LUISS GUIDO CARLI UNIVERSITY
DEPARTMENT OF LAW
FINAL THESIS IN INTERNATIONAL LAW

ENVIRONMENTAL GOVERNANCE IN A CHANGING ARCTIC: HOW A NEW GOVERNANCE REGIME FOR THE PROTECTION OF BIODIVERSITY BEYOND NATIONAL JURISDICTION CAN HELP TACKLE FUTURE CHALLENGES

Margherita Valentina Romani
Student No 138593

Thesis supervisor:
Prof. Christopher Michaelsen

Co-supervisor:
Prof. Pietro Pustorino

A.Y. 2019/2020

Table of contents

List of abbreviations

ABA	Arctic Biodiversity Assessment
ABMT	Area-Based Management Tools
ABNJ	Areas Beyond National Jurisdiction
AEPS	Arctic Environmental Protection Strategy
A5	Arctic Five
A8	Arctic Eight
BBNJ	Biodiversity Beyond National Jurisdiction
CAFF	Conservation of Arctic Flora and Fauna
CAO	Central Arctic Ocean
CAOFA	Central Arctic Ocean Fisheries Agreement
CBD	Convention on Biodiversity
CLCS	Commission on the Limits of the Continental Shelf
COP	Conference Of the Parties
EEZ	Exclusive Economic Zone
IGC	Inter-Governmental Conference
ILBI	International Legally Binding Instrument
IMO	International Maritime Organisation
ISA	International Seabed Authority
MPA	Marine Protected Area
PAME	Protection of the Arctic Marine Environment
RFMA	Regional Fisheries Management Arrangement
RFMO	Regional Fisheries Management Organisation
SAO	Senior Arctic Officials
SAR	Search and Rescue
TFAMC	Task Force on Arctic Marine Cooperation
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly

Chapter 1
Introduction

Before addressing Arctic issues, it is necessary to determine what the "Arctic" is. The Encyclopaedia Britannica defines it as the "northernmost region of the Earth, centered on the North Pole"[1]. This term has sometimes been used to designate the area within the Arctic Circle, a mathematical line that is drawn at latitude 66°30′ N, but scientists agree that this line is without value as a geographic boundary.[2] In the absence of any established delimitation, a commonly used guide to determine where the Arctic region begins is the irregular line that marks the northernmost limit of the stand of trees – beyond this point, the extreme polar conditions make it impossible for trees to grow.[3] The area north of the tree line is made up of the Arctic Ocean, the smallest of the world's oceans, and adjacent territorial regions.[4] This ocean has a thick sea ice cover and is encircled by the landmasses of North America, Eurasia, and Greenland.[5] The term "Central Arctic Ocean (CAO)", on the other hand, refers here to a legal rather than geographical designation, indicating the portion of the Arctic Ocean that lies beyond coastal states' jurisdiction.

The Arctic is currently undergoing tremendous change – the effects of anthropogenic climate change are seriously affecting the Polar North and the wide array of ecosystems and biological diversity that it is home to. In particular, ocean acidification and the change in ocean temperatures and extent of summer ice pose a serious threat to the very survival of many Arctic species, which are particularly sensitive to changes in their habitat.[6] In many ways, the effects of climate change and pollution are being felt more strongly in the Arctic than in other areas of the world. Most of the air pollution originating from the northern hemisphere tends to travel towards the Pole due to the pattern of its atmospheric circulation, resulting in serious degradation in air quality and in the phenomenon of the "Arctic haze", first recorded in 1870.[7] The haze is rust-brown in colour, and chemical analysis have revealed it to be an acidic mixture of hydrocarbons and other pollutants, carried northward by the wind.[8]

Favourable climatic conditions will also make the Arctic Ocean more accessible to human activities. Industrial and commercial interference in the region will become more common and intrusive, posing new and unknown dangers to the Arctic environment. The loss of sea ice will open up new and shorter shipping

---

[1] Encyclopaedia Britannica website: Arctic article, written by Terence Edward Armstrong et al. https://www.britannica.com/place/Arctic accessed 26 August 2020
[2] *Ibid.*
[3] *Ibid.*
[4] Encyclopaedia Britannica website: Arctic Ocean article, written by Ned Allen Ostenso https://www.britannica.com/place/Arctic-Ocean accessed 26 August 2020
[5] *Ibid.*
[6] World Wildlife Fund website: articles on Arctic Wildlife at https://arcticwwf.org/work/wildlife/ accessed 28 August 2020
[7] University of Utah, "Arctic clouds highly sensitive to air pollution." *ScienceDaily*, 3 January 2018 www.sciencedaily.com/releases/2018/01/180103101136.htm accessed 28 August 2020
[8] McCannon 2012, 272

routes to travel from East Asia to northern Europe, as well as new possibilities for mining extraction and resource exploitation.[9]

In September 2019, the UN Intergovernmental Panel for Climate Change released the "Special Report on the Ocean and Cryosphere in a Changing Climate", painting a very grim picture. Scientists found that Arctic sea ice is declining at a rate that is unprecedented in the last 1000 years, and projections were also made for a sea ice free September by the end of the century, depending on whether effective mitigation measures are put in place.[10] The cumulative effects of these profound changes are likely to cause "further habitat contraction and changes in abundance"[11] of Arctic species and ecosystems.[12] Marine ecosystems of the Arctic Ocean support more than 5.000 animal species (including mammals, commercially valuable fish species, and some of the largest seabird colonies on the planet), 2.000 species of algae and tens of thousands of microbes.[13] Sea ice plays a central role in supporting biodiversity, as the survival of endangered Arctic species such as the polar bear and the walrus depends on it.[14] In a nutshell, as atmospheric scientist Tim Garrett summed up, "The Arctic is changing incredibly rapidly – much more rapidly than the rest of the world, which is changing rapidly enough"[15].

The IPCC Report also highlighted that governance systems for the Arctic are not up to the task of addressing the challenges posed by projected future changes.[16] Currently, the existing framework for Arctic governance fails to provide an integrated, legally binding regulatory regime that covers the Arctic Ocean in its entirety.[17] In fact, efforts for the harmonisation of its protection regime need to coordinate all the different legal regimes that find application in its waters. On this point, scholars and commentators have in the past drawn parallelisms between the Polar North and the Polar South. The latter is governed by the 1959 Antarctic Treaty, which establishes a strong legal regime for the region, stating that "Antarctica shall be used for peaceful purposes only"[18] and be an area for international cooperation in scientific research[19]. Governing the Arctic, however, has proved more challenging for both geographical and political reasons. The Antarctic continent is a landmass surrounded by the ocean, while the Arctic is an ocean surrounded by land belonging to five different states, which exercise their sovereignty and jurisdiction over vast areas of the Arctic Ocean.

---

[9] De Lucia 2017, 236
[10] Meredith, M., M. Sommerkorn, S. Cassotta, C. Derksen, A. Ekaykin, A. Hollowed, G. Kofinas, A. Mackintosh, J. Melbourne-Thomas, M.M.C. Muelbert, G. Ottersen, H. Pritchard, and E.A.G. Schuur, 2019: Polar Regions. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. In press.
[11] *Ibid.*
[12] *Ibid.*
[13] CAFF 2013. Arctic Biodiversity Assessment. Status and trends in Arctic biodiversity. Conservation of Arctic Flora and Fauna, Akureyri, 380 http://arcticlcc.org/assets/resources/ABA2013Science.pdf accessed 28 August 2020. [all]
[14] *Ibid.*
[15] Timothy J. Garrett, as cited in the University of Utah ScienceDaily article (n.7)
[16] IPCC Report, 2019
[17] Prip 2019, 6
[18] The Antarctic Treaty (signed on 1 December 1959, entered into force on 23 June 1961), Conference on Antarctica, Washington D.C., Art. 1
[19] *Ibid*., Art. 2

For all these reasons, compared to its southern counterpart, the international regime for the Arctic has always been more fragmented.[20]

A significant portion of the Arctic Ocean falls under the jurisdiction of the five Arctic coastal states (Russia, the United States, Canada, Denmark/Greenland and Norway), the so-called "Arctic Five (A5)". Under the International Law of the Sea regime, they are accorded rights and obligations over their maritime zones stretching up to 200 nautical miles (nm) from the coast. On the other hand, Arctic Areas Beyond National Jurisdiction (hereafter: ABNJ) cover approximately 2.8 million square kilometres beyond coastal states' established boundaries.[21] Scientific understanding of the Arctic marine environment beyond national jurisdiction remains insufficient due to the thick ice cover and extreme climatic conditions that make this area almost inaccessible.[22] However, Arctic high seas concerns have started to gain global attention. Arctic and non-Arctic states' cooperative efforts led in 2018 to the drafting of a protection regime for Arctic ABNJ fisheries, enshrined in the Central Arctic Ocean Fisheries Agreement (CAOFA). The success of this process also developed the role of the A5 grouping as an arena for cooperation – their *ad hoc* meetings always had significant implications for the Arctic region at large, but this was the first instance when they produced a legally binding agreement.[23] On the other hand, the Arctic Council is still regarded as the main forum for Arctic cooperation: its participants include the eight Arctic states (the so-called A8, including the five coastal states plus Sweden, Iceland and Finland), Indigenous Peoples Organisations, NGOs and non-Arctic Observer states.[24] The Council remained outside of the CAOFA process, but recent examples have highlighted its policy-making potential.

