under no doubt, this opening acknowledges that the valuable contribution of actors like China is growing in the economic and scientific domains.

It is worth underling that in Kiruna, together with admitting new Observers, the AC reiterated that "decisions at all levels of the Arctic Council are the exclusive right and responsibility of the eight signatories to the Ottawa Declaration".¹⁷¹ By stating this, the AC clarified once and for all the terms of the Observers' participation to AC activities.

Therefore, on the one hand, inclusion of non-Arctic members has been welcomed in the interests of economic and scientific cooperation. At the same time, sovereignty

¹⁷⁰ *Ibid.*

¹⁷¹ Arctic Council, 2013. Kiruna Vision for the Arctic.

has been reinforced. This is true both with respect to the Arctic Five, retaining sovereign rights as coastal nations, and to the Arctic Eight in general.

2.4.2.5 Subsidiary function of soft law arrangements

Since the entry into force of UNCLOS, all Arctic states have shown a strong commitment to preserving the hard law framework of marine governance at the global level. This is accompanied by another complementary trend. In fact, regional and soft law arrangements have emerged in the last years to complement the existing hard law structure and fill possible regulatory or jurisdictional gaps. These arrangements have contributed consistently to the progress in regulation of marine resources and pollution prevention.

None of the intergovernmental and interparliamentary bodies examined in the previous section are international organisations for international law, and as such they cannot produce any legally binding document. Nevertheless, these soft law governance arrangements play an important function in Arctic governance. Hasanat notes that these bodies contribute to the development of international law by establishing new customs, procedural formalities, and concepts that persist over time.¹⁷²

As we will discuss at length later, another strength of soft-law governance bodies has to do with their flexibility. While treaty-based international governance

¹⁷²Hasanat, W., 2013. Reforming the Arctic Council Against Increasing Climate Change Challenges in the North. *Michigan State International Law Review*, Vol. 22 n° 1; Hasanat, W., 2013. Searching for Synergies in International Governance Systems Developed in the Circumpolar North. *International Journal for Sustainable Development Law and Policy*, Vol. 9 n° 2. In particular, Hasanat refers to the introduction of the notion of Permanent Participant by the AC (see Chapter 1) and to the introduction of the concept of Barents Region by BEAC.

arrangements are rather static, soft-law governance bodies have much more room for manoeuvre and are more responsive to change. In making this argument, Hasanat cites the example of BEAC that introduced the concept of Barents Region, bounding a region not on the basis of the state boundaries but on the basis of shared challenges.¹⁷³ This way, soft-law regional bodies contribute to the development of international law with respect to environmental issues, facilitate the negotiation of certain agreements, and show what can be achieved through informal procedures, bringing new perspectives to problem solving.

For the future, it would be desirable to have more coordination and joint initiative between these fora, to avoid duplication of functions and maximise their efforts.

2.4.3 Arctic states: trends in national policies

In the last years all Arctic states, Sweden being the last one, have approved their national strategies and policy objectives for the Arctic. That shows the growing strategic importance of the northernmost region of the world. Overall, all Arctic states, as appeared in the introductory chapter, attach to their Arctic territories crucial strategic importance and are committed to strengthening their leadership.

After conducting a comparative study of Arctic strategies and policies, Heininen identifies the following strategic priorities and interests of the Arctic states:

1. sovereignty and national security (including security/military-policy and defence);
2. comprehensive security;
3. economic development (including utilization of natural resources and

¹⁷³ *Ibid.*

- energy);
4. regional development and infrastructure;
 5. transportation;
 6. environment (including environmental protection);
 7. governance and management (including rescue and safety);
 8. peoples (including indigenous peoples);
 9. science (including scientific research and cooperation, and knowledge);
 10. international cooperation.¹⁷⁴

Significantly, even in a peaceful region where cooperative relations prevail and the AC role is growing, sovereignty and security remain top priorities for the Arctic states.

Defining the relation between multilateral cooperation and national priorities, Haftendorn argues that the Arctic states reacted to the climate change challenges with different national Arctic strategies that reflect the way they want to safeguard their sovereignty, security, and conditions for their own development.¹⁷⁵ At the same time, these states are aware of the need to cooperate and do recognise the transitional nature of challenges like climate change. Yet, they are very concerned not to have their national sovereignty or their room for political manoeuvre circumscribed.¹⁷⁶

¹⁷⁴ Heininen, L., 2012. *Arctic Strategies and Policies: Inventory and Comparative Study*. The Northern Research Forum and the University of Lapland, pp. 77-78.

¹⁷⁵ Haftendorn, H., 2013. The Case for Arctic Governance: the Arctic Puzzle. *Institute for International Affairs*, Centre for Arctic Policy Studies, University of Iceland, p. 25.

¹⁷⁶ *Ibid.*

For this reason, national and multilateral approaches are closely intertwined. National strategies define the attitude towards multilateral institutions and not the other way around.¹⁷⁷ Some countries, namely the Nordic countries, may be more inclined to use the AC as main instrument to advance their policies, while others, like Russia and the US, assign more importance to their own national strategies.

¹⁷⁷ *Ibid.*

Chapter 3

Arctic governance scenarios

In Chapter 1 and 2 we tried to provide a comprehensive introduction to the Arctic region and its main governance settings. Building on the conclusion of the previous chapter, we will now seek to elaborate a model for Arctic governance that may serve as a basis for scenario analysis.

To begin, we will present and describe a tentative model of Arctic governance. Afterwards, we will outline four scenarios of Arctic governance. Each of these scenarios will be critically assessed, questioning its feasibility and desirability. Our analysis will try to answer three research questions: how can we think of a model for Arctic governance? What future scenarios can we formulate for Arctic governance? What counter-arguments can we advance for each?

3.1 Scenarios for the future of Arctic governance

3.1.1 Overview of Arctic governance models

Before, advancing our own proposal of Arctic governance scenarios, it may be useful to consider relevant literature on the matter. Humrich and Wolf analyse Arctic governance by taking as variables geographical scope (from national to global), functional breadth (from sectorial to universal), and ethical aspects (from co-existence to establishment of a community) of given governance options.¹⁷⁸

Based on such variables, the authors draw six scenarios for Arctic governance. In the first scenario, cooperation in the Arctic is minimal. Governance is exercised at the national level only, while cooperation is limited to specific issues. The second scenario consists in the nationalisation of the Arctic through the extension of the Arctic coastal states' maritime zones and in the framework of UNCLOS. Governance is based on international treaties just for the division of sovereignty and exploitation rights, while the rest is left to national lawmakers. The third scenario revolves around an Arctic Treaty based on the model of the Antarctic Treaty. The fourth scenario considers the possibility of an Arctic treaty as a regional seas convention – that is, treaty regulation – but on the regional and not global level. In the fifth scenario cooperation is organised around an Arctic regional organisation based on the AC model.¹⁷⁹

Humrich and Wolf conclude that these scenarios are either infeasible or unrealistic to be realised in the future. Thus, the two authors propose a model of integrated

¹⁷⁸ Humrich, C. and Wolf, K. D., 2012. From Meltdown to Showdown? Challenges and Options for Governance in the Arctic. *Peace Research Institute Frankfurt*, pp. I-III.

¹⁷⁹ *Ibid.*

multi-level governance as the best and most feasible option for the future of Arctic governance.¹⁸⁰

3.1.2 Proposal for a model of Arctic governance

Taking into consideration the literature regarding Arctic governance scenarios, we will seek to draw a new scheme to the aim of illustrating possible options for Arctic governance. In particular, we will introduce a new interpretative key for Arctic governance scenarios.

3.1.2.1 An innovative governance demands approach

In defining and analysing possible governance scenarios, we will start from the assumption that Arctic governance as outlined in Chapter 2 is in need of a reform or, at least, is inevitably subject to changes for the reasons outlined in the Chapter 1.

Furthermore, we will draw the attention to the functions that a given governance regime may absolve and the demands that each scenario would be able to address. By *governance function* we mean all regulatory functions played by a given set of institutions, norms, and laws. By *governance demand* we mean emerging necessity for new regulatory tools to regulate specific subject matters. The strength of this approach the fact of being more tightly linked to what the Arctic stakeholders want and to what is mostly needed in terms of regulation. For this reason, in order to single out only the most well-grounded options for the future of Arctic governance,

¹⁸⁰ *Ibid.* To be more specific, Humrich and Wolf point out that in the model of multi-integrated governance “each different governance challenge would be solved in a functionally specific way at the level appropriate to it, while levels and sectorial approaches would be harmonised and integrated in such a way that governance activities with different participants at each level or in specific sectors would not develop centrifugal tendencies and threaten cooperation as a whole”.

we will each time consider on what governance demands a given scenario is based and to which gaps it would possibly answer.

According to this logic, we will exclude non-cooperative options like the one suggested in the first two scenarios by Humrich and Wolf.¹⁸¹ In fact, it is apparent from our previous analysis that the Arctic states are in search of a cooperative framework and there are no premises of full-fledged conflicts to break out in the Arctic. Similarly, the complex web of bilateral and multilateral cooperative arrangement makes any go-alone option unrealistic.

3.1.2.2 Argumentative structure and added value

In order to make our scenario analysis more meaningful, we will also analyse how each governance scenario and its governance solutions may contrast with other opposing demands. To achieve this, we will not only consider the arguments in support of a given scenario, but we will also provide counter-arguments that reveal possible weak points of each scenario.

Ultimately, our goal will be to assess critically and in an unprecedented way possible scenarios for Arctic governance by bringing to light their strengths as well as their weak points. As shown in Figure 6, we will strive to address intrinsically new research questions by focusing on emerging governance demands, underlining strengths and weaknesses of each scenario, and deriving specific lessons and trends.

