



Double Master's Degree in International Relations
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Prospects of Arctic governance:
critical analysis of current trends and future scenarios

Summary

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Academic year 2014/2015

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

Summary

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

1. Introduction to the Arctic region: current situation and challenges ahead

The Arctic is conventionally defined as the land and marine areas that stretch 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.¹ The Arctic region encompasses 21 million square kilometres and includes the Arctic Ocean and territories of the eight Arctic states: Canada, Denmark (through Greenland), Finland, Iceland, Norway, Russia, Sweden, and the United States. Far from being a deserted land, the Arctic is home to around 4 million people, 10 percent of which is indigenous.

In the upcoming years, the Arctic is going to face new challenges, and transboundary threats and opportunities. Global climate change will have a far-reaching impact on the Arctic, in economic, geopolitical, social, and environmental terms. In particular, certain challenges deserve more attention. These include the prospects of sea ice retreat, the expansion of 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 the fragile multilateral cooperation in the region. In the Arctic more than anywhere else, cooperation and coordination are paramount to seize transboundary opportunities and tackle transboundary challenges arising from climate change.

1.1 The legal framework

The Arctic is governed by a rich set of laws, norms and practices that shape governance and multilateral cooperation in the region. The United Convention on the Law of the Sea

¹ Arctic Monitoring and Assessment Program (AMAP), 1997. Report on Arctic Pollution Issues: A State of the Arctic Environment.

(UNCLOS) is a cornerstone of international law at the global level. It regulates territorial boundaries at sea, and the right to enforce laws and exploit resources. It is relevant to the Arctic because it establishes rights and duties of the Arctic states and sets the boundaries of territorial sovereignty from the coast to the high seas.

Analysing UNCLOS provisions, we underline that UNCLOS is a framework convention and does not contain substantive regulatory standards for issues such as safety and fishing restriction. At the same time, we observe that regulation by single states cannot provide solution to transboundary issues such as pollution and fisheries that have an intrinsically transboundary nature. Therefore, multilateral cooperation among Arctic states and beyond is essential to set sustainable standards.

1.2 The actors

Any analysis of Arctic governance cannot depart from considering the role of the states extending on the fringes of the Arctic Circle. Talking about Arctic states, we point out an important difference between the Arctic Eight, members of the Arctic Council (AC), and the Arctic Five, the Arctic coastal states to the Arctic Ocean.

The AC's objective as main high-level forum of the region 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.²

Regarding non-Arctic states involvement, twelve non-Arctic states have been admitted as AC observers.³ Among these, China, India, Italy, Japan, Republic of Korea, and Singapore were welcomed as observers at the Kiruna ministerial meeting in May 2013. Interestingly, for the first time, Asian countries were admitted as observers in the AC. In general, we consider the admittance of these new observers as an acknowledgment by the AC of the growing role of non-Arctic states in scientific research and economic activities in the Arctic.

The European Union (EU) has begun developing an Arctic Policy. The Council of Ministers, the European Commission, and 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, and at the policy level, since EU policies on environment, climate, and fisheries all have an impact in the Arctic region. The EU

² Arctic Council, 1996. Ottawa Declaration, art. 1.

³ These are France, Germany, The Netherlands, Spain, United Kingdom, People's Republic of China, Italy, Japan, Republic of Korea, Singapore, and India.

requested full observer status in the AC in 2013. To date, the status of observer has not been granted to the EU because of the ban on seal products imposed in 2009.

To conclude, four of the five arctic coastal states, excluding Russia, are members of the NATO. Possible membership of other two AC, Finland and Sweden, has been debated at the national level. Overall, we note that, in the Arctic, national actions are replacing joint alliance intervention and, in general, Arctic states are not interested in recurring to NATO alliance as dispute resolution mechanism for bilateral disputes.⁴ Moreover, the AC explicitly singles out security from the range of issues that it deals with, making of NATO a marginal player in the region.

1.3 An attractive economic potential

To understand why the Arctic is under the international spotlight, it may be useful to review its immense resource potential. UNCLOS provides a comprehensive framework for resources management in the Arctic. Other sectorial agreements and organisations also have a role in setting rules for resources exploitation.