These recent developments have built momentum for a renewed commitment of all Arctic players to regional and global cooperation, and my research focuses on how the new approaches to Arctic governance that have emerged in the last decade can be operationalised in order to tackle future environmental and political challenges. In fact, there is a strong need for adaptation measures to be implemented throughout the Arctic Ocean. In environmental policy, the term refers to regulation that is introduced for the purposes of reducing vulnerability to the effects of climate change, rather than reduce and curb emissions.[25] The majority of the pollution affecting the Arctic region comes from somewhere else in the world – therefore, a regional response to climate change should focus on adaptation, addressing the wide-ranging impacts of climate change in a comprehensive manner.

My analysis presents the on-going Biodiversity Beyond National Jurisdiction (BBNJ) process as a starting point and the next best opportunity to work towards a new era for Arctic environmental governance. In 2015, a process was initiated by UNGA to "develop an international legally binding instrument [ILBI]

[20] Molenaar et al. 2013, 400
[21] Prip 2019, 3
[22] Kraabel 2019, 6
[23] Kuersten 2016, 390
[24] Arctic Council website: About https://arctic-council.org/en/about/ accessed 28 August 2020
[25] Dupuy and Vinuales 2018, 192

under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction"[26]. A Draft Text of the ILBI was released in November 2019, which heavily relies on cooperation with existing regional and subregional bodies for its implementation.[27] This led to commentators suggesting that this interaction with other instruments, frameworks and bodies will be at the forefront of its development and functioning.[28] Therefore, ILBI implementation will require Arctic stakeholders not only to cooperate within themselves, but to interact with this international instrument in a shared commitment to enhance biodiversity conservation beyond national jurisdiction. In order to do so, the current governance framework would have to come to terms with its fragmentation, as well as with recent geopolitical friction and Arctic states' reticence to accept restrictions over their sovereignty[29]. Therefore, a satisfying solution for ILBI cooperation and implementation would lead the way towards a more successful future for Arctic governance, not only in the field of biodiversity protection but in tackling future environmental changes, adapting the Arctic legal regime to the Anthropocene.

1.1 Research question

The present paper attempts to answer the following research question:

How might Arctic actors shape their cooperation to yield the best possible results in terms of regional implementation of the future ILBI for the protection of BBNJ and how does this successful governance response help tackle other future challenges, both environmental and political, affecting the Polar North?

In order to answer this question, I will tackle additional sub-questions. For example, how are the ILBI's institutional arrangements shaped in the Draft Text? What are Arctic states' main interests and concerns in regards to the Arctic Ocean? What are the main strengths and weaknesses of existing fora for Arctic cooperation, namely the A5 and the Arctic Council? How can these be channelled in future cooperative efforts? What challenges lie ahead and how does the proposed solution help address them?

[26] UNGA Res. A/69/292 'Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 19 June 2015
[27] A/CONF.232/2020/3 Annex, 'Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 18 November 2019 (ILBI Revised Draft Text), see Arts 6, 48-51
[28] Blanchard et al. 2019, 6
[29] Molenaar et al. 2013, 400

1.2 Methodology

Lately there have been increasing calls for an enhancement of the regime for Arctic governance, including the adoption of a comprehensive and legally binding instrument *à la* Antarctic Treaty.[30] However, Arctic coastal states explicitly dismissed this idea in the Ilulissat Declaration[31], and this solution would be almost impossible to implement without the support of Arctic states. Hence, my research is based on how the Arctic regime is today, presenting proposals that build on Arctic bodies' existing governance role rather than arguing for drastic changes. The thesis starts with a descriptive approach, presenting the governance regime for the Polar North as it stands today, eventually moving on to adopt an evaluative approach when taking into account the strengths and weaknesses of the A5 and the Arctic Council. The last chapters employ a normative approach, building on previous analysis in order to respond to the research question.

The literature is mostly comprised of scholarly analyses, as well as transcripts and summaries of negotiating sessions and relevant legal instruments. The issue of Arctic environmental governance has been at the forefront of Oran Young's research – in the last couple of years, the American scholar has focused his attention on how recent geopolitical changes have impacted the region, and how the role of the Arctic Council could be enhanced.[32] Christian Prip urged Arctic states to use the ILBI negotiation process as an incentive to take responsibility and be proactive in creating a comprehensive protection regime for the Arctic Ocean[33], and Timo Koivurova and Richard Caddell analysed the Arctic Council's potential in fostering cooperation and implementation[34]. My research aims to add something to previous research by analysing the ILBI in light of our current understanding of what its institutional arrangements might look like, based on the November 2019 Draft Text. Furthermore, I intend to contribute to Oran Young's analysis of the changing Arctic by taking into account some of the newest geopolitical stressors, including the Covid-19 crisis and its damaging effects on international relations.

1.3 Structure

The thesis begins with a historical overview of how Arctic cooperation has been shaped throughout the decades, starting from the Cold War era. In fact, it is in the aftermath of the Second World War that the Arctic region rose to global prominence as a military and geopolitical battleground. In the following sections, the main developments that occurred in the post-Cold War era are presented, such as the creation of the Arctic Environmental Protection Strategy (AEPS) and the process that led to the establishment of the

[30] European Parliament, Resolution of 9 October 2008 on Arctic governance https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-474 accessed 29 August 2020
[31] Ilulissat Declaration, Arctic Ocean Conference, Ilulissat, Greenland 28 May 2008. https://cil.nus.edu.sg/wpcontent/uploads/2017/07/2008-Ilulissat-Declaration.pdf accessed 29 August 2020
[32] Young 2019, 1
[33] Prip 2019, 7
[34] Koivurova and Caddell 2018, 136

Arctic Council in 1996. The chapter has a strong focus on how Arctic issues that are still present today first emerged, including environmental degradation, the difficult assimilation of indigenous communities, and governance fragmentation. After analysing how the Arctic Council came to be, the third chapter considers its role in environmental governance and in Arctic science and policy. In particular, three instances where the Council contributed to the drafting of legally binding regional agreements are presented, and the overall significance of these developments is assessed. A final section is dedicated to the failure of the Task Force on Arctic Marine Cooperation (TFAMC), which was supposed to enhance "the Council's role in Arctic marine stewardship"[35].

The most powerful players in the Arctic arena, namely Arctic states, are the object of discussion in chapter 4. The A5/A8 issue is first introduced, especially Arctic coastal states' show of exceptionalism in recent A5-led projects. An analysis of the fragmentation among Arctic states' follows, with a special focus on how their different views and approaches may affect cooperation. Eventually, the A5's potential to become the new leading forum for Arctic cooperation is assessed against the backdrop of the current governance framework, taking into account the Arctic Council's main strengths and weaknesses. The following chapter provides an overview on the CAOFA process, including the drafting of the Oslo Declaration, the negotiations that ensued and the main contents of the final Agreement.