¹⁸¹ *Ibid.*

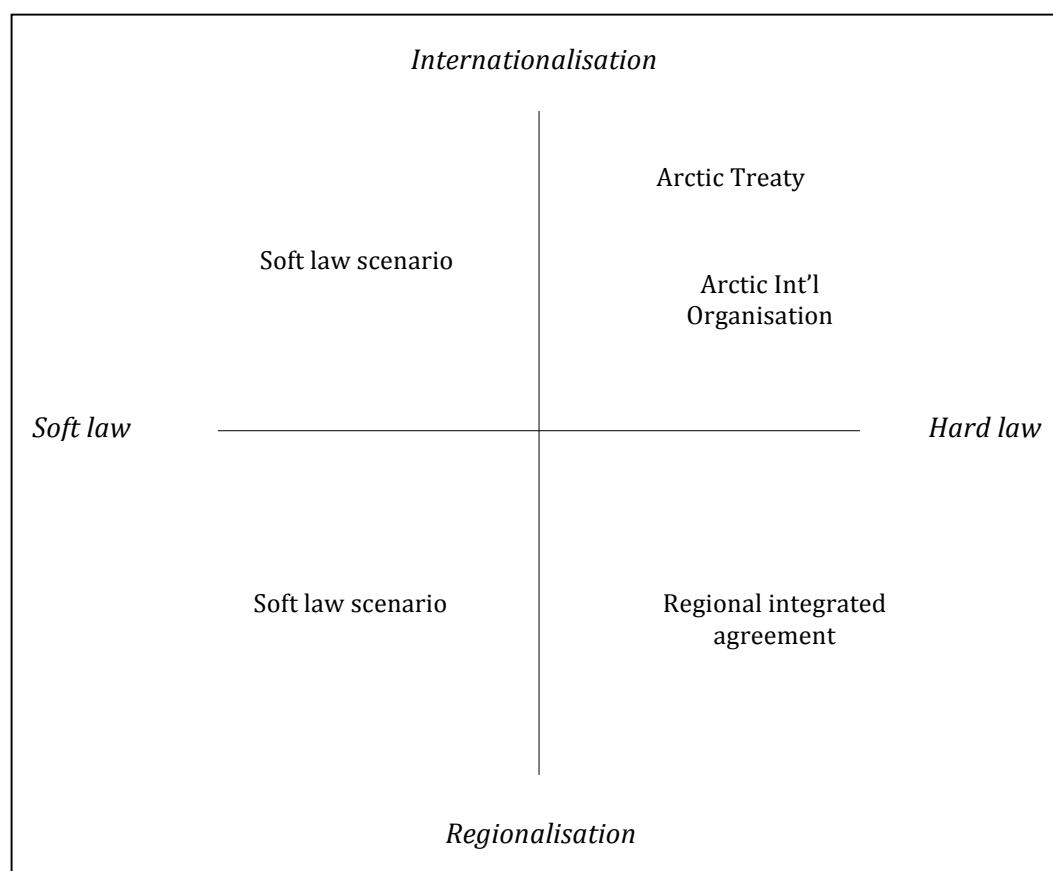
Figure 6 Research added value

State of the art	Added value
What are possible governance scenarios for the Arctic?	Which scenario would be able to address emerging governance demands?
Are these scenarios feasible/desirable?	What are the strengths of these scenarios? What are their weak points?
Which scenario would work best in the Arctic?	What trends/lessons may we take out from the analysis of each scenario?

3.1.2.3 A new model for scenario analysis

Coming to the model of scenario analysis, we propose to organise possible governance scenarios according to the model shown in Figure 7. In particular, we will take into consideration two dimensions in order to assess governance developments, a geographical and a legal dimension. On the vertical axis of Figure 7, we take into consideration the geographical scope of possible developments. At one extreme, we find the internationalisation option, consisting of a progressive internationalisation of the Arctic. At the opposite extreme, we have the regionalisation option, entailing a transfer of governance functions to a lower level. The horizontal axis considers the legal aspects of possible governance evolutions, ranging from a pure soft law scenario (on the left) to a hard law framework (on the right).

Figure 7 Model for scenario analysis



There are three main reasons for the choice of these variables. First of all, this model tries to drive the attention to the legal framework regulating the Arctic because the main modifications of Arctic governance are likely to happen at this level and only secondarily at the functional level. Another reason for choosing this model is to be found in the fact that geographical scope and legal nature of governance arrangements constitute the bottom level of analysis. Only after singling out these two variables and analysing them, it is possible to take into consideration other elements like the functional breadth and the moral aspects of governance changes. Thirdly, the present model will focus only on inter-state cooperation in the Arctic and its impact on governance. We will tackle the geographical and legal scope

of governance changes since these are the most relevant to multilateral inter-state relations.

Figure 8 Description of the four scenarios

Scenario	Description
Arctic Treaty	Conclusion a comprehensive and legally binding treaty modelled after the Antarctic Treaty
Arctic Int'l Organisation (AIO)	Transformation of the Arctic Council into an international organisation
Soft law scenario	Development of soft law arrangements regulating all aspects of Arctic governance, both on the regional and int'l level
Regional integrated agreement	Conclusion of a regional sea agreement for the Arctic Ocean, implementation of Ecosystem Based Management (EBM) as policy approach to resource management

3.2 Arctic Treaty

3.2.1 Hard law as a governance pathway for the future

The scenario entailing the conclusion of an Arctic comprehensive binding agreement or Arctic Treaty takes the lead from the claim that deep changes have occurred in the Arctic region in the last decades. As a result of these geopolitical and economic developments, the regulatory framework for the Arctic is in need of a deep and comprehensive reform in order to answer emerging regulatory needs.

The present scenario argues for the conclusion of an international treaty covering the Arctic region and addressing it with specific regulation. Such treaty would regulate territorial rights, environmental protection, and sustainable development, enforcing a system of obligations upon all signatories. To explore this scenario and define the Arctic Treaty in more details, it may be useful to draw a comparison with the Antarctic.

3.2.2 The Antarctic treaty system: setting out the grounds for a comparison

Earlier we argued that Arctic governance differs deeply from that of the Antarctic, mainly because the Arctic is not subject to one encompassing treaty.¹⁸²

In the Antarctic, legal regulations have developed amid opposing claims of some states who claimed sovereign rights over it, and others that viewed the Antarctic as a global common and, therefore, not subject to the exclusive jurisdiction of any state. This is an important difference because the Arctic is subject to the undisputed jurisdiction of the coastal states.¹⁸³

Beyond this core distinction, the two Poles differ deeply also in geographic and geopolitical terms. The Antarctic is an ice-covered land mass surrounded by the ocean and defined as a *terra firma*.¹⁸⁴ By contrast, the Arctic is not a land mass and presents a semi-closed ocean almost completely surrounded by land. In addition, the Arctic is inhabited by more than 4 million indigenous and non-indigenous

¹⁸² See Chapter 2, section 2.2.2.

¹⁸³ Sands, P., and Peel, J., 2012. *Principles of International Environmental Law*. Cambridge: Cambridge University Press.

¹⁸⁴ Young, O. R., 2010. Arctic Governance - Pathways to the Future. *Arctic Review on Law and Politics*, Vol. 1 n° 2. For a brief comparison between Arctic and Antarctic geography, please see National Snow and Ice Data Centre (NSIDC), Arctic vs. Antarctic. Official website: <https://nsidc.org/cryosphere/seaice/characteristics/difference.html>.

peoples, while in the Antarctic there are no permanent residents and human presence is limited to researchers.

Similarly, economic activities in the Antarctic consist only of seasonal tourism and research activity. On the contrary, in the Arctic industrial activity is vast and diversified. To complete the picture, the Antarctic has been declared a nuclear free zone and demilitarised. This is not the case in the Arctic where military activity has always been relevant, especially during the Cold War.

As we outlined earlier, during the International Geophysical Year held from July 1957 to December 1958, scientific research conducted at the southern Pole brought to light the importance of Antarctic for science and for the entire world. New interest for the region and competing territorial claims gave the way to negotiations that resulted in the Antarctic Treaty, signed in December 1959 and with effect in 1961, after having been ratified by twelve nations.

The Antarctic Treaty addressed the conflict arisen from overlapping claims to part of the Antarctic. With the Antarctic Treaty these claims were neither recognised nor annulled. Rather, territorial claims in the Antarctic were put on hold.¹⁸⁵ Yet, the Antarctic Treaty was a great achievement for the southern pole insofar it provided a solution to Cold War tensions and unresolved territorial disputes. It paved the way for fruitful scientific cooperation and settled international disputes.

¹⁸⁵ Sands, P., and Peel, J., 2012. *Principles of International Environmental Law*. Cambridge University Press; Rayfuse, R., 2007. Melting Moments: The future of polar oceans governance in a warming world. *Review of European Community and International Environmental Law (RECIEL)*, Vol. 16 n° 2. Article IV of the Antarctic Treaty states that “no acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica.” This provision is the result of a compromise that allowed the parties to come to an agreement but leaves territorial disputes unsettled. Antarctic Treaty, 1959, 402 U.N.T.S. 71.

The Antarctic Treaty has been later enriched by the provisions of the Convention on the Conservation of Antarctic Seals (1972), the Convention for the Conservation of Antarctic Living Marine Resources (1982), and the additional Protocol on Environmental Protection (1991). The 1991 Protocol essentially establishes the region as a natural reserve.¹⁸⁶

All these documents taken together are commonly known as Antarctic Treaty System (ATS). The ATS has been defined as a “regional co-operative effort” since it addresses one region only.¹⁸⁷ The ATS establishes that the Antarctic should be used for peaceful purposes, research, and international cooperation.¹⁸⁸

Taking all this into consideration, what really allows to take the Antarctic as model for Arctic governance is that the Antarctic treaty and its ATS are successful examples of management of a harsh region with unique conditions, high environmental risk, competition on right to natural resources.¹⁸⁹

3.2.3 The case for a comprehensive international treaty of the Arctic

The EU advanced a reform of Arctic governance entailing the conclusion of a comprehensive international agreement. In its Resolution on Arctic governance, the European Parliament advised that the European Commission should be prepared to

¹⁸⁶ Antarctic Treaty, 1959, 402 U.N.T.S. 71, artt. 1-3.

¹⁸⁷ Vidas, D., 2000. The Polar Marine Environment in Regional Cooperation. In Vidas, D., ed., 2000. *Protecting the Polar Marine Environment – Law and Policy for Pollution Prevention*, Cambridge: Cambridge University Press.

¹⁸⁸ For an overview on Antarctic governance refer to Dodds, K., 2012. *The Antarctic A Very Short Introduction*. Oxford: Oxford University Press; National Research Council (NRC), 1993. *Science and Stewardship in the Antarctic*.