Fisheries constitute a very relevant share of northern income. Arctic fisheries are concentrated in the Arctic marine area and in the Central Arctic Ocean. Detailed fisheries regulation is provided by regional regimes and fisheries management organisations. The area north of the Bering Strait constitutes a significant exception to this regulation. An area of 2.8 square kilometres, it is covered with ice all year round and no fisheries operate there.

The Arctic has been witnessing a steady increase in the volume of shipping, as shown by the Arctic Shipping Assessment Progress Report.⁵ This increase is undoubtedly connected to changing weather conditions. Despite the fact that transit shipping remains quite modest in numbers, for the future it is believed that the volume of traffic will make of passages like the Northern Sea Route and the North West Passage true competitors of the Suez Canal and vital transportation corridors.

Regarding the oil and gas sector, the US Geological Survey estimates 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. According to USGS findings, the deep ocean basin areas that are contested in terms of extended continental shelf are not expected to contain

⁴ 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].

⁵ Arctic Council, 2009. Arctic Marine Shipping Assessment Report.

considerable hydrocarbons resources. Instead, these resources are considered to lie on the continental shelf or onshore where boundaries are not contested.⁶ Yet, actual and potential exploitation of the natural resources poses a threat to the environment and a challenge to policy makers.

2. Identifying governance trends and goals

Taking this into account, our analysis focuses on three main research questions. What does *governance* mean? Why should one deal with Arctic governance today? What governance settings can be retrieved in the Arctic and what trends do they show?

2.1 Governance: definition, key features, and challenges ahead

To answer these questions, we start from reasoning on a definition of *governance*. In our understanding, governance is *the act of governing*. As such, governance is the sum of laws, norms, policies, and institutions that shape trans-border relations between states, peoples, cultures, and organisations.⁷ In a nutshell, governance is the highest form of coordination and cooperation between state and non-state actors for the achievement of shared interests.

In this respect, our analysis shows that the main features of global governance today are interdependence, complexity of the international arena, multiplicity of actors, wide use of soft law, and multiplicity of threats. In fact, just like new challenges do not respect national boundaries, opportunities are also transboundary. To take these new opportunities, concerted action and solid regulatory framework are indispensable. We conclude that the effectiveness of good governance arrangements depends on the capacity to answer the challenges outline above.

2.2 Arctic governance: definition, key features, and challenges ahead

The concept of Arctic governance mirrors that of global governance. Arctic governance may be defined as the act of governing tasked with region-specific objectives. In the context of

⁶ Johnston, P. F., 2010. Arctic Energy Resources and Global Energy Security. *Journal of Military and Strategic Studies*, Vol. 2 n° 2.

⁷ Weiss, T. G. and Thakur, R., 2010. *Global Governance and the UN: an Unfinished Journey*. Bloomington, Ind.: Indiana University Press.

the Arctic, the concept of *governance* has been defined as a key social function centred on generating collective outcomes that are beneficial to society and address societal needs.⁸

From our analysis, it emerges a highly fragmented and multi-layered picture of Arctic governance, ranging from informal to more formal settings, and involving a complex web of multilateral bodies and non-state actors. This picture contrasts with that of other regions of the world, and with Antarctic governance in particular.

With the aim of transforming this definition into a working concept, we identify key challenges arising in connection to climate change. In particular, we focus our attention on the implications of increasing accessibility to the region for the environment and indigenous peoples. Climate change has harmful impacts on the Arctic ecosystem and indigenous livelihoods *per se*. This element combined with increased resource accessibility poses considerable threats to the circumpolar equilibrium and calls for a coordinated response.

Following Corell *et al.*, we state that, in relation to climate change, Arctic governance is called to ensure production of public goods and availability of resources, avoid public bads (*e.g.* environmental degradation), limit pollution, and protect the right of indigenous peoples to their traditional livelihoods. Multilateral Arctic governance should strive to achieve these goals through devising political coordination, rules for conflict resolution, and appropriate regulations for risk reduction.⁹

2.3 Arctic governance settings and their latest trends

Any definition of *Arctic governance* cannot depart from an assessment of governance settings at the international, regional, and national level in all their specificity. In particular, we draw our attention to the evolution of these governance settings over time and to states' interests underlying this process.