The on-going BBNJ process is introduced in chapter 6, starting with an overview of the existing frameworks and instruments that relate to international biodiversity and their application in the Arctic, alongside with the legal regimes that are specific to this region. The objectives and principles of the ILBI are presented, but a special focal point is on its institutional arrangements. In fact, the Draft Text provides the starting point for an analysis of how the hybrid approach might likely take form in the final BBNJ Agreement. A final section on Arctic states' preferences for a regional approach introduces the topic of their main interests and perspectives on the BBNJ negotiations, as the following chapter directly addresses some political and legal issues that might hinder regional cooperation and implementation of the ILBI. Keeping in mind the A5/A8 issue, its sections focus on Arctic coastal states' concerns over their continental shelf beyond 200 nm in the Arctic Ocean and consider the possibility of their uneven ratification of the BBNJ Agreement.

In Chapters 8 and 9, I build on what was presented so far and directly respond to the research question. First, I analyse the CAOFA process in order to answer the following questions: to what extent is an A5-led process desirable in the context of regional and international cooperation? What are the strengths and weaknesses of the CAOFA? On the other hand, I address the Arctic Council's shortcoming in regards to ABNJ governance, and assess whether a new regional body should be set up. After concluding that this process would likely fail to yield any desirable result, I present proposals that build on the Council's existing role and expertise. The last section argues for a cooperative mechanism that engages both the A5 and the Arctic Council, playing on their main strengths to enhance Arctic environmental governance. The likelihood of

[35] Arctic Council Task Force on Arctic Marine Cooperation, Report to Ministers of the Task Force on Arctic Marine Cooperation. Arctic Council Task Force on Arctic Marine Cooperation (TFAMC), 2017, 1

success and effectiveness of this model is then assessed on the backdrop of the current Arctic geopolitical situation, taking into account the failure of the 2019 Rovaniemi Ministerial meeting and the difficult relations between the United States, Russia and China. I present how the governance model I have envisaged can help tackle these (mostly political) issues, and foster cooperation in devising and implementing successful adaptation measures for the Arctic Ocean.

In the conclusion, I summarise and evaluate the thesis' main findings. I further reflect on the challenges ahead, underscoring how proactive efforts of Arctic states are necessary to build a stronger response to the threats disrupting the unique Arctic environment.

Chapter 2
History of Arctic cooperation

This chapter provides a short overview of Arctic history, with a focus on how governance regimes have evolved throughout the last decades. The following sections start by presenting the Arctic in the Cold War and post-Cold War world. In fact, for the purposes of my research, this is when the notion of the Arctic as a legal and political region first emerged. However, the geopolitical tensions and polarized global scene stifled cooperation for decades, and it is during the 1980s and the 1990s that the need for a strong and homogenous "Arctic policy" was first recognised. This "new wave of international cooperation in the Arctic"[36], as Oran Young calls it, led to successful achievements such as the establishment of the Arctic Council in 1996. The last section considers the relevant negotiations, and stresses how Arctic states' main interests shaped the Council's role and functions.

Before we begin, however, it is necessary to acknowledge that the current Arctic legal order is the result of centuries of occupation from western powers. Generations of Arctic indigenous people have suffered at the hands of western explorers and European nations, who pursued their claims over Arctic and subarctic land through colonialism and exploitation. Starting in the late sixteenth century, the French and English established colonies in Canada, the Russians did so in Alaska and Siberia, and the Kingdom of Denmark and Norway renewed its claim to Greenland.[37] As a result, Arctic natives were exposed to new conflicts and infectious diseases, while the Europeans rampaged their land for commercially valuable resources such as walruses and fur-bearing animals.[38] The exploitation continued with increasing intensity in the nineteenth and twentieth century, when thousands of outsiders reached various areas of the Pole in search of coal, iron and gold.[39] During these years, Arctic land was sold and bought freely, and in 1867 the United States famously purchased Alaska from Russia – these transactions occurred with little if no regard of the needs of indigenous communities.

With this short caveat, the author wishes to remind the reader that the Arctic region is no stranger to the damaging effects of imperialism and colonialism, and underscore that the effects of this history can even be seen today. Indigenous communities count around 500.000 of the 4 million Arctic inhabitants[40], and their life and economy continue to be intrinsically connected to their land[41]. For this reason, they are left particularly vulnerable to the disrupting effects of climate change, which may affect hunting, fishing and

---

[36] Young 1998, 34
[37] McCannon 2012, 78
[38] *Ibid*., 88
[39] *Ibid*., 154
[40] Arctic Council website: Permanent Participants https://arctic-council.org/en/about/permanent-participants/ accessed 28 July 2020
[41] Arctic Centre, University of Lapland, Focus: Arctic Indigenous Peoples https://www.arcticcentre.org/EN/arcticregion/Arctic-Indigenous-Peoples# accessed 28 July 2020

herding, as well as the very existence of their ice-dependant settlements, while they have very little power in the Arctic arena.[42] Therefore, even though the Arctic's political and legal history has seen states as the main actors of regional cooperation, as the following sections show, there is the need for a bigger engagement of indigenous voices in creating the new infrastructure for Arctic environmental governance.

2.1 The Cold War

There are some noteworthy advancements in Arctic regime formation that preceded the Second World War, such as the 1911 North Pacific Fur Seal Convention and the 1920 Treaty of Spitsbergen (currently referred to as the Svalbard Treaty). The former addressed the issues of preservation and protection of fur seals in their range areas around the Bering Sea, is the first international convention of its kind, and is widely regarded as a success.[43] The Svalbard Treaty, on the other hand, was centred on issues of security and sovereignty in the Svalbard archipelago, located in the Arctic Ocean, and the international regime established therein is still in force today. It provided for the demilitarisation of the area and recognised Norway's sovereignty over the archipelago, even though its exercise of sovereignty is not unfettered.[44] It is noteworthy that this treaty saw the participation of many non-Arctic states including China, which became a signatory in 1925, as further proof of its long history of participation in Arctic politics.[45]

However, any further development in Arctic cooperation was halted by the outbreak of WWII and the ensuing Cold War. The region, like the western world alike, was polarized between two opposing groups, with the Soviet Union on one side and the NATO allies on the other. As a result, regional cooperation became almost unfeasible and environmental governance was never pursued, the only exception being the 1973 Agreement on the Conservation of Polar Bears.[46] This outlawed intrusive hunting of polar bears and represented a significant achievement given the political climate of those times. However, during the Cold War the world mostly looked at the Arctic as an important military and geopolitical battleground. The region was increasingly militarised and used as the testing and deployment ground for strategic weapons such as underwater nuclear devices, as well as exploited for its raw materials.[47] These years saw the development of its infrastructure and brought a general modernisation of the region, but also made evident new pressing issues such as the difficult assimilation of indigenous people, transboundary air and water pollution and environmental disasters.

The Iron Curtain that divided Europe between the "East" and the "West" during the Cold War can be said to have virtually stretched up north to the Arctic region, where both important NATO allies and the

---

[42] *Ibid.*
[43] Young 1998, 30
[44] *Ibid.*, 30-31
[45] Pan and Huntington 2015, 155
[46] Young 1998, 31
[47] *Ibid.*, 29

USSR were sovereign powers. The Polar North started to gain increasing military and geopolitical importance, for a number of reasons. Its mere geographic features made it an attractive choice as a strategic front in the Cold War: in fact, Alaska held strategic importance for both air and sea power due to its proximity to the Soviet Union, and the sparsely populated region was perfect as the testing ground of new strategic and tactical weapons.[48] Furthermore, and perhaps most importantly, from the Arctic Ocean any target in Europe, Northeast Asia or North America could be easily struck in a nuclear attack.[49] It can be said that the Arctic was utilised as an important theatre for the two superpowers' strategies of nuclear deterrence.[50]

These military operations, which increased in number and scope throughout the decades, often came at the expenses of the Arctic environment and its peoples. During the Cold War, not only was the region under constant threat of military destruction, but the increase in population that accompanied the development in military and economic activities produced booming quantities of pollution and human waste.[51] Furthermore, both superpowers conducted atomic tests in the Arctic – in October 1961, the Soviets exploded the most powerful nuclear device ever detonated, the so-called "Tsar-Bomba", and the scope of the resulting environmental devastation is yet to be measured.[52] These years saw the rise in Arctic indigenous people's willingness to counter the hegemonic powers that ruled upon them, but results were somehow mixed.[53] In the 80s, the United States and Canada resisted opposition by the Dene people and started using the Beaufort Sea as a testing and deployment ground for their newly developed cruise missiles.[54] Under the 1983 Canada-U.S. Test and Evaluation Program, the United States was able to fly missiles over the Dene's traditional land, and these operations continued until after the end of the Cold War.[55]