¹⁸⁹ See Duyck, S., 2011. Drawing Lessons for Arctic Governance from the Antarctic Treaty System. In Alfredsson, G., Koivurova, T., and Hossain, K., eds., 2011. *The Yearbook of Polar Law*, Vol. 3. Leiden: Brill Editions, p. 3.

the opening of international negotiations leading to the adoption of an international treaty for the protection of the Arctic. The Parliament also added that the negotiations shall be inspired by the Antarctic Treaty as supplemented by the environmental protocol of 1991.¹⁹⁰

Young notes that, despite their different arguments, all scholarly opinions advocating the conclusion of an Arctic treaty would like to see the conclusion of a comprehensive, legally binding convention or treaty, open to participation of stakeholders beyond the boundaries of the Arctic region.¹⁹¹

3.2.3.1 Strengths of the Arctic Treaty scenario

Taking all into account, it is time to review the reasons why a comprehensive international treaty of the Arctic would address pressing governance demands.

Legally binding, homogenous, and comprehensive regulation

The first argument has to do with hard law broadly understood. In fact, since the Nuuk meeting and the adoption of the two binding agreements, it has emerged a trend toward the legalisation of Arctic governance, meant as progressive adoption of binding agreements. In this respect, the adoption of a binding tool would fill a

¹⁹⁰ EU Commission, 2008. Communication from the Commission to the European Parliament and the Council "The European Union and the Arctic Region". Available at http://eeas.europa.eu/arctic_region/docs/com_08_763_en.pdf. [Accessed 7th March 2015]. See also Hasanat, W., 2013. Searching for Synergies in International Governance Systems Developed in the Circumpolar North. *International Journal for Sustainable Development Law and Policy*, Vol. 9 n° 2. Hasanat notes that more recently the European Parliament has revised its position and no longer advocates the conclusion of an Arctic treaty. See European Parliament, 2011. A Sustainable EU Policy for the High North, TA 0024. Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=///EP//TEXT+TA+P7TA20110024+0+DOC+XML+V0//EN>. [Accessed 10th May 2015].

¹⁹¹ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 438.

regulatory gap by imposing legal obligations upon all signatories and ensuring the enforcement of all its provisions. In matters of environmental protection, like in the case of oil spills prevention and response, pollution from shipping, and sustainable fishing, an Arctic Treaty would ensure that all signatories have a legal obligation to fulfil their duties.

Another reason why an Arctic Treaty could be presented as successful scenario of cooperation is the fact that it would provide homogenous and comprehensive regulation of all Arctic-related aspects. These would range from purely economic issues, like trade, to environmental concerns and sustainability. As we will see for the counter-arguments, a reasonable objection to this statement could be that UNCLOS is already providing universal and binding regulation for the management of these issues in the Arctic. Nevertheless, a supporter of the Arctic Treaty option could always argue that UNCLOS is not an Arctic-specific convention and, as said earlier, does not fully address all Arctic peculiar concerns. The Antarctic in this respect is a case in point because the Antarctic Treaty is a case of region-specific comprehensive agreement.

Inclusion of new stakeholders

A third argument that could be advanced in support of the Arctic Treaty scenario has to do with membership and stakeholders. Young mentions a claim made in support of the Arctic Treaty scenario that revolves around the informal system of consensus within the Arctic Eight group.¹⁹² In this case the argument could be made that, with more interests and more actors involved, Arctic governance cannot be left

¹⁹² *Ibid.*, p. 430.

with coastal states only but should be reasonably enlarged to the Arctic Eight and, possibly, to the a broader range of non-Arctic actors.

The analysis of the previous chapters hinted to the fact that the Arctic is opening up to new stakeholders, from lower latitudes, Asia, and even non-state entities, like the EU, with growing stakes in the region. An Arctic Treaty open for signature to those with a proven economic interest in the region – like the Antarctic Treaty – could engage a larger number of investors in fields like scientific research, economic development, and energy, to the ultimate benefit of Arctic development itself.

3.2.4 Counter-arguments: hard law options and weaknesses of binding regimes

At a closer look, the Arctic Treaty scenario fails to address several governance demands. In particular, at the level of the AC, this scenario does not meet the clear demand for a simple and flexible set of regulation contained in the Ilulissat Declaration in favour of the status quo. As seen in Chapter 2, the Arctic Five stated that there is “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean”.¹⁹³

Despite the good points in support of the Arctic Treaty scenario, it may be useful to dig deeply into the reasons why this scenario should be disregarded.

Limits of the comparison

To begin a critical discussion of the Arctic Treaty scenario, we need to consider the plausibility of taking as reference the Antarctic Treaty. It is true that, despite the difference between the two Poles, a comparison with the Antarctic Treaty System

¹⁹³ Arctic Ocean Conference, 2008. Ilulissat Declaration. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

may prove useful to grasp Arctic governance shortcomings. Still, at least one difference doesn't allow thinking of the Arctic as a global common and subject to a treaty resembling the Antarctic Treaty.

The existence of sovereign territorial rights on Arctic lands and marine areas cannot be overcome. The legal regulation of the Arctic by a comprehensive treaty could not touch the sovereign rights of the coastal states, and therefore the internationalisation of the Arctic under such a treaty shall be excluded under international law. For the area of the Central Arctic Ocean that could potentially be unregulated, it must be pointed out that, even if sea-ice shrinkage is a reality in the Arctic, it is also true that the prospects of a Central Arctic Ocean completely free from ice or even navigable are clouded in doubt.

Lack of political will

Another considerable obstacle to the conclusion of a comprehensive treaty of the Arctic is the lack of political will on the side of the Arctic states. More than others Arctic states, the Arctic Five would not reasonably support a treaty that could potentially hinder their sovereign rights, and this is in line with the above mentioned Ilulissat Declaration.

In this respect, Young argues that every effort towards a comprehensive legally binding treaty will be at least politically charged, as the Arctic coastal states stated in Ilulissat that they "see no need to develop a new comprehensive international

legal regime” for the Arctic Ocean, not to mention of the circumpolar region as a whole.¹⁹⁴

What status for non-Arctic signatories?

Another issue called into question is the legal status of potential signatories that do not belong to the Arctic Five or the Arctic Eight. As an international treaty, the Arctic Treaty would be open for signature to all nations that, as in the case of the Antarctic Treaty, demonstrate a true interest in the region. Again, that may work well in a region where there are no sovereign rights recognised under international law. Yet, in the Arctic such scenario is confronted with the need of defining the rights of potential non-Arctic signatories without hindering the Arctic Five’s territorial rights.

In part, we have already witnessed a debate regarding the admission of new observers to the AC and their status within the regional forum. As we saw earlier, the solution found within the AC has been that of admitting new observers to recognise and foster their contribution to scientific and economic development. Nevertheless, the Arctic states have also clearly stated that these countries will be excluded from the decision making process within the AC. Therefore, there is no room for speculations that an Arctic Treaty could give observers any larger powers.

Is an Arctic Treaty desirable?

In addition to all these arguments, we should also consider the fact that such an agreement may not even be desirable. Young mentions several reasons why such a

¹⁹⁴ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 438. Arctic Ocean Conference, 2008. Ilulissat Declaration. Available at <http://www.arctic-council.org>. [Accessed 7th March 2015].

treaty may not improve Arctic governance.¹⁹⁵ First and foremost, the legally binding treaties imply stronger obligations but they also set a number of limitations “as mechanism for providing effective governance for complex and dynamic system”. By dynamic system in this context we mean a system that experiences non-linear or even abrupt changes.¹⁹⁶

Legally binding agreements generate more normative pull and more obligations than non-binding arrangements, thus solving the problem of compliance in the international arena. Nevertheless, legally binding agreements require lengthy negotiations and they often avoid contentious issues in the interest of building consensus. Moreover, legally binding agreements are less adjustable to changing systems in timely manner. Last but not least, the role that they accord to non-state actors is not comparable to the role that the latter play in soft law frameworks.¹⁹⁷

3.2.5 SWOT analysis: Arctic treaty scenario at a glance

Looking at this scenario through the lenses of the Strengths-Weaknesses-Opportunity-Threats (SWOT) approach, we may derive some useful findings.

As shown in Figure 9, the main strength of the Arctic Treaty scenario consists in the fact that it could provide a full set of legally binding and Arctic-specific regulations to cover the entire Arctic region. Looking at this scenario from a SWOT analysis perspective, we may argue that this scenario could build upon the current trend for

¹⁹⁵ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, pp. 435-438.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

the conclusion of binding agreement because this suggests that binding regulation is needed in the Arctic.

Figure 9 SWOT analysis of the Arctic Treaty scenario

STRENGTHS <ul style="list-style-type: none">• Comprehensive, legally binding framework covering the Arctic	WEAKNESSES <ul style="list-style-type: none">• Weak comparison with the Antarctic• Lack of political will
OPPORTUNITIES <ul style="list-style-type: none">• Build on the trend towards the conclusion of binding agreements	THREATS <ul style="list-style-type: none">• Demand for simple and flexible regulation (Ilulissat)• Hindrance on sovereign rights• Limitations deriving from legal obligations

Nevertheless, the Arctic Treaty scenario has remarkable weaknesses that make its realisation highly unlikely. Overall, the scenario itself is put under discussion by the opposing demand for flexible and simple regulations made explicitly by the Arctic states. In addition, this scenario could threaten the Arctic states' sovereign rights and pose serious limitations to Arctic governance itself.

3.3 Arctic International Organisation

3.3.1 From Arctic Council to Arctic International Organisation

Another scenario worth discussing is the internationalisation of the AC within a legally binding framework. We already presented many organisations that insist on the Arctic and are not full-fledged international organisations.

The AC is the main case in point. As we said, the AC is a forum based on a non-legally binding document, the Ottawa Declaration. It is a forum for discussion and cooperation, and does not have the power to adopt binding decisions. To be sure, so far the AC has allowed more room for cooperation and, in general, has provided a flexible framework to compose the interests of the Arctic states.