The main result of our analysis is the derivation of key governance trends. At the international level, we focus in particular on the governance function played by UNCLOS through Article 76, regarding the solution of conflicts arising from overlapping claims to an extended continental shelf, and Article 234, establishing enhanced regulation of marine pollution prevention in ice-covered areas. We conclude that UNCLOS has been and effective

⁸ Corell, H., Corell, R., Hanson, U., Kankaanpää, P., McGlade, J., Penikett, T., Senner, S., Simoniya, N., and Young, O., 2010. Arctic Governance Project Report.

⁹ Haftendorn, H., 2013. The Case for Arctic Governance: the Arctic Puzzle. *Institute for International Affairs, Centre for Arctic Policy Studies, University of Iceland.*

governance tool and has provided the Arctic with a universal framework of dispute resolution. Despite this, UNCLOS provides a rather *fragmented and incomplete regulation* and it is not the constitution of the oceans envisaged at its establishment.¹⁰

At the regional level, we focus in particular on the AC and its evolution starting with the Ottawa Declaration, the Ilulissat Declaration, the Nuuk meeting, up until the Kiruna Declaration. In this respect, we argue that Arctic governance has witnessed a process of *progressive expansion of the AC role*, through consolidation of its organisation and activities.¹¹

We also derive another opposing trend. The AC appears to be pulled in two opposite directions by its members, 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. The Arctic states have also committed to *limit the current expansion of the AC role*. Together with admitting new Observers, the AC reiterates that “decisions at all levels of the Arctic Council are the exclusive right and responsibility of the eight signatories to the Ottawa Declaration”.¹² 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 has been reinforced.

To complete the picture of Arctic regional governance, we account for the dense web of soft law arrangements by analysing other inter-governmental bodies and inter-parliamentary bodies. With this analysis, we give evidence of the important *subsidiary function of soft law* in Arctic governance. As a matter of fact, regional and soft law arrangements complement the existing hard law structure and fill possible regulatory gaps, contributing to the progress of marine resources regulation and preservation.

As far as national Arctic policies are concerned, we carry out a detailed analysis of Arctic states’ strategies and policies for the Arctic. In particular, we show the *growing strategic importance* of the northernmost region of the world. Significantly, we state that even in a peaceful region where cooperative relations prevail, *sovereignty and security remain top priorities for the Arctic states*.¹³ These states are aware of the need to cooperate and do

¹⁰ Sands, P., and Peel, J., 2012. *Principles of International Environmental Law*. Cambridge University Press.

¹¹ Russian International Affairs Council (RIAC), 2013. International Cooperation in the Arctic. Report; Arctic Council, 2013. Kiruna Vision for the Arctic.

¹² Arctic Council, 2013. Kiruna Vision for the Arctic.

¹³ Heininen, L., 2012. *Arctic Strategies and Policies: Inventory and Comparative Study*. The Northern Research Forum and The University of Lapland.

recognise the transnational nature of challenges like climate change. Yet, they are very concerned to preserve their own sovereignty, security, and development plans.¹⁴

3. Identifying governance demands and assessing future scenarios

Building on these trends, we address 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?

3.1 Proposal for scenarios analysis for the future of Arctic governance

To begin, we assess the practical implications of the trends identified previously by formulating a model for scenario analysis.

Our proposal for is based on an innovative *governance demands approach*. Consistent with a demand-driven approach, for each scenario we draw the attention to its regulatory functions and to emerging regulatory demands that the given scenario would be able to address. By *governance function* we mean the regulatory functions played by a given set of institutions, norms, laws. By *governance demand* we mean emerging necessities for new regulatory tools to regulate specific subject matters.

The strength of this approach consists in the fact that it focuses on what responds best to regional needs and stakeholders' preferences. In order to make our scenario analysis even more meaningful, for each governance scenario we also analyse opposing demands. The distinguishing feature of our analysis is the ability to bring to light strengths and weaknesses of each governance option, based on Strength-Weakness-Opportunity-Threat (SWOT) evaluation.

Consistent with this approach, we reformulate our research questions to underline the added value of our analysis (Figure 1).