In March 1989, the Alaskan ecosystem suffered the damaging effects of the infamous *Exxon Valdez* oil spill, which released more than 11 million gallons of oil into Alaskan waters.[56] The incident had a disastrous effect on the local seabird colonies and marine biodiversity, and the levels of toxicity in these waters remain high to this day, more than three decades later.[57] At the same time, however, the general public' environmental conscience was growing fast, resulting in new standards being developed for wildlife conservation.[58] These sometimes clashed with the specific needs of indigenous communities that depended on hunting seals and whales for their survival. In 1977, Alaskan Inupiat and Yupik managed to create the Inuit Circumpolar Circuit (ICC), which lobbied the International Whaling Commission and was granted a limited quota of whales each year, circumventing the worldwide moratorium on commercial whaling

[48] Zellen 2009, 74-76
[49] *Ibid.*, 76
[50] *Ibid.*, 82
[51] McCannon 2012, 236-237
[52] *Ibid*., 245
[53] *Ibid.*, 237
[54] Zellen 2009, 81
[55] Zellen 2009, 81
[56] McCannon 2012, 255
[57] *Ibid.*
[58] *Ibid*., 251-252

established in 1982.[59] Still, many instances remained where a successful balance between wildlife conservationist efforts and indigenous needs was difficult to achieve.

During the Cold War, international cooperation in the Arctic was centred on military assistance and strategic coordination, and any governance mechanism for the region was yet to be created. Things changed with the fall of the Iron Curtain, allowing Arctic players to commit to a new era of non-military cooperation for the Polar North. On 1 October 1987, Mikhail Gorbachev held a speech in Murmansk, which underscored the need to designate the Arctic as a "zone of peace and fruitful cooperation"[60]. The Murmansk speech held important symbolic value for the Arctic region at large, and it is widely regarded by scholars as an important sign of the beginning of a new era of Arctic cooperation.

2.2 The Arctic in the Post-Cold War era

The fall of the Iron Curtain led to the fall of the Arctic's "Ice Curtain". As tensions in the High North softened, the process of demilitarisation began, and Arctic history entered a new era in a vastly transformed world. Non-military cooperation could now be pursued, and it was further perceived as necessary in light of the public's increasing concerns over climate change. In 1991, this led representatives of the eight Arctic states to meet in Rovaniemi, Finland and to sign a joint Declaration on the Protection of the Arctic Environment[61]. The Declaration was the result of a process which was the first to include three of the indigenous peoples' organisations that would eventually become Permanent Participants in the Arctic Council, and marked the creation of the Arctic Environmental Protection Strategy (AEPS).[62] The latter committed Arctic states to cooperate in order to better their understanding of regional environmental concerns and determine the best strategies to tackle them accordingly.[63] Working groups were established to further these objectives, including one on the Conservation of Arctic Flora and Fauna (CAFF).[64] It can be said that the object and scope of the AEPS reflected Arctic states' concerns of the times, and focused on specific pollutants rather than on a holistic and comprehensive approach to the protection of the Arctic ecosystem.[65] Still, this first example of soft law cooperation set the tone for what was yet to come in terms of regional governance.

The growing interest in global and regional cooperation was fostered by the drafting of the United Nations Convention on the Law of the Sea (UNCLOS)[66] in 1982, which offered a much needed legal

---

[59] *Ibid*., 255-256
[60] Mikhail Gorbachev's speech in Murmansk, Russia, 1 October 1987 https://www.barentsinfo.fi/docs/Gorbachev_speech.pdf accessed 7 August 2020
[61] Rovaniemi Declaration on the Protection of the Arctic Environment, Rovaniemi, Finland, 14 July 1991 https://iea.uoregon.edu/treaty-text/1991-declarationprotectionarcticenvironmententxt accessed 8 August 2020
[62] Young 1998, 35-36
[63] *Ibid*., 35
[64] *Ibid*., 39
[65] *Ibid*., 38
[66] United Nations Convention on the Law of the Sea (signed 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS)

framework for governance efforts in the Arctic and elsewhere. This Convention has been deemed the "constitutions for the oceans", as its 320 articles comprehensively codify International Maritime Law. Its rules have now been crystallised as customary in nature and, as such, they are binding even on non-parties. Many UNCLOS provisions put the emphasis on international and regional cooperation, which shall ensure the protection and preservation of the marine environment[67] and the promotion of marine scientific research[68]. Furthermore, the duty to cooperate soon became one of the main procedural principles of International Environmental Law, as the 1992 Rio Declaration on Environment and Development recognised the duty of "States and people"[69] to cooperate "in the further development of international law in the field of sustainable development"[70].

These years saw the rise to prominence of non-state actors in the Arctic scene, especially indigenous peoples' groups and environmental organisations. [71] On the other hand, since the end of the Cold War, Arctic states saw little intrusion from the international community and non-Arctic states into regional politics.[72] All these developments, and the need for a new governance forum that would harmonise this multitude of Arctic voices, eventually led to the first step being taken towards the creation of a more comprehensive regime for regional governance.

2.3 The establishment of the Arctic Council

The new political climate led to the 1995 commencement of negotiations to create an environmental governance body, but it soon became apparent that Arctic states disagreed on the degree of independence and strength this new institution was to be entrusted with.[73] During negotiations, discussions were deeply shaped by the difference of views among Arctic states. Canada and the Scandinavian countries felt it was necessary to create a mechanism that would hold the two superpowers, especially Russia, accountable.[74] Canada strongly advocated for a new international organisation, which would have a wider mandate than the AEPS program.[75] On the other hand, the United States and Russia argued that a strong body would impose undue restrictions on state sovereignty.[76] Another contentious issue was that of indigenous representatives' status within the Council, with Canadian and Nordic leaders arguing for their inclusion as full participants with decision-making power alongside Arctic states. The Washington delegation feared opposition from a

[67] *Ibid*., Art. 197
[68] *Ibid*., Art. 242(1)
[69] Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development (Rio De Janeiro, 3-14 June 1992) A/CONF.151/26 (Vol. I), Principle 27
[70] *Ibid.*
[71] *Ibid.*
[72] Young 2019, 1-2
[73] *Ibid.*, 13
[74] Landriault et al. 2019, 13
[75] Bloom 1999, 714
[76] Landriault et al. 2019, 14

strong indigenous delegation would hinder the achievement of US' objectives in the Arctic, given the Inuit Circumpolar Circuit's past hostility towards some of President Nixon's Alaskan policies.[77]

On 19 September 1996, the eight Arctic states signed the Declaration on the Establishment of the Arctic Council ("Ottawa Declaration"), and the new body formally absorbed the AEPS' mandate. Arctic states were established as the only voting members, and they would decide by consensus; indigenous peoples' organisations became Permanent Participants with full consultation rights in relation to the Council's activities; finally, Observer status could be granted to non-Arctic states, NGOs and global and regional inter-governmental and inter-parliamentary organisations.[78] A compromise had been reached on the creation of a limited, soft-law body: a high level forum tasked with "promoting cooperation, coordination and interaction […] on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic"[79]. The 1998 Iqaluit Declaration described the main rules and objectives for the Council, explicitly excluding the sensitive issue of military security from its mandate.[80] However, the mandates of the existing AEPS working groups were soon renewed, and the CAFF and the Protection of the Arctic Marine Environment (PAME) Working Groups tasked with conducting environmental research and draft policy recommendations.[81]

The Ottawa Declaration also made reference to a "Sustainable Development Program"[82], which Arctic states committed to oversee and coordinate under the aegis of the Arctic Council.[83] The principle of sustainable development was introduced in the global conversation in 1987 with the drafting of the Brundtland Report, which defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[84], and was further crystallised in the 1992 Rio Declaration[85]. Therefore, the inclusion of this new concept is certainly noteworthy, and it led to the establishment of the new Arctic Council Sustainable Development Working Group in 1998.[86]