Since its establishment the AC has contributed to environmental protection and sustainable development of the region, providing a venue for cooperation and coordination. Furthermore, it has organised the efforts of the Arctic states, providing science and information to policy makers, and conveying a positive image of the Arctic in the world. Yet, a claim could be made that the very soft-law nature of the AC prevents it from creating binding obligations under international law, limiting the effectiveness and the impact of the AC work.¹⁹⁸

3.3.1.1 An Arctic Regional Council

Attempts to establish an international organisation in the Arctic region have already been made in the past decades. Yet, these attempts have not been successful.¹⁹⁹

¹⁹⁸ For an overview of the Arctic Council's achievements see Hasanat, W., 2013. Reforming the Arctic Council Against Increasing Climate Change Challenges in the North. *Michigan State International Law Review*, Vol. 22 n° 1.

¹⁹⁹ See also Hasanat, W., 2013. Searching for Synergies in International Governance Systems Developed in the Circumpolar North. *International Journal for Sustainable Development Law and Policy*, Vol. 9 n° 2.

The debate preceding the drafting of the Ottawa Declaration revolved around the legal nature to be given to the would-be AC. In 1991, Pharand drafted a treaty model of the Arctic Regional Council (ARC) suggesting the establishment of an international organisation in the Arctic.²⁰⁰ His work was published by the Canadian Arctic Resource Committee.

Pharand's proposal is explicitly drafted as a treaty because "a treaty is favourable to a Declaration or a Memorandum of Understanding because of their questionable legally binding nature in international law".²⁰¹ In his project, the first requisite for the establishment of the ARC is the conclusion of a treaty. The ARC should be established by the eight arctic states with the aim of facilitating cooperation and protecting the environment.

As for the organism of this Council, Pharand envisages the possibility of establishing an Assembly²⁰² and a Commission²⁰³ as main organs, and a Secretariat as subsidiary organ. The draft treaty includes the possibility of admitting new member states, governmental and non-governmental organisations, and territorial and regional

²⁰⁰ Pharand, D., 1991. Draft Arctic Treaty: an Arctic Regional Council. In Canadian Institute of International Affairs, 1991. *The Arctic Environment and Canada's International Relations*. Ottawa: Canadian Arctic Resources Committee. Available at <http://www.carc.org/pubs/v19no2/5.htm>. [Accessed 7th April 2015].

²⁰¹ *Ibid.*

²⁰² *Ibid.* The Assembly shall be composed of the members of the Council, it shall establish the general line of the Council, coordinate its activities, and make recommendations for the attainment of the objectives. It has nearly unlimited powers of discussion but limited powers of decision, it is described as forum where the general policies are discussed but too large to approve the implementation of specific measures. Consensus vote is suggested as the appropriate procedure for this body. The commission shall be formed by twelve members, the eight founding members as permanent members and the four non-permanent members elected on a rotating basis for four years.

²⁰³ *Ibid.* The Commission decides on the measures to be taken and on the implementation of these measures. Therefore, it is thought as a governing body where founding members have a controlling role but not a right of veto.

governments. All these actors are considered eligible for membership if they demonstrate “substantial interest in the work of the Council and a capacity to further its purposes”. Moreover, “admission shall be decided by the Assembly upon the recommendation of the Commission”.²⁰⁴

Another suggestion of formalisation of the AC comes from Nowlan that proposes to base the AC on a treaty similar to the Madrid Protocol to the Antarctic Treaty.²⁰⁵

3.3.2 The case for the reform of the Arctic Council

The debate regarding the nature and the role of the AC continued after the Ottawa Declaration. Criticism and reform regarded especially the AC structure and decision-making procedure. In 2001, Pekka Haavisto, Finnish consultant and former Minister of the Environment for Finland, drafted a report commissioned by Finland during its AC chairmanship. The report was submitted to the Senior Arctic Officials (SAOs) and proposed a reform of the AC to restructure its organisation and improve its effectiveness. After the SAOs discussed it, the final report was delivered to the AC secretariat at the end of June 2001.²⁰⁶

²⁰⁴ As specified by Pharand in the commentary, the Council is open to membership of other states, organisation of states (*e.g.* the European Community, now European Union), NGOs (*e.g.* the ICC), and territorial governments (*e.g.* Alaska, Yukon, North West Territory, Greenland), and regional governments (*e.g.* Chakotskiy, Nunavik, Nordic Sami Council). The admission of new members shall be based, in Pharand’s project, on the favourable recommendation of the Commission where the founding members form a two-third majority.

²⁰⁵ Nowlan, L., 2001. Arctic Legal Regime for Environmental Protection. *IUCN Environmental Policy and Law Paper*, n° 44.

²⁰⁶ Arctic Council, 2001. Minutes of the Arctic Council Senior Officials’ Meeting, Rovaniemi, June 12-13. Available at, online: <http://www.arctic-council.org/index.php/en/document-archive/category/143-sao-meeting-in-rovaniemi-finland-june-2001>. [Accessed 7th March 2015]. See also Hasanat, W., 2013. Searching for Synergies in International Governance Systems Developed in the Circumpolar North. *International Journal for Sustainable Development Law and Policy*, Vol. 9 n° 2; Fenge, T. and Funston, B., 2015. The Practice and Promise of the Arctic Council. Independent report

The conclusions of the Haavisto study prompted the Arctic states to reform the way the AC operated. Since then, reforms have proceeded slowly due to the need for consensus.²⁰⁷ Haavisto proposal includes better coordination among Working Groups, communication with other regional bodies, increased funding, increased financial support to Permanent Participants, and expansion of the role of the observers.²⁰⁸

The most recent and drastic proposal to transform the AC into an international organisation came about with Finland's Strategy for the Arctic Region, published by the Office of the Finnish Prime Minister in 2013. The Strategy included statements in support of recognising the AC as "a treaty-based international organisation", including the establishment of a permanent secretariat the conclusion of binding international agreements.²⁰⁹

commissioned by Greenpeace. Available at http://www.greenpeace.org/canada/Global/canada/file/2015/04/GPC_ARCTIC%20COUNCIL_RAPPORT_WEB.pdf. [Accessed 7th May 2015].

²⁰⁷ Haavisto, P., 2001. Consultant's Study: Review of the Arctic Council Structures. The Haavisto study served as a background to discuss a reform of the AC. The study identifies several problems and calls for improving the AC's efficiency and effectiveness. The report states that the fact that the AC is only for governments and permanent participants and not an international organisation constitutes an obstacle to effective cooperation. The consensus-based decision making risks to allow a minority to block the proposals of the "majority". Among other issues, the report laments the lack of a broad and equally-shared basis of funding to support the activities of the Working Groups, and the lack of a permanent secretariat with autonomous resources. The proposed long-term solution to the AC organisational and functional problems is the establishment of a permanent secretariat with a permanent funding mechanism from all member states. As we outlined earlier, in the Nuuk Declaration, the ministers introduced the AC Permanent Secretariat in Tromsø, Norway, operational since May 2013.

²⁰⁸ Arctic Council, 2001. Minutes of the Arctic Council Senior Officials' Meeting, Rovaniemi, June 12-13. Available at, online: <http://www.arctic-council.org/index.php/en/document-archive/category/143-sao-meeting-in-rovaniemi-finland-june-2001>. [Accessed 7th March 2015]. See also Hasanat, W., 2013a. Reforming the Arctic Council Against Increasing Climate Change Challenges in the North. *Michigan State International Law Review*, Vol. 22 n°1.

²⁰⁹ Prime Minister of Finland, 2013. Finland's Strategy for the Arctic Region 2013, Government resolution on 23 August 2013. Available at

The arguments advanced in support of these statements revolve around the global role acquired by the AC. In Finland's reasoning, Arctic issues have global implications, such as environmental change and opening of new sea routes. Therefore, the AC is called to establish dialogue with actors outside the Arctic and take on a global role. Moreover, from the strategy it emerges that opening up the AC to new observers is inevitable and will offer the AC all needed resources and stronger multilateral cooperation.

The proposal is also grounded on the fact that the AC role has already been strengthened with the establishment of the Permanent Secretariat and with the conclusion of two binding agreements between the AC member states. Even more than that, the agenda of the AC has extended to cover also economy and international law. On these grounds, the AC action could be extended to new sectors and its political weight could be augmented by holding global Arctic Summits.²¹⁰

3.3.2.1 AIO strengths

To proceed in our analysis, we will now assess whether the transformation of the AC into a full-fledged international organisation reflects emerging trends in Arctic governance or addresses pressing governance demands.

Stronger Arctic Council within and beyond the region

<http://vnk.fi/documents/10616/334509/Arktinen+strategia+2013+en.pdf/6b6fb723-40ec-4c17-b286-5b5910fbecf4>. [Accessed 19th April 2015].

²¹⁰ *Ibid.* Shortly after the release of the Strategy, Finland proposed to hold a summit of Council leaders in occasion of the Finnish chairmanship of the Council in 2017. See also Nilsen, T., 2013. Finland Aims for Arctic Summit. *Barents Observer*. Available at <http://barentsobserver.com/en/arctic/2013/12/finland-aims-arctic-summit-04-12>. [Accessed 13rd April 2015].

Since its establishment and even before, the nature of AC has been much debated and its reform has been attempted more than once. Established as a soft law organization, the AC has been strengthened and enriched with more functions.

Institutionally, the appointment of the Permanent Secretariat²¹¹ and the conclusion of binding international agreements between the Arctic states²¹² suggests a development toward a hard law framework. Even more than that, the Kiruna Declaration signalled the need to strengthen the AC's role and expand its functions from policy-shaping to policy-making. Overall, the extension of the AC agenda and its growing role in the international arena seem to show that the AC is gradually evolving into an international treaty based organisation with global interests and global responsibilities.

A treaty-based AC would have a new status both in the region and outside the Arctic. Within the Arctic region, a treaty-based AC would grant more coordination, coherence, and effectiveness to the action of Arctic states and PPs. The problems of lack of coordination, duplication of functions, and lack of coordinated management would be effectively tackled by such an arrangement.

Outside the region, the AC would benefit from a legally binding basis in terms of visibility. Through a *legalised* AC, the Arctic would have a stronger voice and a much more visible position in the international arena. In addition, from the strictly legal point of view, the AC would ensure compliance with all legally binding documents,

²¹¹ On the outcome of the Nuuk Meeting see Chapter 2, section 2.3.3.

²¹² The Arctic Aeronautical and Maritime Search and Rescue Agreement, and the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic. See Chapter 2, section 2.3.3.

like the two agreements on Oil Pollution and Search and Rescue, approved by the Arctic states.