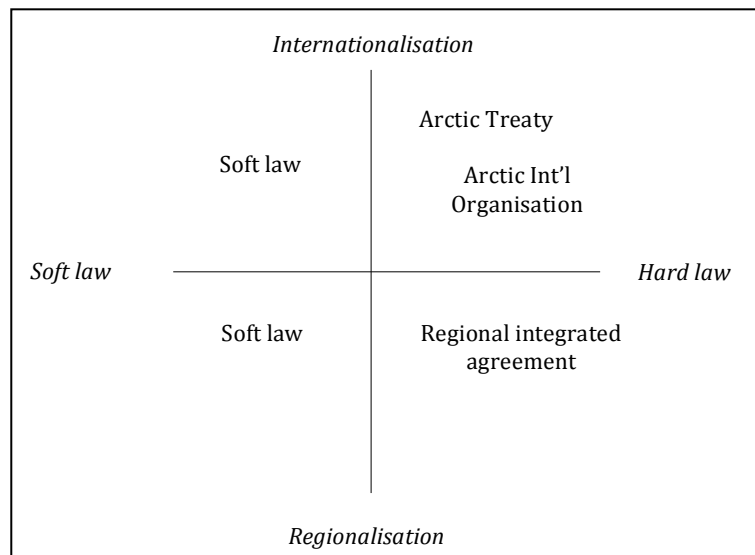
¹⁴Haftendorn, H., 2013. The Case for Arctic Governance: the Arctic Puzzle. *Institute for International Affairs, Centre for Arctic Policy Studies, University of Iceland.*

Figure 1 Research added value

| State of the art | Added value |
|--|---|
| What are possible governance scenarios for the Arctic? | What scenarios would 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? |

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

Figure 2 Model for scenario analysis



3.2 Arctic treaty scenario

The scenario of the conclusion of an Arctic comprehensive binding agreement, or Arctic Treaty, is virtually located at the extremes of the graph (Figure 2) since it entails maximum internationalisation and an entirely hard law structure. It argues for the conclusion of an international treaty covering the Arctic region and addressing it with specific regulations. The plausibility of this scenario is based on a parallel with the Antarctic Treaty as successful example of management of a harsh region, high environmental risk, and competition for natural resources. We make the case for this scenario by arguing that it would regulate territorial rights, environmental protection, and sustainable development, enforcing a system of obligations upon all signatories.

The main strength of this scenario is that it provides for a *legally binding, homogenous, and comprehensive framework of regulation*. Its plausibility is supported by the 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 regulatory gap by imposing legal obligations and ensuring their enforcement. In addition, the Arctic Treaty would provide comprehensive and Arctic-specific regulation, addressing the argument that UNCLOS is not an Arctic-specific convention.

A second argument that could be advanced in support of the Arctic Treaty scenario has to do with *membership and stakeholders*. The Arctic is opening up to new stakeholders from lower latitudes, and even non-state entities, like the EU. 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, energy, to the ultimate benefit of the Arctic itself.

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 simple and flexible regulation contained in the Ilulissat Declaration.¹⁵ Moreover, the comparison with the Antarctic Treaty has at least one limit that appears insurmountable. The *existence of sovereign territorial rights* on Arctic lands and marine areas cannot be overcome.

Another considerable obstacle to the conclusion of the Arctic Treaty is the *lack of political will* on the side of the Arctic states. More than other 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 Ilulissat Declaration.

Furthermore, the Arctic Treaty scenario leaves open the issue of 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.

Even more than that, such Arctic Treaty may not be even *desirable*. Legally binding treaties imply stronger obligations and thus limit effective governance of complex and dynamic systems like the Arctic.¹⁶ In addition, they require lengthy negotiations and they often avoid

¹⁵ Arctic Ocean Conference, 2008. Ilulissat Declaration.

¹⁶ 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.

contentious issues in the interest of building consensus. Last but not least, the role that they usually accord to non-state actors is not comparable to the role that the latter play in soft law frameworks.¹⁷

3.3 Arctic International Organisation

The second scenario considered is the transformation of the AC into a full-fledged international organisation based on a binding treaty, called Arctic International Organisation (AIO). The AC is a forum based on a non-legally binding document, the Ottawa Declaration and does not have power to adopt binding decisions. This scenario answers to the claim that the soft-law nature of the AC limits its effectiveness and impact.