The Council's activity began under Canada's chairmanship in 1996, and now, almost twenty five years later, most commentators agree that it has performed fairly well over the decades, its accomplishments having exceeded expectations[87]. This chapter has underscored how the Polar North's history and politics

---

[77] *Ibid.*
[78] Declaration on the Establishment of the Arctic Council (Ottawa Declaration), Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council, Ottawa, Canada, September 19, 1996 , para 2-3 https://oaarchive.arctic-council.org/bitstream/handle/11374/85/EDOCS-1752-v2-ACMMCA00_Ottawa_1996_Founding_Declaration.PDF?sequence=5&isAllowed=y accessed 11 August 2020
[79] The First Ministerial Meeting of the Arctic Council, Iqaluit Declaration, Iqaluit, Canada, September 17-18 1998 https://oaarchive.arcticcouncil.org/bitstream/handle/11374/86/01_iqaluit_declaration_1998_signed%20%282%29.pdf?sequence=1&isAllowed=y accessed 10 August 2020
[80] *Ibid.*
[81] Bloom 1999, 714
[82] Ottawa Declaration, para 1(c)
[83] *Ibid.*
[84] The World Commission on Environment and Development, *Our Common Future (Brundtland Report)*, (Oxford University Press, 1987), Part II(1)
[85] Rio Declaration on Environment and Development, Principle 4
[86] Bloom 1999, 715
[87] Young 2019, 1

have impacted the development of its governance structure, but also the problems that the latter was created to address. In particular, the Arctic Council's primary role in environmental protection is now as relevant as it was in 1996. Significant developments in regional governance have further cemented the Council's role as the main venue for cooperation and governance in the region, "akin to an Arctic United Nations"[88]. As the world has now fully entered the Anthropocene, a new geological era in which human activities are the main driver of change of the Earth's surface, it remains to be seen whether Arctic stakeholders will be able to meet the region's most pressing environmental needs.

[88] Landriault et al. 2019, 11

Chapter 3
The Arctic Council

After its establishment, the Arctic Council soon assumed a more proactive role, contributing to action plans, scientific assessments and environmental projects.[89] It found a "governance niche"[90] for itself, and in more than twenty years of activity it has proved successful in facilitating cooperation and coordination among relevant Arctic and global actors.[91] Its administrative capacity was strengthened with the creation of the Arctic Council Secretariat, which became active in 2013 and was designed to provide administrative and organizational support to the intergovernmental forum.[92] The number of Observers has grown steadily with the rise of international interest in the Arctic – a wide array of stakeholders participate in the work of the Council today, but the eight Arctic states remain the only members with decision-making power. Six indigenous people organisations currently enjoy the Permanent Participants status: the Aleut International Association, the Arctic Athabaskan Council, the Gwich'in Council International, the Inuit Circumpolar Circuit, the Russian Association of Indigenous Peoples of the North, and the Saami Council.[93] Their activity is supported by the Indigenous Peoples' Secretariat, which was established in 1994 under the AEPS. Furthermore, as of 2020, thirteen non-Arctic (predominantly Asian or European) states have been granted Observer status within the Council, including China, Japan and other distant-water fishing states, as well as intergovernmental and interparliamentary organisations such as the IMO, the OSPAR Commission and IUCN, and a number of environmental NGOs.[94]

The Arctic Council's core activities are conducted through its six working groups. These include the already mentioned CAFF, PAME and Sustainable Development working groups, the Arctic Contaminants Action Program, the Arctic Monitoring and Assessment Program and the working group on Emergency Prevention, Preparedness and Response.[95] Task forces are also routinely established within the Council to investigate specific issues. Still, its legal character as a soft-law body never changed, and while the Arctic Council's scientific and policy contributions are becoming increasingly frequent and sophisticated, they can never be directly translated into binding law. In fact, the Council lacks the mandate to produce regulatory norms and has no compliance or enforcement mechanisms, rather it can only issue recommendations of a soft-law nature.[96] Nevertheless, in the last few years negotiations of regional binding agreements have seen growing engagement of the Council, building momentum and renewing support for an enhancement of its

[89] Landriault et al. 2019, 15
[90] Humrich 2017, 87
[91] *Ibid.*
[92] Arctic Council website: Arctic Council Secretariat https://arctic-council.org/en/about/secretariat/ accessed 11 August 2020
[93] Arctic Council website: Permanent Participants https://arctic-council.org/en/about/permanent-participants/ accessed 11 August 2020
[94] Arctic Council website: Observers https://arctic-council.org/en/about/observers/ accessed 16 August 2020
[95] Arctic Council website: Working Groups https://arctic-council.org/en/about/working-groups/ accessed 16 August 2020
[96] Prip 2019, 5

policy-making role. The following sections present the Arctic Council's role as the preeminent forum for Arctic governance and analyse the success and significance of recent developments that have highlighted its policy-making potential, as well as the striking failure of the Task Force on Arctic Marine Cooperation.

3.1 Environmental governance role

Through the years, the Council has served as the main forum for stakeholders to address key regional issues, facilitating the emergence of a unique Arctic strategy. Regional and international cooperation is carried out via a comprehensive framework where Ministerial meetings of Arctic states' Foreign Ministers are the primary decision-making body.[97] Representatives eventually convene on a joint Declaration, which approves projects and plans for the new two years, highlights emerging issues, and can establish task forces.[98] The Senior Arctic Officials (SAOs) are then tasked with acting upon the interests of the Ministers by directing the activities of the working groups, which is where the majority of the Arctic Council's work is undertaken.[99] Working groups then deliver their findings back to the SAOs for consideration.[100] SAOs include representatives from Arctic states' Ministries for Foreign Affairs as well as from indigenous organisations. Furthermore, task forces can be established to work on specific issues for a limited period, after which they are dissolved.[101] At the end of the two-year chairmanship cycle, another Ministerial meeting will take place which will set the tone for the two years to come, and so it continues.

The Iqaluit Declaration states that the Arctic Council is tasked with promoting cooperation and disseminate knowledge on environmental issues[102], but the forum eventually started to include social, cultural and economic issues having both regional and global implications within its remit[103]. Still, the Council's activities in research and in policy-shaping have always had a specific focus on fostering environmental protection, and the latter, as well as sustainable development, have remained at the forefront of the Council's work. Significant contributions have come from the CAFF and PAME working groups, but many efforts to go beyond the soft law nature of their recommendations and lead regional policy initiatives have been frustrated.[104] As a policy-shaping body with no enforcements abilities, in fact, the success of Arctic Council's initiatives depends on whether consensus is reached among all its voting members, and some projects touching on sensitive issues are often abandoned. It can be said that the Council's role in environmental governance has mostly been shaped by its ability to foster discussion and improve scientific

[97] Barry et al. 2020, 3
[98] *Ibid.*, 6
[99] *Ibid.*, 3
[100] *Ibid.*
[101] *Ibid.*
[102] Iqaluit Declaration, September 17-18 1998
[103] Barry et al. 2020, 1
[104] See chapter 8, section 8.2.2

understanding of the Arctic Ocean ecosystem rather than on proposing policy recommendations for its conservation and management.

However, the last decade has seen growing participation of the Council in regional initiatives, which have highlighted its policy-making potential and inspired scholarly debates on the need to enhance its legal competence. The forum contributed significantly to the drafting of three legally binding conventions: the 2011 Arctic Search and Rescue (hereafter: SAR) Agreement[105], the 2013 Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response[106] and the 2017 Agreement on Enhancing International Arctic Scientific Cooperation[107].

3.1.1 Recent examples of policy-making within the Arctic Council

The first legally binding agreement negotiated and adopted under the aegis of the Arctic Council was the 2011 Arctic SAR Agreement. The process began at the 2009 Tromsø Ministerial Meeting, which established a Council Task Force tasked with negotiating a regional agreement that would implement two international instruments: the SAR Convention[108] and the ICAO Convention[109]. The former entered into force in 1985 and divided the world's oceans into 13 different SAR areas; states in the same area were hence tasked with delimiting the SAR regions for which they were legally responsible.[110] The Convention further required states to establish rescue coordination centers (RCCs) and rescue sub-centers (RSCs) from which to conduct SAR operations.[111] The new SAR Convention was to coordinate both maritime and aeronautical SAR operations – its text stated that "Parties shall ensure the closest practicable coordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over their search and rescue regions"[112]. Therefore, joint efforts had to be undertaken between the International Maritime Organisation (IMO) and the International Civil Aviation Organisation, which oversees the application of the 1944 ICAO Convention.[113] The international SAR Convention was part of an ambitious global initiative, but it heavily relied on regional efforts for its implementation.