Equal members, more structured cooperation

This scenario calls for two other considerations regarding membership. As a treaty-based organisation, the AC would be called to open the Arctic doors to non-Arctic observers and stakeholders. This is in line with the recent admission of new observers. Yet, in the case of the scenario considered here, these observers would be called to a more structured participation. By some Arctic states, namely large coastal states like Russia, US, and Canada, this could be seen as an hindrance or, at least, a limitation, to their sovereign territorial rights.

Last but not least, the institutionalisation of the AC under a legally binding treaty would imply an equality of its members and significantly limit the discretionary power of the Arctic Five (if not abolish it). The three Arctic states that are not part of the Arctic Five group, Finland, Sweden and Iceland, would immensely benefit from this scenario and would not be excluded by the decision making process within the Arctic Five group.

3.3.3 Counter-arguments: unfeasibility of the AIO

At a closer examination of the AC current features, it emerges that, despite potential demands for its institutionalisation, changes to its soft-law nature may be slower and more marginal than we may think. As observed in the previous section with the Arctic Treaty scenario, the proposal of a hard law basis for the AC disregards the demand for a simple and flexible set of regulation contained in the Ilulissat Declaration.

What basis for an international organisation of the Arctic?

The transformation of the AC into an international organisation with the power to create obligations upon its members would entail the conclusion of a binding agreement establishing such organisation. Therefore, some of the arguments put forward for the Arctic Treaty scenario applies also to this scenario.

Lack of political will

Koivurova notes that it would be misleading to think that the AC could easily turn into a treaty-based organisation. In fact, the scholar notes that the AC has been practically the same kind of inter-governmental forum since 1991 and has taken a strong no treaty approach.²¹³ Therefore, we can conclude that, in broad terms, the AC as governance structure is resistant to change. A change is underway within the AC and in the Arctic in general, but we cannot foresee any imminent far-reaching reform.

Membership and structure

It is not by chance that the proposal for the transformation of the AC into an international body came from Finland and not from other Arctic states, especially from the Arctic Five. Since the Ottawa Declaration, the Arctic Five have been strong supporters of a body without legal personality to guide cooperation in the region. In the Ilulissat Declaration, they stressed once more their commitment to maintain the status quo when it comes to governance in the Arctic, as well as the clear will to maintain their leadership position *vis-à-vis* the other Arctic states.

²¹³ Koivurova, T., 2010. Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance. *Polar Record*, Vol. 46 n° 237, p. 149.

Given the conservative positions of AC members like Russia, US, and Canada, it is unlikely that they will concede on the establishment of an international body that would *de facto* put on equal footing all AC member states.

3.3.4 SWOT analysis: AIO scenario at a glance

Figure 10 SWOT analysis of the AIO scenario

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> • Legally binding framework, enforceable decisions • Coordination, coherence, effectiveness • Stronger voice • Members' equality 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> • What kind of agreement? Among whom? • Limitations of legally binding regulation
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> • Build on and strengthen AC's global role 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> • Other attempts have failed • No political will

The AC has been strengthening its role for a while. The establishment of the Permanent Secretariat and the conclusion of two binding agreements under AC auspices show that. The establishment of the AIO rests on the assumption that this trend will continue and that the evolution of the AC into an international organisation will meet the demands of all stakeholders involved. According to this logic, the lack of political will and, most of all, the lack of consent on the side of the Arctic Five present the greatest challenge to this scenario.

To conclude, these arguments explain why, while many authoritative voices call for a reform of the AC, the option of a complete transformation into an international organisation has been excluded. The AC will continue to play what Young calls a generative role.²¹⁴ Yet, we conclude that it will not evolve into a regulatory body with authority to create obligations and implement binding agreements.

3.4 Soft law scenario

After having considered hard law scenarios, we may move on and consider the soft law option. This scenario of Arctic governance, entirely based on soft law, takes the lead from trends and development that emerged in the previous section.

3.4.1 Soft law and the Arctic: in search of a cooperative solution

3.4.1.1 What is soft law?

Soft law is a relatively new concept, developed in the 1970s to account for an emerging phenomenon in international law. In particular, soft law emerged as an alternative to the conclusion of treaties to regulate international issues.

Some scholars define *soft law* as anything that is not *hard law*.²¹⁵ Others maintain that soft law comprises all legal and non-legal obligations that create expectations and are used to avoid disputes.²¹⁶ Despite the fact that other writers²¹⁷ include in

²¹⁴ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 437.

²¹⁵ Sztucki, J., 1990. Reflections on International "Soft Law". In Ramberg, J. *et al.*, eds., 1990. *Festschrift till Lars Hjerner: Studies in International Law*. Stockholm: Norstedts.

²¹⁶ Gruchalla-Wesierski, T., 1984. A Framework for Understanding "Soft Law". *McGill Law Journal*, Vol. 30, pp. 39-40.

this definition all politically or morally binding agreements, Klabbers notes that it is more accurate to say that soft law does not include political and moral commitments, since their legal nature is rather controversial.²¹⁸

From all these definitions, it emerges that soft law is a rather controversial concept where many definitions are possible. According to Klabbers, the term characterises in a loose way all instruments that “are considered as giving rise to legal effects, but do not (or not yet perhaps) amount to real law”.²¹⁹ Therefore, we may consider soft law all declarations, statements, codes of conduct, UN General Assembly resolutions, and all other non-binding instruments that do not create legal obligations.

Interestingly, Gruchalla-Wesierski identifies five main elements of soft law regulation: the subject matter and the means of formation of soft law regulation have international nature since they are formed by international organisations or states; soft law includes both legal and non legal instruments; soft law creates expectations that norms will be respected and has the purpose of avoiding or solving disputes by establishing links of cooperation; lastly, soft law norms are difficult to interpret for third parties because the extent to which they must comply with the norms is determined by the parties themselves.²²⁰

3.4.2 The case for a soft law scenario

²¹⁷ See Heusel, W., 1991. *Weiches Völkerrecht*. Baden Baden: Nomos.

²¹⁸ Klabbers, J., 1996. The Redundancy of Soft Law. *Nordic Journal of International Law*, Vol. 65. For an overview of soft law see also Chinkin, M. C., 1989. The Challenge of Soft Law: Development and Change in International Law. *International and Comparative Law Quarterly*, Vol. 38; Abbott, K.W. and Snidal, D., 2000. Hard and Soft Law in International Governance. *International Organization*, Vol. 54.

²¹⁹ Klabbers, J., 1996. The Redundancy of Soft Law. *Nordic Journal of International Law*, Vol. 65, p. 168.

²²⁰ Gruchalla-Wesierski, T., 1984. A Framework for Understanding “Soft Law”, *McGill Law Journal*, Vol. 30, pp. 44-45.

Taking these elements into account, we can then move to outline a pure soft-law scenario for the Arctic.²²¹ In a pure soft law scenario, regulation of environmental issues of shared concern would be left uniquely to non-binding instruments. In a certain way, this scenario is the closest to the status quo among those that we have considered so far. Nevertheless, in this case we are considering a governance arrangement that presents a strong use of soft law instruments for cooperation and that moves away from hard law solutions.

In this scenario, UNCLOS remains the only legally binding framework. In the Ilulissat spirit, no other convention, international or regional agreement would be added. Agreements like the Oil Spill Preparedness and Response Agreement or the SAR Agreement would remain isolated cases. On the contrary, systematic cooperation would continue within the AC and at the bilateral level, mainly through declarations and informal agreements.

For example, Stokke argues that existing soft law institutions in the Arctic, and the AC in particular, have contributed to fostering environmental governance by strengthening the knowledge base, providing practical guidance on risk reduction, increasing Arctic visibility in international fora, and supporting national implementation of all measures by single states.²²² These achievements and the lack

²²¹ Hasanat has made a valuable contribution to the study of soft law in the Arctic. See for example Hasanat, W., 2012. *Soft-Law Cooperation in International Law: The Arctic Council's Efforts to Address Climate Change*. Rovaniemi: Lapland University Press; Hasanat, W., 2007. Definitional Constraints Regarding Soft Law. *1&2 AALCO Quarterly Bulletin*, Vol. 8; Hasanat, W., 2012. The Role of International Governance Systems in Protecting the Arctic Environment: Examining Climate Change Policy. *Yearbook of Polar Law*, Vol. 4 n° 561; Hasanat, W., 2012. Diverse Soft-Law Cooperation Forms in the Arctic – Do They Complement or Contradict Each Other? *International Community Law Review*, Vol. 14 n° 3.

²²² Stokke, O. S., 2007. A Legal Regime for the Arctic? Interplay with the Law of the Sea Convention. *Marine Policy*, Vol. 31 n° 4, p. 10.

of political consensus on the conclusion of a comprehensive binding treaty confirm that this flexible approach could be the key to the future of Arctic governance.

3.4.2.1 Strengths of the soft law scenario

Soft law has been the core of Arctic governance so far

This scenario is plausible because the premises are already in place and it has on its part the commitment of the Arctic states in Kiruna. The previous chapters explored how Arctic governance has developed using primarily a soft law approach, starting from the Ottawa Declaration in 1996 and finishing with the Kiruna Declaration. Parallel to that, we have also presented other organisations insisting in the Arctic region that have a soft law nature and, therefore, lack a legally binding basis.

Overall, the trend identified in Chapter 2 suggests that soft law arrangements prevail in Arctic governance and that have contributed consistently to the management of environmental and non-environmental issues. Moreover, intergovernmental and interparliamentary bodies have so far played a key role in the development of international law in the Arctic keeping their soft law nature.²²³

Avoidance of legal obligations

As such, soft law allows parties to conclude informal agreements that do not impose legal obligations upon them but grant reasonable expectations of compliance and coordination. In general, the greatest strength of soft law norm is the avoidance of legal obligations and the discretion regarding the terms of these obligations. To be sure, this does not mean that soft law arrangements are necessarily less effective.

²²³ See Chapter 2, section 2.4.2.5.

On the contrary, the political value of soft law agreements in some case equals a legal obligation.

Flexible and timely solutions to abrupt changes

Soft law agreements and declaration are normally concluded in a very short period of time. Parties are encouraged to find a common ground by the very non-binding nature of their commitment. While an Arctic Treaty would be incompatible with the necessity of responding to environmental challenges in a timely manner, soft law instruments would allow for immediate action.