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. The most recent and drastic proposal to transform the AC into an international organisation came about with Finland's Strategy for the Arctic Region.

The strengths of this scenario consists in the fact that there is already a *governance demand for a stronger AC*, and the AC has already been strengthening its role within and beyond the region. Institutionally, the appointment of the AC Permanent Secretariat, the conclusion of two binding agreements under AC auspices¹⁸, 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.

In addition, a treaty-based AC would have a *new status both in the region and outside the Arctic*. Within the Arctic region, a potential AIO would grant more coordination, coherence, and effectiveness to the action of Arctic states. 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 and compliance.

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, namely Finland, Sweden, and Iceland, would immensely benefit from this scenario.

¹⁷ *Ibid.*

¹⁸ The Arctic Aeronautical and Maritime Search and Rescue Agreement, and the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic.

This being said, the AIO scenario appears unfeasible from several points of view. First of all, like for the Arctic Treaty scenario, the proposal of a *hard law basis* for the AIO disregards the demand for a simple and flexible set of regulation contained in the Ilulissat Declaration.

Secondly, we point out the *lack of political will and AC resistance to change*. The AC has been practically the same kind of inter-governmental forum since 1991 and has taken a strong no treaty approach.¹⁹

Last but not least, another weakness of this scenario emerges at the level of *membership and structure*. We note that it is not by chance that the proposal for the transformation of the AC into an international organisation came from Finland and not from one of the Arctic Five. The Arctic Five have been strong supporters of a body without legal personality to guide cooperation in the region, and with the Ilulissat Declaration they stressed once more their commitment to maintain their leadership. 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.

3.4 Soft law scenario

In the soft law scenario, regulation of environmental issues of shared concern would left uniquely to non-binding instruments. In the spirit of Ilulissat Declaration, UNCLOS would remain the only comprehensive treaty and systematic cooperation continues within the AC and at the bilateral level, mainly through declarations and informal agreements.

This scenario relies on the fact that soft law has been *the core of Arctic governance so far*. As a matter of fact, Arctic governance developed using primarily a soft law approach since its establishment with the Ottawa Declaration and soft law arrangements already give a meaningful contribution to the management of environmental and non-environmental issues.

Another strength of this scenario is the *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. To be sure, this does not mean that soft law arrangements are necessarily less effective. On the contrary, the political value of soft law in some case equals a legal obligation.

¹⁹ Koivurova, T., 2010. Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance. *Polar Record*, Vol. 46 n° 237.

Soft law agreements allow for *flexible and timely solutions to abrupt changes*. They are normally concluded in a very short period of time and parties are encouraged to find a common ground by the very non-binding nature of their commitment. Responding to environmental challenges in a timely manner, the soft law scenario is more flexible, quick, and less demanding but potentially more effective.

Another advantage of this scenario is that it would allow for *broader participation and inclusion*. Hasanat notes that soft law allows for bottom-up initiatives to be heard at higher level of governance. This entails more but also increased direct civil society participation.²⁰ In the case of the Arctic, this is particularly true with regards to indigenous peoples organisations.

Notwithstanding this, the greatest weakness of the soft law scenario is the lack of binding instruments in a moment when the Arctic seems to have a growing need for enforceable rules, especially in the field of environmental risk prevention and response. Another interesting weakness of the soft law scenario is provided by the *testing-without-committing* argument. States may use soft law as a test to understand whether they want to commit to more demanding solutions.²¹ This could often lead to inaction on issues covered by soft law regulation.

3.5 Regional integrated agreement scenario

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 having as main object environmental regulation. This regional agreement would also entail the implementation of the Ecosystem Based Management (EBM) policy mechanism. This scenario provides 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 solution to local environmental challenges.

We define EBM 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 by showing that, within a given ecosystem, all human activities should be considered from an ecosystem perspective.²²

²⁰ Hasanat, W., 2012. *Soft Law Cooperation in International Law: the Arctic Council's Efforts to Address Climate Change*. Rovaniemi: Lapland University Press.