---

[105] Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic (Arctic SAR Agreement) (signed 12 May 2011, entered into force 19 January 2013) https://oaarchive.arctic-council.org/bitstream/handle/11374/531/EDOCS-3661 - v1ACMMDK07_Nuuk_2011_SAR_Search_and_Rescue_Agreement_signed_EN_FR_RU.PDF?sequence=5&isAllowed=y accessed 17 August 2020

[106] Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (Oil Spill Agreement) (signed 15 May 2013, entered into force 25 March 2016) https://oaarchive.arctic-council.org/bitstream/handle/11374/529/EDOCS-2068-v1-ACMMSE08_KIRUNA_2013_agreement_on_oil_pollution_preparedness_and_response_signedAppendices_Original_130510.PDF?sequence=6&isAllowed=y accessed 17 August 2020

[107] Agreement on Enhancing International Arctic Scientific Cooperation, (signed 11 May 2017, entered into force 23 May 2018) https://oaarchive.arctic-council.org/handle/11374/1916 accessed 17 August 2020

[108] International Convention on Maritime Search and Rescue (SAR Convention) (signed 27 April 1979, entered into force 22 June 1985), 1403 UNTS 118

[109] Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947), 15 UNTS 295

[110] Kao et al. 2012, 835

[111] *Ibid.*

[112] SAR Convention, Annex. Chapter 3.2

[113] Kao et al. 2012, 835

As a result, the Arctic SAR Agreement delimits the area under each state's SAR jurisdiction, defines competent authorities and rescue centers, and addresses both maritime and aeronautical operations in the Arctic.[114] Some delimitations raised sovereignty concerns over maritime areas, and the Agreement explicitly states that the SAR boundary delimitations "shall not prejudice the delimitation of any boundary between States or their sovereignty, sovereign rights or jurisdiction"[115]. Article 9 also emphasizes that state parties shall enhance their cooperation in matters relevant to the Agreement.[116] It must be said, however, that the SAR Agreement was not adopted by the Arctic Council, due to concerns of Arctic states that did not consider the soft law body fit for this purpose;[117] however, the Nuuk Declaration still recognised it as "the first legally binding agreement negotiated under the auspices of the Arctic Council"[118]. The process that led to the SAR Agreement was the first one to denote the possibility that legally binding instruments could still be among the Council's contributions to regional governance, even though it lacked the formal capacity to adopt them.[119]

The 2013 Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (the so-called Oil Spill Agreement) was the Arctic response to the 2010 *Deepwater Horizon* incident, an explosion that led to a massive off shore oil spill in the Gulf of Mexico. Negotiating states aimed to create a regime for oil spill response in the Arctic region, and the process began with the seventh Arctic Council ministerial meeting, where participants signed the 2011 Nuuk Declaration. The latter established a Task Force that would develop an international instrument on Arctic marine oil pollution preparedness and response.[120] Furthermore, the Emergency Prevention, Preparedness and Response (EPPR) and other relevant working groups were tasked with providing recommendations and best practices.[121] These findings contributed to the drafting of the final Agreement, which was signed at the 2013 Kiruna Ministerial meeting.

The Oil Spill Agreement's objective is laid out in Article 1: "[to] strengthen cooperation 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"[122]. Boundaries are established and Arctic coastal states' areas of responsibility defined.[123] Obligations relating to monitoring and mutual assistance are also imposed on all state parties.[124] In a nutshell, the Agreement requires each state to work together in order to ensure implementation of the Arctic oil spill response regime established therein.

---

[114] *Ibid.*
[115] Arctic SAR Agreement, Art. 3(2)
[116] *Ibid.*, Art. 9
[117] Molenaar et al. 2013, 407
[118] Nuuk Declaration on the occasion of the Seventh Ministerial Meeting of the Arctic Council, 12 May 2011 https://oaarchive.arcticcouncil.org/bitstream/handle/11374/92/07_nuuk_declaration_2011_signed.pdf?sequence=1&isAllowed=y accessed 17 August 2020
[119] Molenaar et al. 2013, 407
[120] Nuuk Declaration, 12 May 2011
[121] *Ibid.*
[122] Arctic Oil Spill Agreement, Art. 1
[123] *Ibid.*, Art. 3(1)
[124] *Ibid.*, Art. 7 and Art. 8(1)

The most recent binding agreement negotiated under the aegis of the Arctic Council was the 2017 Agreement on Enhancing International Arctic Scientific Cooperation. The negotiating process was similar to that of the other two instruments: at the 2013 Kiruna Ministerial meeting, the Scientific Cooperation Task Force (SCTF) was established and tasked with working towards an arrangement on improved scientific research cooperation among Arctic States. The instrument had first been envisaged as a non-binding Memorandum of Understanding, but it soon became apparent that it required enforcement abilities and binding power for its implementation.[125] At the 2017 Arctic Council Ministerial meeting, which took place in Fairbanks, Alaska, negotiations were completed and the final text signed by foreign affairs ministers representing all eight Arctic states.

The Agreement has been defined as "a primary example of science diplomacy"[126], because it saw the participation of both diplomats and scientists and was successful in negotiating conditions that would eliminate legal or political barriers to the conduct of scientific research in the Arctic, facilitating regional cooperation on the matter.[127] Furthermore, Arctic Council Observer states were actively involved in the negotiating process and were given the possibility to present comments on proposed drafts.[128] The Agreement aims to facilitate access by scientists from all eight Arctic states to specific Arctic areas, which shall be accorded entry and exit of persons, equipment, data and samples, access to national civilian research infrastructure and facilities, and to terrestrial, coastal, atmospheric and marine research areas.[129] State parties shall further facilitate access to scientific information and sharing of data and metadata.[130] Furthermore, the Agreement promotes efforts for improving education and creating opportunities for future generations of Arctic scientists[131], and it expressly provides for researchers coming from non-Arctic states to benefit from its provisions[132].

3.1.2 A reflection on these developments and their significance

The Arctic Council's success in contributing to the negotiation and drafting of three legally binding instruments is certainly noteworthy, but these recent developments need to be analysed more closely. In fact, while scholars[133] have recognised the symbolic value of the Arctic Council's contributions, they have been mostly hesitant to admit that any drastic change of the Arctic regime was taking place.

If we start by considering the Arctic SAR Agreement, it is easy to infer that it merely reaffirmed and implemented Arctic states' pre-existing treaty obligations – the 2011 Agreement contained no obligations

[125] Smieszek 2017, 1
[126] *Ibid.*, 2
[127] *Ibid.*
[128] *Ibid.*, 4
[129] Agreement on Enhancing International Arctic Scientific Cooperation, Arts. 4-7
[130] *Ibid.*, Art. 7
[131] *Ibid.*, Art. 8
[132] *Ibid.*, Art. 17(2)
[133] See Kao et al 2012, Rottem 2015, Smieszek 2017

the parties had not acquiesced to already via the SAR or the ICAO Convention, to which all Arctic states were already parties.[134] The Oil Spill Agreement has been criticised for its lack of ambition;[135] as noted by Rottem, it has proved "more important as a symbol of Arctic cooperation than as a practical mechanism"[136]. It has also been argued that public safety issues such as SAR operations and oil spill response are relatively uncontroversial, and had been at the forefront of Arctic states' focus since the early 2000s.[137] The Agreement on International Arctic Scientific Cooperation is different from the two previous instruments because it does create a completely new set of obligations.[138] Furthermore, discussions were led by a coordinated effort coming from the United States and Russia, which worked together even though geopolitical tensions were rising among the two superpowers after Russia's annexation of Crimea in 2014.[139] However, this instrument addresses a non-sensitive issue such as scientific cooperation and builds on the Arctic Council's established role as a science-generating, cooperation-building body. Ultimately, these three agreements are only binding for the eight Arctic Council member states.