A soft law scenario would be more flexible, quick, and less demanding but potentially more effective. This applies to inter-state agreements, intergovernmental and interparliamentary bodies, but also to sector-specific regulation at the regional level.²²⁴

Broader participation and inclusion

Hasanat notes that soft law offers another advantage. It allows for bottom-up initiatives to be heard at a higher governance level. This entails increased direct civil society participation.²²⁵ In the case of the Arctic, this is particularly true with regards to indigenous peoples organisations. Thanks to the soft law nature of the AC, these organisations have been awarded the peculiar status of PPs, which entails special participatory rights.²²⁶ Such participation is much broader than those

²²⁴ See also Hasanat, W., 2013. Searching for Synergies in International Governance Systems Developed in the Circumpolar North. *International Journal for Sustainable Development Law and Policy*, Vol. 9 n° 2.

²²⁵ Hasanat, W., 2012. *Soft Law Cooperation in International Law: the Arctic Council's Efforts to Address Climate Change*. Rovaniemi: Lapland University Press, p. 185.

²²⁶ See Chapter 2.

granted by international organisations. The latter do not allow civil society groups to sit with states, even when those groups are directly affected by the decisions taken.²²⁷

On this point, Hasanat underlines that soft law allows non-state actors to express their claims. He goes on by saying that this could be interpreted as rethinking the concepts of *limited sovereignty* and *responsible sovereignty* by recognising that the claims of these communities must be voiced to face global challenges like environmental protection.²²⁸

3.4.3 Counter-arguments: too soft?

If it is true that soft law tools address the governance demand for more flexible and inclusive instruments, it is also true that the Arctic is facing a growing need for enforceable rules, especially with regards to risk prevention and response in the environmental field.

In this respect, one major weakness of soft law is that it does not create legally binding obligations. A forum established by a non-binding declaration, like the AC, is not able to enact legally binding regulations and enforce its principles upon unwilling states.

Another interesting counter-argument against a soft law scenario revolves around the fact that states may use soft law as a test to understand whether they want to

²²⁷ For instance, the Arctic Circumpolar Declaration on Arctic Sovereignty adopted by Inuit communities during the Arctic Council Ministerial Meeting is an example of the new room for cooperation opened by soft law tools of governance.

²²⁸ Hasanat, W., 2012. *Soft Law Cooperation in International Law: the Arctic Council's Efforts to Address Climate Change*. Rovaniemi: Lapland University Press, p. 187.

commit to more demanding solutions.²²⁹ This could often lead to inaction on issues covered by soft law regulation.

3.4.4 SWOT analysis: soft law scenario at a glance

To sum up, the discussion of the soft law scenario has brought up a number of interesting points. On the one hand, the soft law scenario relies on the good record of soft law arrangements that are already in place in the Arctic. Putting in place this scenario would ultimately require only expanding the soft law basis already in place (Figure 11).

On the other hand, it must be taken into account that the soft law scenario does not address the need for binding regulation. Though soft law has shown good level of compliance in the Arctic, it is difficult to exclude that more binding instruments will not be needed in the future.

Figure 11 SWOT analysis of the soft law scenario

STRENGTHS <ul style="list-style-type: none">• Flexible, timely, non-legally binding framework	WEAKNESSES <ul style="list-style-type: none">• No enforceable rules
OPPORTUNITIES <ul style="list-style-type: none">• Soft law arrangements have a good record in Arctic governance• Soft law basis already in place	THREATS <ul style="list-style-type: none">• Binding agreements have been adopted and seems needed• Risk of testing without committing

²²⁹ *Ibid.*

3.5 Regional integrated agreement

3.5.1 Regional solutions to global problems

The fourth and last scenario that we will take into consideration is that of a regional binding agreement concluded among the Arctic states and having as main object environmental regulation. Such an agreement would address the need for Arctic-specific regulation but, at the same time, it would be on a regional, and not international scale, avoiding the objection connected to the internationalisation of the Arctic. We also suggest that this regional binding agreement could entail the implementation on a regional scale of Ecosystem Based Management (EBM) as cross-country environmental policy.

We believe that it is useful to consider this scenario in the context of Arctic governance because it could devise possible solutions to governance needs and demands emerged in the course of our analysis.

A regional agreement concluded among the Arctic states and focused on environmental issues would provide comprehensive and legally binding regulation of human activities in the Arctic. In addition, it would ensure that the decision-making and policy-shaping aspects of Arctic governance remain with the Arctic states. Last but not least, this scenario would devise targeted solutions for regional and sub-regional planning through the EBM approach.

Before discussing pros and cons of this scenario, we are going to define in more details both the concept of regional agreement and that of EBM.

3.5.1.1 What is EBM?

We define EBM in broad terms as an integrated way to provide goals and frameworks for the protection of land and wildlife in specific areas. EBM as a policy method aims at grasping the interaction between socioeconomic and biologic environment and act accordingly to tackle environmental problems. These interconnections are studied for areas that have the same characteristics and that may be studied as system on their own.

More specifically, the term EBM shows that, within a given ecosystem, all human activities including economic activities are managed and considered from an ecosystem perspective.²³⁰ The main peculiarity of EBM is therefore that it differs from traditional regional planning and management for its peculiar comprehensive, trans-disciplinary, and transboundary focus.²³¹

Following Slocomber, we argue that EBM as ecosystem approach is a comprehensive and trans-disciplinary approach that includes people, their activities, and the ecosystem where they operate. Such an approach describes the area considered dynamically and not statically, in relation to its natural characteristics. It aims at defining goals and planning processes in a dynamic and sustainable way. Slocomber notes that the main strength of EBM lies in the fact that society or ecosystems are seen as self-defining, self-maintaining units that interact with each other. EBM as an approach to regional planning works at its best for protected areas with peculiar environmental challenges.²³²

²³⁰ Slocomber, D. S., 1998. Lessons from Experience with Ecosystem-based Management. *Landscape and Urban Planning*, Vol. 40, pp. 31-32.

²³¹ *Ibid.*

²³² *Ibid.*

3.5.2 The case for a regional agreement and EBM in the Arctic

Huebert and Yeager advance the conclusion of a regional seas agreement for the management of the Arctic Ocean as the most effective solution to governance gaps in facing new challenges. According to them, the main advantage of this agreement would be to provide a framework for consistent and holistic management of the Arctic Ocean.²³³

In the opinion of the two scholars, this agreement could build upon the United Nations Environmental Programme (UNEP) for regional seas already in place. In alternative, an independent regime could be established following the example of the OSPAR Convention for the North East Atlantic. Interestingly, many region-based treaties are cited as examples, including OSPAR, the Cartagena Convention, the Special Areas and Wildlife Protocol (SPAW Protocol) in the Caribbean, the Helsinki Commission (HELOCOM) in the Baltic region.²³⁴

In particular, the agreement could contribute to bringing the Arctic to the attention of governments and not only of environmental agencies. In addition, such an arrangement would combine goals of sustainability with obligations on the Arctic governments regarding targets, timetables, and duties to protect the environment.²³⁵

As far as EBM is concerned, the AC has been long promoting the idea of EBM discourse for the Arctic. In 1997 with the State of the Arctic Environment Report,

²³³ Huebert, R. and Yeager, B. B., 2008. *A New Sea: The Need for a Regional Agreement on Management and Conservation of the Arctic Marine Environment*. Oslo: WWF International Arctic Program, p. 28.

²³⁴ *Ibid.*

²³⁵ *Ibid.*; Nowlan, L., 2001. Arctic Legal Regime for Environmental Protection. *IUCN Environmental Policy and Law Paper*, n° 44.

then in 2004 with the Arctic Climate Impact Assessment (ACIA), and in 2009 with the Arctic Marine Shipping Assessment (AMSA), the AC disseminated reports that clarify that biophysical changes in the Arctic do not happen in isolation but, on the contrary, they are clearly linked to what happens in the rest of the world.²³⁶ Doing this, the AC has been promoting what Young calls EBM discourse to react to these changes.²³⁷

As we already mentioned, the EBM concept provides an alternative policy discourse that looks at the Arctic as a complex and dynamic socio-ecological system. Essentially, EBM takes into account the sociological and ecological dimension of systems (or ecosystems). The focus is on large socio-ecological systems, overcoming jurisdictional fragmentation.²³⁸

For instance, EBM in relation to living marine resource means that both the impacts of fisheries on the ecosystem and the constraints that the ecosystem places on fisheries must be taken into account.²³⁹ Therefore, the ecosystem perspective is applied to the management of a given economic sector or, ideally, to all economic sectors.

3.5.2.1 Arguments in support of the regional integrated scenario

Existing legal basis for a regional seas agreement

²³⁶ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 432, p. 441.

²³⁷ *Ibid.*

²³⁸ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24; Young, O. R., 2010. Arctic Governance - Pathways to the Future. *Arctic Review on Law and Politics*, Vol. 1 n° 2.

²³⁹ Hoel, A. H., 2009. Do We Need a New Legal Regime for the Arctic Ocean? *The International Journal of Marine and Coastal Law*, Vol. 24.

The first advantage of this scenario is that the legal basis for the conclusion of a regional seas agreement is already available. Huebert and Yeager note that the premises to build such a regional treaty are already in place. The two scholars mention in particular UNCLOS as international framework, the AC as political forum to foster the conclusion of the agreement, the Polar Code for shipping guidelines, and the OSPAR Convention and other regional agreements providing the model for pollution control.²⁴⁰

It is interesting to note that Huebert and Yeager refer to UNCLOS Article 123 in combination with Article 234 as the ground for the regional agreement.²⁴¹ Article 123 provides that the states bordering an enclosed or semi-enclosed sea shall cooperate through an appropriate regional organisation with the aim of managing living and non-living resources, and protect and preserve the environment.²⁴²

An enclosed or semi-enclosed sea is defined by Article 122 as “a gulf, basin or sea surrounded by two or more States and connected to another sea or the oceans by a narrow outlet or consisting entirely or primarily of the territorial sea and exclusive economic zones of two or more coastal states”.²⁴³ Pursuant to Article 234, states may enact special legislation to protect ice-covered waters within their EEZ.²⁴⁴

From these two articles combined together we derive the possible legal basis for this scenario. This argument is based on the admissibility of the definition of the

²⁴⁰ Huebert, R. and Yeager, B.B., 2008. *A New Sea: The Need for a Regional Agreement on Management and Conservation of the Arctic Marine Environment*. Oslo: WWF International Arctic Program, p. 28.