²¹ *Ibid.*

²² Slocomber, D. S., 1998. Lessons from experience with ecosystem-based management. *Landscape and Urban*

In support of this scenario, we argued that the regional agreement could build upon the United Nations Environmental Programme (UNEP) Regional Seas Programme already in place. In alternative, an independent regime could be established following the example of the OSPAR Convention for the North East Atlantic.²³ As far as EBM is concerned, the AC has been long promoting the idea of EBM discourse for the Arctic.

The first strength of this scenario is that the *legal basis for the conclusion of a regional seas agreement is already available*. UNCLOS provides the international framework, particularly with Article 123 in combination with Article 234, the AC serves as political forum fostering the conclusion of the agreement, the Polar Code provides shipping guidelines, and the OSPAR and other regional agreements give a model for pollution control.²⁴

In addition, the regional agreement and the EMB would be able to devise *targeted and integrated solutions*. EBM captures the non-linear changes that affect a given socio-ecological system, like a large marine ecosystem, going beyond the fragmentation of national claims.²⁵ 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 practice.²⁶ Therefore, the main strength of this approach is that it helps devising cooperative regimes and addressing interrelated issues in an integrated way.²⁷

In addition, we also take into account the *reinforcing effect of the regional agreement and EBM*. A regional agreement would reinforce EBM management of marine and coastal areas in the Arctic by providing a comprehensive and region-specific framework where EBM could be best enforced. At the same time, EBM in the Arctic would make compliance to the regional agreement smoother.

Coming to the weaknesses, the first problem relates to *Article 122 and the qualification of the Arctic Ocean as a semi-enclosed sea*. Rayfuse defines the debate around this issue as a

Planning, Vol. 40.

²³ 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.

²⁴ *Ibid.*

²⁵ 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.

²⁶ *Ibid.*

²⁷ Young, O. R., 2010. Arctic Governance - Pathways to the Future. *Arctic Review on Law and Politics*, Vol. 1 n° 2.

vexed question.²⁸ 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.²⁹

Another substantial objection is the fact that the *US is not part to UNCLOS* to date.³⁰ One of the pitfalls of the scenario is that the regional agreement would rest on UNCLOS international framework as legal basis. The US would need to ratify UNCLOS for such an agreement to be approved under UNCLOS.

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

Furthermore, devising regional and specific solutions to environmental challenges in the Arctic could cause *holes in the regulation* for threats that come from the rest of the world. Most threats to the Arctic environment, e.g. greenhouse gases, are generated outside the region and their regulation would not be subject to control by an agreement for the Arctic Ocean.³¹

Last but not least, *the path toward EBM implementation across Arctic states appears more tortuous* than one may think. 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 knowledge base for it at the local level, the choice of appropriate policy instruments, and cooperation across governance sectors.³² Overall, EBM is still a work in progress and its implementation and success will vary deeply depending on local conditions, geography and specific needs.

4. Prospects of Arctic governance: guidelines for the future

²⁸ 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.

²⁹ Franckx, E., 1993. *Maritime Claims in the Arctic: Canadian and Russian Perspectives*. Martinus Nijhoff Publishers; Rothwell, D. R., 1996. *The Polar Regimes and the Development of International Law*. Cambridge: Cambridge University Press.

³⁰ 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.

³¹ 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.

³² 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.

In our analysis we systematically exclude 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 failure. On the contrary, the scenario analysis achieves its objective of shedding light on which solutions are viable for the future of Arctic governance, which ones are feasible, and which ones are desirable. Even more than that, it helps our understanding of the fact that there are governance demands that often contrast with each other and that, therefore, call for careful balancing of interests and voices.

Based on the analysis of governance trends and needs, as well as on the conclusion drawn from the scenario analysis, we 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, in fisheries, shipping, pollution prevention and response, and adaptation measures.

Work on the implementation of the recently concluded Polar Code in order to strengthen environmental protection.

Extend the coverage of existing fisheries management organisations to the Central Arctic Ocean in accordance with the precautionary principle.

Include in Arctic cooperation non-Arctic and non-state actors that bring new material and human resources to the region.

Strengthen the effectiveness of the Arctic Council as a high level regional forum for cooperation and coordination.

Use and, where possible, strengthen existing fora of cooperation rather than creating new ones.

Include environmental considerations in all aspects of Arctic governance, from legal regulation to resource management and conservation.