The Council's role has significantly developed in the last two decades, but it is still far from becoming an independent, policy-making body. The failure of the Task Force on Arctic Marine Cooperation's efforts exemplifies how widespread and strong support from all Arctic states is necessary for such a change to happen, and how difficult this support is to achieve.

3.2 The Task Force on Arctic Marine Cooperation

In 2015, the Ninth Ministerial Meeting of the Arctic Council led to the drafting of the Iqaluit Declaration, where Arctic states and Permanent Participants reinforced their commitments to the Arctic Council.[140] The Declaration established a Task Force, its objective being "to assess future needs for a regional seas program or other mechanism, as appropriate, for increased cooperation in Arctic marine areas"[141]. In fact, the Arctic Council saw cooperation as the best solution to respond to Arctic marine issues more effectively, in a region that was being increasingly affected by anthropogenic climate change.[142]

A Report was released in 2017, where the Task Force on Arctic Marine Cooperation (TFAMC) identified "needs and opportunities for enhancing and strengthening the Council's role in Arctic marine stewardship"[143]. The Report identified values and principles that should guide future Arctic cooperation,

---

[134] Kao et al. 2012, 837
[135] Rottem 2015, 55
[136] *Ibid.*
[137] Landriault et al. 2019, 16-17
[138] Smieszek 2017, 5
[139] *Ibid.*, 6
[140] Iqaluit Declaration, Iqaluit, Canada, 24 April 2015 https://oaarchive.arcticcouncil.org/bitstream/handle/11374/662/EDOCS-3431 -v1 -ACMMCA09_Iqaluit_2015_Iqaluit_Declaration_original_scanned_signed_version.PDF?sequence=7&isAllowed=y accessed 19 August 2020
[141] *Ibid.*, para 43
[142] Balton and Zagorski 2020, 4-5
[143] TFAMC Report to Ministers, 2017, 1

such as ensuring complementarity between Arctic states and the Council and strengthening the latter's marine stewardship efforts.[144] Its most striking recommendation, however, was the creation of a new Arctic Council subsidiary body, which would enhance coordination with other relevant bodies and address future needs for cooperation.[145] The TFAMC was then tasked with presenting terms of reference for a new subsidiary body and complementary enhancements to the Arctic Council, to be submitted by 2019.[146]

However, the Task Force has only met twice since 2017, and it is unlikely to fulfil its mandate[147], mainly due to insufficient support, and at times even outright opposition, from Arctic states. Russia, in particular, expressed concerns that establishing a new body and entrusting it with the power to adopt legally binding decisions would impede on the economic development of the Russian Arctic.[148] As the coastal state with the largest maritime zones in the Arctic Ocean, Moscow feared that such a development would impose a heavier burden on Russia than on the other Arctic states.[149] Their failure to adopt a Ministerial Declaration at the 2019 Rovaniemi Ministerial Meeting further underscored that Arctic states' commitment to enhancing regional cooperation was not as strong as it seemed.[150] The meeting resulted in a Joint Ministerial Statement, which failed to mention the TFAMC and, due to pressures coming from the US delegation, excluded any reference to climate change.[151] US Secretary of State Mike Pompeo's speech was focused on concerns about Chinese influence in the region, and the Washington delegation was determined in ensuring the final Statement would include no mention of the latest science on climate change or the Paris Agreement.[152] This last point is particularly striking; the environmental problems facing the Arctic are too acute, and the need to take conservation measures so pressing, for climate change to be considered a political, debatable issue. Furthermore, the Rovaniemi Ministerial meeting represented the first time in Arctic Council history where representatives failed to agree on the text of a Declaration.

The present chapter has presented how the Arctic Council has managed to become the region's leading intergovernmental body and foster cooperation on science and policy – Arctic states further recognised its policy-making potential when they successfully negotiated three legally binding agreements under its aegis. At the same time, however, these recent developments did not change the Council's status as a soft law body, and the failure of the TFAMC is proof that current geopolitical tensions can have strong and damaging effects on Arctic governance. It remains to be seen whether Arctic Council cooperation will continue to develop, or come to an abrupt halt.

---

[144] *Ibid.*, 7
[145] *Ibid.*, 6
[146] Balton 2018, 1
[147] *Ibid.*
[148] Molenaar 2017, 63
[149] *Ibid.*, 63-64
[150] Balton and Zagorski 2020, 6
[151] Rovaniemi Joint Ministerial Statement on the occasion of the Eleventh Ministerial Meeting of the Arctic Council, Rovaniemi, Finland, 7 May 2019 https://oaarchive.arcticcouncil.org/bitstream/handle/11374/2418/Rovaniemi_Ministerial_Statements.pdf?sequence=1&isAllowed=y accessed 20 August 2020
[152] Sengupta 2019, The New York Times article

Chapter 4
Arctic states as the main Arctic actors

The previous chapter analysed the Arctic Council's governance role, and recent developments that have crystallised its primary role in shaping Arctic policy. However, implementation of the forum's recommendations and guidelines, and the overall success of its contributions, depend on Arctic states' willingness to comply. Therefore, it can be said that the Arctic Council needs Arctic states more that Arctic states need the Arctic Council. In a region where two superpowers such as the United States and Russia operate, lack of endorsement from one of these two states can mark the failure of otherwise widely supported regional initiatives. In the Arctic arena, Arctic coastal states (United States, Russia, Canada; Norway and Denmark/Greenland) enjoy an even more prominent role in light of the sovereignty and sovereign rights they are accorded under UNCLOS over the waters of the Arctic Ocean.

In the last decade, Arctic coastal states have further developed what Kraabel identified as an "exceptionalist view"[153] of their responsibilities and role in Arctic governance, and emerged as a separate grouping on the regional arena, the so-called Arctic five (A5). The process that led to the drafting of the 2018 Central Arctic Ocean Fisheries Agreement (CAOFA) effectively marked the development of the A5 as an alternative forum for Arctic cooperation. In this case, the Arctic Five were successful in creating a binding regulatory regime for Arctic ABNJ fisheries, setting a very important precedent for the future of international and regional governance in the Polar North. The next section presents how the main disparities in Arctic power relations are not caused by states' political leverage, rather by their geographical position and the rights they enjoy under International Law, analysing both the A5/A8 issue and A5 "exceptionalism". The Arctic Five's potential as a new forum for international cooperation is then considered by presenting and analysing its most significant contributions, from the Ilulissat Declaration to the CAOFA.

4.1 The A5/A8 issue

The Arctic region does not exist in a legal vacuum: here, a number of international conventions, as well as customary International Law, find application. UNCLOS defines Arctic coastal states' maritime zones and accords them special rights and obligations in the waters of the Arctic Ocean. Each Arctic coastal state has the right to establish a territorial sea of up to 12 nautical miles (nm) from the baselines established in accordance with the Convention[154], where its sovereignty is subject only to the right of innocent passage that must be guaranteed for all ships[155]. Art. 33 further defines the contiguous zone, stretching 24 nm from the

[153] Kraabel 2019, 5
[154] UNCLOS, Art. 3
[155] *Ibid*., Art. 17

baselines, where coastal states have the right to exercise the control necessary to "prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea"[156], and punish infringements committed within its territory or territorial sea.[157] In the Exclusive Economic Zone (hereafter: EEZ), which can measure up to 200 nm from its baselines, the coastal state has sovereign rights in relation to exploring and exploiting, as well as managing and conserving, living and non-living resources of the water column.[158] The state's jurisdiction extends to marine scientific research, protection of the marine environment and the establishment of artificial islands and other structures.[159] Coastal states also enjoys sovereign rights over a wide portion of the seabed and subsoil under the continental shelf regime[160] – however, the delimitation of states' rights and obligations over the Arctic Ocean seabed is still contentious[161].