²⁴¹ *Ibid.*

²⁴² United Nations, 1982. Convention on the Law on the Law of the Sea, art. 123.

²⁴³ *Ibid.*, art. 122.

²⁴⁴ *Ibid.*, art. 234.

Arctic Ocean as semi-enclosed sea almost completely surrounded by the territories of the coastal states.²⁴⁵

Targeted and integrated solutions

Young refers to EBM as an alternative policy discourse to frame the Arctic. In his analysis, EBM captures non-linear changes that affect a given socio-ecological system, like a large marine ecosystem, going beyond the fragmentation of national claims and devising cooperative regimes to address interrelated issue in an integrated manner.²⁴⁶

Development of sectorial arrangements is not excluded (*e.g.* regimes for oil and gas development, fishing, and shipping), but the core of this policy discourse remains the fact of transcending jurisdictional boundaries, approaching socio-ecological systems in holistic terms, and providing a rationale for collaborative management practices.²⁴⁷ Therefore, the main strength of this approach is that it helps devising cooperative regimes and addressing interrelated issues in an integrated way.²⁴⁸

Reinforcing effect of regional agreement and EBM

²⁴⁵ In support of this definition of the Arctic Ocean as semi-closed sea see, for example, Potts, T. and Schofield, C., 2008. Current Legal Developments in the Arctic. *The International Journal of Marine and Coastal Law*, Vol. 23. See also Rayfuse, R., 2007. Melting Moments: The future of polar oceans governance in a warming world. *Review of European Community and International Environmental Law* (RECIEL), Vol. 16 n° 2. Rayfuse defines the issue of the definition of the Arctic Ocean as a semi closed sea under Article 122 of UNCLOS as a “vexed question” also because of the obligations to cooperate that derive from Article 123.

²⁴⁶ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 432.

²⁴⁷ *Ibid.* Young defines EBM in opposition to another policy discourse, the “discourse of geopolitics/political realism”. The latter focuses on control and anticipates conflicts between or among those who seek to exploit natural resources.

²⁴⁸ Young, O. R., 2010. Arctic Governance - Pathways to the Future. *Arctic Review on Law and Politics*, Vol. 1 n° 2.

In addition, we also take into account the fact that a regional seas agreement like the one we have described could reinforce and, at the same time, be strengthened by the EBM approach. A regional agreement would reinforce EBM management of marine and coastal areas in the Arctic by providing a comprehensive and region-specific framework of binding regulation where EBM could be best enforced. At the same time, EBM in the Arctic would make compliance to the regional agreement much more easier.

3.5.3 Counter-arguments: a feasible option?

Article 122 and the Arctic: a vexed question

As we mentioned, the qualification of the Arctic Ocean as a semi-enclosed sea is rather problematic. Rayfuse defines the debate around this issue as a vexed question.²⁴⁹ Despite the fact that there seems to be a general agreement that the Arctic Ocean meets all conditions to qualify as semi-enclosed sea, part of the academia rejects this hypothesis.²⁵⁰ In particular, Franckx and Rothwell appear to reject the proposition that the Arctic Ocean qualifies as semi-enclosed sea.²⁵¹

US and UNCLOS

²⁴⁹ Rayfuse, R., 2007. *Melting Moments: The Future of Polar Oceans Governance in a Warming World. Review of European Community and International Environmental Law (RECIEL)*, Vol. 16 n° 2, p. 210.

²⁵⁰ In particular, Rayfuse refers to Franckx, E., 1993. *Maritime Claims in the Arctic: Canadian and Russian Perspectives*. Martinus Nijhoff Publishers, pp. 240-243; Rothwell, D. R., 1996. *The Polar Regimes and the Development of International Law*. Cambridge: Cambridge University Press, pp. 289-290.

²⁵¹ *Ibid.*

Another substantial objection to the argument proposed by Huebert and Yeager is the fact that the US is not part to UNCLOS to date.²⁵² One of the pitfalls of the scenario is that the regional agreement could rest on UNCLOS international framework as legal basis. The US would need to ratify UNCLOS for such an agreement to be approved *under UNCLOS*.

Risks of replication and holes in the regulation

Another counter-argument that we may advance is that this scenario would risk replicating existing sectorial and international regulation insisting in the Arctic, bringing as back to the argument made for the Arctic Treaty scenario.

Another argument could be advanced in relation to the idea of devising regional and specific solutions to environmental challenges in the Arctic. Most threats to the Arctic environment, *e.g.* greenhouse gases, are generated outside the region and, what is more important, their regulation would not be subject to control by an agreement for the Arctic Ocean.²⁵³

Tortuous pathway towards EBM

At a closer look, EBM may present more problems than expected. In fact, its implementation in the Arctic is still at a very initial stage and many challenges are associated with it. Among these, we may list the production of EBM knowledge base at the local level, the choice of appropriate policy instruments, and cooperation

²⁵² Huebert, R. and Yeager, B. B., 2008. *A New Sea: The Need for a Regional Agreement on Management and Conservation of the Arctic Marine Environment*. Oslo: WWF International Arctic Program.

²⁵³ Young, O. R., 2009. The Arctic in Play: Governance in a Time of Rapid Change. *The International Journal of Marine and Coastal Law*, Vol. 24, p. 433.

across governance levels and sectors.²⁵⁴ Overall, EBM is still a work in progress and its implementation will vary deeply depending on local conditions, geography and specific needs.

In fact, EBM as a policy approach may not always be effective. Depending on the areas where it is applied, local variables should be considered. For example, the large Russian coast presents very different features along the coastline. In addition, implementing EBM would require additional coordination with local authorities and not only at the federal level. This element does not rule out the possibility of EBM in ecosystems like the Russian one but calls for additional consideration.

3.5.4 SWOT analysis: regional integrated agreement scenario at a glance

In order to take a snapshot of the regional integrated agreement scenario (Figure 12), we may argue that a regional agreement entailing the implementation of the EBM approach could rest on the solid basis of UNCLOS and on AC specific support to EBM. The strengths of this scenario are undeniable as long as we try to satisfy the demand for comprehensive and specific regulation of Arctic issues without hindering sovereign rights of coastal states. Nevertheless, the scenario is confronted with consistent obstacles. Among these, the fact that the US has not ratified UNCLOS appears as an insurmountable issue to conclude any binding agreement within UNCLOS framework.

²⁵⁴ Hoel, A. H., 2009. Do We Need a New Legal Regime for the Arctic Ocean? *The International Journal of Marine and Coastal Law*, Vol. 24.

Figure 12 SWOT analysis of the regional integrated scenario

STRENGTHS <ul style="list-style-type: none">• Comprehensive and holistic management• Regional focused scenario, targeted solutions• Enforceable regulation	WEAKNESSES <ul style="list-style-type: none">• Replication of existing regulation• Does not fully account for local variables• Implementation problems
OPPORTUNITIES <ul style="list-style-type: none">• AC has been promoting EBM discourse• Legal basis already in place (UNCLOS)	THREATS <ul style="list-style-type: none">• Problematic definition of semi-closed sea• U.S. is not part to UNCLOS

6. Preliminary conclusions

The scenario analysis has four different options of Arctic governance evolutions along the geographical and legal variables. Before moving to the final conclusion of this analysis, it may be useful to make some considerations about the results of this scenario analysis.

In our analysis we have systematically excluded or, at least, put under discussion all the considered scenarios. None of them seems to win the counter-arguments that have been put forward. Still, the fact of excluding these scenarios does not amount to a complete failure. Instead, it helps our understanding of which solutions are viable, which are feasible, and which are desirable. Throughout the analysis, it has emerged the fact that there are governance demands that often contrast with each other and that, therefore, call for careful balancing of interests and voices.

Chapter 4

Conclusion

In this thesis we studied possible future prospects of Arctic governance. Accordingly, we analysed and assessed several governance arrangements that allow for multilateral cooperation in the Arctic region. By doing so, we identified pitfalls and trends of the current governance framework, and tried to build possible scenarios for the future.

In this concluding chapter, we will go through the main achievements of this analysis in terms of Arctic governance understanding. This will be the basis to offer general recommendations of what should be done to address emerging governance demands in the Arctic.

4.1 Current situation and challenges ahead

The Arctic is undergoing deep changes that have relevant implications for the environment, the economy, international cooperation, and social life. Among these challenges, we underlined the uncertain prospects of sea ice retreat, the possibility of new navigable routes, untapped or undiscovered natural resources that could become more accessible, gaps in fisheries regulation in ice-covered areas of the Central Arctic Ocean, and the need to foster an enduring but vulnerable multilateral cooperation. In this respect, we pointed out that cooperation and coordination in the region are important in order to seize transboundary opportunities and tackle transboundary challenges.

After having defined the Arctic, this analysis outlined its regulatory framework. In particular, we considered UNCLOS as the overarching global instrument that defines sovereignty in the Arctic. We also presented its two implementation agreements that regulate specific issues like deep seabed mining, and conservation and management of straddling and highly migratory fish stocks. To conclude, we considered two binding agreements concluded by the Arctic states to regulate two pressing issues, *e.g.* search and rescue, and oil pollution preparedness and response.

We then moved to consider the role of the AC as high-level forum of the region, distinguishing its members into the Arctic Five, the coastal states, and the Arctic Eight. After having reviewed the AC functioning, we briefly outlined the actual involvement of non-Arctic actors in the region, and especially the EU, NATO, and AC observers, like China.

The analysis of the Arctic resources served the purpose of showing what is the actual or potential economic value of this region and why its strategic importance is

growing. In this respect, existing gaps (*e.g.* gaps in fisheries regulation) and new regulatory instruments (*e.g.* the Polar Code) should catalyse international attention.

4.2 Identifying governance trends

In Chapter 2, our analysis focused on three main research questions. What does *governance* mean? Why should we deal with Arctic governance today? What governance settings can be retrieved in the Arctic and what trends do they show?

We took the lead from the definition of global governance to better understand what Arctic governance means. We may define governance as the act of governing, and therefore the sum of all sets of norms, values, agreements, and institutions that shape relations between states, peoples, cultures, and organisations. Governance may be also understood as the way societies adopt rules to devise common goods and solutions to shared problems. In a nutshell, governance is the highest form of coordination and cooperation between state and non-state actors for the realisation of shared interests. The analysis showed that the main features of global governance are problem interdependence, complexity of the international arena, multiplicity of actors, and multiplicity of threats.

Arctic governance follows a path similar to that of global governance. It may be defined as the act of governing tasked with region-specific objectives and challenges. From our analysis, it emerged a fragmented and multi-layered image of Arctic governance that contrasts with that of other regions of the world, and with Antarctic governance in particular.

In order to transform Arctic governance in a working concept, we identified key challenges arising in connection to climate change. In particular, we focused on the implications of increasing accessibility of the region for the environment and indigenous peoples' livelihood. Following Corell *et al.* we states that, in relation to climate change, Arctic governance is called to ensure production of public goods and availability of resources, avoid public bads such as environmental degradation and disasters, limit pollution, and protect the right of indigenous peoples to their traditional livelihoods.²⁵⁵

Having made these considerations, we described the existing Arctic governance settings by looking at the international, regional, and national levels in all their specificity. In particular, we tried to draw our attention to the evolution of these governance settings over time and to states' interests underlying this process.

The main result of this analysis was the derivation of key governance trends. At the international level, we concluded that UNCLOS is still a fragmented and incomplete regulatory framework. At the regional level, the main trends highlighted are the consolidation of the AC, its growing agenda and international stance, and the adoption of two binding agreements under its auspices.

Furthermore, we also brought to light the limits to the expansion of AC role. In fact, the AC appears to be pulled in two opposite directions, one toward the inclusion of new observers and non-state actors, and the other toward the exclusiveness of a forum that is inevitably dominated by the Arctic states. Last but not least, we provided evidence that soft law arrangements play an important subsidiary

²⁵⁵ Corell, H. *et al.*, 2010. Arctic Governance Project Report, p. 4.

function in Arctic governance and – set UNCLOS aside – they are the predominant form of governance in the region.

As far as national Arctic policies are concerned, we carried out an analysis of the latest Arctic states' strategies. From the comparison between them, we derived that sovereignty and national security remain top priorities for the Arctic states, followed tightly by economic development. Environment and governance management are also present among their commitments but are not on the top of their agenda.

4.3 Identifying governance demands and assessing possible scenarios

In Chapter 3, we started by posing three challenging research questions. How can we think of a model for Arctic governance? What scenarios can we formulate for Arctic governance? What counter-arguments can we advance for each?

To begin, we assessed the practical implications of the trends identified in Chapter 2 by outlining four governance scenarios. Consistent with a demand-driven approach, for each scenario we focused on its regulatory function and on emerging regulatory needs that the given scenario would be able to address.

The strength of this approach consists in the fact that it focuses on what respond to regional needs and state' preferences. The distinguishing feature of our analysis is the ability to bring to light strengths and weaknesses of each governance option, based on SWOT evaluation.

Consistent with this approach, we revised our research questions to underline the added value of our analysis. Our new research questions were as follows. What scenarios would address emerging governance demands? What are the strengths of these scenarios? What are their weak points? What lessons may we take out from the analysis of each scenario?

For our scenario analysis, we took into account two variables, the geographical and legal dimensions of governance, and set out four scenarios along these variables.

The Arctic Treaty scenario was the first option considered. It is virtually located at the extremes of the graph (Figure 7) since it entails maximum internationalisation and an entirely hard law structure. The plausibility of this scenario could be based, at least in part, on a parallel with the Antarctic Treaty. We made the case for the Arctic Treaty scenario by arguing that it would allow for legally binding, homogeneous, and comprehensive regulation. In addition, it would fully include into Arctic management all stakeholders involved on equal footing.

To counter this argument, we stressed that the comparison with the Antarctic Treaty presents several limits, it is not supported by political will, and leaves opened important issues, such as the status assigned to non-Arctic signatories. We concluded that the plausibility and desirability of this scenario are clouded in doubt.

The second scenario considered is the AIO scenario, consisting in the transformation of the AC into a full-fledged international organisation based on a binding treaty. Proposals of reform of the AC in this sense have been advanced in the past, but none of them has been put into practice. This scenario has on its side the fact that, recently, the AC has strengthened its role in the region and beyond.

The appointment of the Permanent Secretariat, the conclusion of binding treaties under its auspices, and the willingness to expand its function from policy-shaping to policy-making, are all elements that stand in favour of an evolution of the AC into a potential AIO.

Coming to the strengths of this governance option, the AIO would be able to enforce binding obligations upon its members, granting more coordination, coherence, and effectiveness to its action. Moreover, such AIO would have a stronger voice as global actor in the international arena. Lastly, the AIO would ensure more structured cooperation and equality of its members, which would be auspicious to small Arctic states.

Nevertheless, we underlined that the AIO scenario appears unfeasible from several points of view. First of all, it would entail the conclusion of a binding agreement, encountering the same objections provided in the Arctic Treaty scenario. Secondly, we pointed out that political will for such transformation is lacking among Arctic states, and issues of membership and structure of the potential AIO remain insurmountable.

In the soft law scenario, we considered a governance framework entirely based on non-legally binding agreements and declarations. In the spirit of the Ilulissat Declaration, UNCLOS would remain the only comprehensive treaty and cooperation would revolve around the AC and informal agreements. This scenario relies on the fact that Arctic governance is already largely based on soft law. Moreover, the soft law option would respond to the need of avoiding stringent legal commitments, and would allow for flexible and timely responses to abrupt changes (*e.g.* environmental

emergencies). Last but not least, it would also ensure broad participation and inclusion of indigenous peoples.

Notwithstanding this, the greatest weakness of the soft law scenario is the lack of binding instruments in a moment when the Arctic seems to face a growing need for enforceable rules, especially in the field of environmental risk prevention and response.

Before concluding, we analysed a fourth scenario, the regional integrated agreement scenario. By that we mean a regional binding agreement concluded among the Arctic states and containing mostly environmental regulation. This regional agreement would also entail the implementation of the Ecosystem Based Management (EBM) policy mechanism.

This scenario would provide a comprehensive and legally binding framework while, at the same time, devising region-specific solutions. In addition, the EBM approach would ensure targeted and timely solutions to local environmental challenges. In support of this scenario, we argued that this type of regional agreement would find a legal basis in UNCLOS and broad support in the work of the AC. Moreover, targeted and integrated solutions offered by this arrangement would be particularly well thought for the Arctic.

Yet, taking UNCLOS as a legal basis poses at least two challenges, the controversy regarding Article 122 and the fact that the US is not part to it. Moreover, we argued that the regional integrated scenario runs the risk of reproducing the same replication of functions and holes in regulation that constitute a problem in the current system. Last but not least, even if the AC has expressed its support to EBM,

its implementation is not straightforward and has to take into account differences at the national and subnational levels.

Significantly, we concluded our scenario analysis by stating that the mere fact of ruling out all proposed scenarios does not amount to a failure. On the contrary, the scenario analysis achieved its objective of shedding light on which solutions for the future of Arctic governance are viable, which are feasible, and which are desirable. Even more than that, it helped our understanding of how emerging governance demands may conflict with each other, calling for balancing of interests.

4.4 On the radar of Arctic governance: guidelines for the future

The Arctic is a fascinating land of extremes with incredible opportunities. Governance of the Arctic needs to merge political, economical, social, and environmental considerations to preserve indigenous peoples' livelihood, the Arctic unique ecosystem, and the immense potential of the region.

This is even more compelling today that the Arctic catalyses international attention for the prospects of oil extraction. As we saw, this is not the only source of concern for the future of the Arctic but it has rightly received increased media attention after Greenpeace staged a protest at the Apollo well operated by the Transocean Spitsbergen drilling rig in the Barents Sea.²⁵⁶

²⁵⁶ See Milazzo, E, 2014. Arctic Oil and Gas: Fuelling the Debate? Arctic Climate Change Emerging Leaders (ACCEL) Blog. Available at <https://accelfellowship.wordpress.com/arctic-oil-and-gas-fuelling-the-debate/>. [Accessed 23rd March 2015]. Regarding Greenpeace campaign and the tensions regarding Russia's response to it, please see Greenpeace, Official Website: <http://www.greenpeace.org/usa/en/campaigns/Save-the-Arctic/>

Based on the analysis of governance trends and needs, as well as on the conclusion drawn from the scenario analysis, we would like to conclude this research work by leaving few recommendations. More than specific policy recommendations, these are meant to be guidelines for future governance developments and multilateral cooperation among the Arctic states.

Strengthen international cooperation on existing and emerging issues. Areas like fisheries, shipping, pollution prevention and response, as well as adaptation measure to climate change should be prioritised.

Work on the implementation of the recently concluded Polar Code. The Polar Code is an important achievement for the region and for the international community as a whole. In the spirit of strengthening cooperation and environmental protection, it is important to work closely on its timely implementation.

Extend the coverage of existing fisheries management organisations to the Central Arctic Ocean. Even if prospects of commercial fisheries in the Central Arctic Ocean are cast in doubt, it is important to take precautionary measures to ensure sustainable management of fisheries in the future.

Include in Arctic cooperation non-Arctic and non-state actors. In the case of non-Arctic states, their inclusion in the AC as observers is already a reality. Their inclusion will bring new resources and expertise to the development of the Arctic, especially in the economic and scientific domains. International cooperation should be seen as a resource and fostered accordingly. In this sense, it will not constitute a prejudice to Arctic states' sovereignty over their land and marine areas.

Strengthen the effectiveness of the Arctic Council as a high level regional forum for cooperation and coordination. The Arctic Council is not going to become an international organisation but its role will and should be strengthened to accompany the evolution of the region and its growing strategic importance.

Use and, where possible, strengthen existing fora of cooperation. Even if there is always room for improvement, Arctic governance can already count on a well-structured web of governance arrangements. In the short/medium term, it is recommended to strengthen these fora by improving their functioning, rather than creating new ones. This would also pass through rationalisation of functions and increased coordination between governance bodies.

Include environmental considerations in all aspects of Arctic governance, from legal regulation to resource management and conservation. Combine the concept of development of the Arctic with the conservation and protection of the environment through mechanisms like Ecosystem Based Management.

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