Under the UNCLOS regime, much of the Arctic Ocean falls under the jurisdiction of coastal states. As a result, the A5 always played a critical role in relation to those circumpolar politics that were most likely to affect their enjoyment of sovereign rights in their maritime zones.[162] More recently, members of the Arctic Five reiterated their primacy in Arctic marine governance by meeting outside of the Arctic Council to discuss areas of interest or responsibility exclusive to the coastal states, raising concerns among the three excluded nations (Iceland, Sweden and Finland).[163]

The first of these gatherings occurred at Ilulissat, Greenland, in 2008. In many ways, this meeting was aimed at reassuring international commentators who had started to envisage the Arctic as a "lawless frontier" and argued for the creation of a comprehensive and legally binding governance instrument *à la* Antarctic Treaty.[164] The discussion was sparked by the 2007 *Arktika* scientific expedition, which led two submersible vessels to descend more than two miles under the ice cap and deposit a Russian flag on the seabed at the geographical North Pole.[165] This triggered strong reactions and counter-reactions, as many among academics and environmental NGOs, and even the European Parliament, wrongly perceived that this event marked the beginning of the last land and resource-grab in history, which would go unchecked due to the lack of binding regulations for the Arctic.[166] Nowadays, scholars[167] agree that the political and legal significance of Russia's flag-planting was exaggerated by the media, and have refuted the idea of a binding instrument similar to the 1959 Antarctic treaty, citing geographical and political differences between the Arctic and the Antarctic as well as Arctic states' resistance to accept restrictions over their sovereignty.[168]

---

[156] *Ibid*., Art. 33(1)(a)
[157] *Ibid*., Art. 33
[158] *Ibid.*, Art. 56(1)(a)
[159] *Ibid*., Art. 56(1)(b)
[160] *Ibid*., Art. 76(1)
[161] This topic will be addressed in detail in Chapter 7, Section 7.1
[162] Landriault et al. 2019, 27
[163] *Ibid.*
[164] *Ibid.*, 28-29
[165] Chivers 2007, The New York Times article
[166] Molenaar et al. 2013, 405
[167] *Ibid.*, 400
[168] *Ibid.*

However, when Arctic coastal states convened their first formal meeting at Ilulissat in May 2008, they felt the need to address those concerns as they had been widely expressed by the international community. They did so in the Ilulissat Declaration, where the A5 recognised themselves to be "in a unique position"[169] to tackle future Arctic challenges, in light of the sovereignty and sovereign rights they exercise in large areas of the Arctic Ocean.[170] Furthermore, the Declaration underscored that an "extensive international legal framework"[171] already applied to the Arctic, referencing the law of the sea framework as enshrined in UNCLOS and reinforcing their commitment to international cooperation and the peaceful settlement of disputes.[172] By doing so, the A5 did offset calls for a new Arctic treaty.[173] However, their decision to exclude from the gathering at Ilulissat all other Arctic Council participants sparked criticism.[174] Non-coastal Arctic states, in particular, criticised the Arctic Five and their claim to a "stewardship role"[175] in the protection of the Arctic ecosystem, arguing that their gatherings would undermine the work of the Arctic Council.[176]

In 2010, the A5 convened once again at the ministerial level in Chelsea, Quebec, where their commitments as enshrined in the Ilulissat Declaration were emphasized once again, but the Arctic Council was recognised as "the central forum for international cooperation on Arctic issues"[177]. Therefore, A5 gatherings were to complement, rather than challenge, the Council's activities.[178] Even with this concession, the reaction from excluded states was the same. Permanent Participants also criticised their exclusion, with the President of the Inuit Circumpolar Conference, Duane Smith, stressing the importance of indigenous involvement and participation in discussions on Arctic science and policy.[179]

However, A5 gatherings continued, hosting conversations on energy, fisheries and public safety issues.[180] The process that led to the drafting of the 2018 CAOFA was also reserved to Arctic coastal states, and it was eventually made to include other Arctic and non-Arctic states. In this setting, the privileged role of the A5 was reinforced once again: a significant example of this is that they wished to include other states "in talks at some point in the future as appropriate"[181], getting them involved only when their preferred regime had been identified.[182] As I present in the following chapter, the entirety of the CAOFA process,

---

[169] Ilulissat Declaration, 28 May 2008
[170] *Ibid.*
[171] *Ibid.*
[172] *Ibid.*
[173] Landriault et al. 2019, 29
[174] *Ibid.*
[175] Ilulissat Declaration, 28 May 2008
[176] Prip 2019, 3
[177] Arctic Ocean Coastal States meeting, Chelsea, March 29, 2010, Summary by Lawrence Cannon, Foreign Affairs Minister of Canada https://www.arctic-report.net/wp-content/uploads/2012/01/2010.03-Arctic-Ocean-Coastal-Statesmeeting-Chelsea-Canada-March-2010.pdf accessed 21 August 2020
[178] Landriault et al. 2019, 31
[179] Landriault et al. 2019, 32
[180] *Ibid.*
[181] Chairman's Statement, issued by the Five Arctic Ocean Coastal States at Meeting on Future Arctic Fisheries held at Washington, U.S., 29 April-1 May 2013
[182] Zou 2016, 404

including the resulting Agreement, reflected the A5's strong influence over regulation of the Central Arctic Ocean. In a nutshell, the A5 alliance has managed to successfully become a force to be reckoned with in the Arctic arena, and their role in regional politics can be expected to further develop.

4.2 Arctic coastal states' "exceptionalism"

In the field of international relations, the term "exceptionalism" refers to a tendency to put a state's special responsibilities and special interests at the center of its foreign policy.[183] In the case of the Arctic five, this approach is reflected in the Ilulissat Declaration whereby they declared that they are in "a unique position to address the potential impact on vulnerable ecosystems of climate change and the melting of ice, […] the livelihoods of local inhabitants and indigenous communities, and the potential exploitation of natural resources"[184].

This approach may prove to be the main cause of fragmentation among Arctic states in their future governance efforts, given the three remaining Arctic states' reluctance to accept its quasi-hierarchical connotations. Furthermore, this aspect must be kept in mind when analysing the future of environmental cooperation in the region, as it is likely that coastal states will claim to play a leadership role in relation to the management of Arctic maritime areas, both within and beyond their national jurisdiction. Conservation and management measures adopted for the Arctic high seas might still hinder on coastal states' enjoyment of their rights within their maritime zones, and a delicate balance would need to be struck. The Arctic Council, on the other hand, has more expertise in scientific research and policy-shaping, but it is unable to transform its soft law recommendations into tangible results without the political support of the A5. For these reasons, as I present in the final chapters, it is important to ensure that efforts coming from both the Council and the Arctic Five complement each other[185], in a way that can help address the region's future needs.

4.3 The A5's potential as the new forum for international cooperation

The Arctic Council and the A5 have overlapping membership and mandates, and they both recently proved capable to produce legally binding agreements. However, there are specific aspects that differentiate the two, which have to be considered in order to understand why Arctic coastal states have chosen the Arctic Five arena, rather than the Council, to negotiate the CAOFA.

The A5 grouping does not have any independent power or existence apart from the states that are part of it, nor any administrative body supporting its activities.[186] Representatives from the five states meet and negotiate in an *ad hoc* manner, and they can discuss and address any Arctic issue they deem important,

[183] Kraabel 2019, 5
[184] Ilulissat Declaration, 28 May 2008
[185] For the best way to achieve complementarity, see Chapter 8, Section 8.3
[186] Kuersten 2016, 390

including military security issues that would be beyond the Council's mandate.[187] Another significant difference concerns non-Arctic actors' participation: in fact, in the Arctic Council the participation of extra-regional stakeholders is limited to a mere consultative role, and they can never be granted any decision-making power. On the contrary, A5 meetings are not bound to respect any rules of procedure, and participants are free to invite other regional or international players. Arctic coastal states did so during the CAOFA process, by inviting China, Japan, South Korea, the EU and Iceland to the negotiating table.[188] From this moment on, all ten states formally had the same decision-making power over the final text, something that could have never been achieved had the Agreement been negotiated under the aegis of the Arctic Council. By doing so, the Arctic Five further managed to develop an international convention whose rules would bound all distant water fishing nations, successfully extending the application of the protection regime as enshrined in the CAOFA.

In a nutshell, and perhaps unsurprisingly, operating within the A5 gives states more freedom in organising their cooperation. In and of itself, this can be a positive aspect, but it can also lead to the exclusion of some important, but less politically powerful, stakeholders such as indigenous people, which only enjoyed limited representation during the CAOFA negotiations. The A5 seem to have the political power needed to kick-start negotiations and lead governance efforts, but it is important to ensure a strong commitment to cooperation and environmental protection coming from all Arctic stakeholders. There is a lot that Arctic players can learn from the A5 example, but the engagement of the Arctic Council will be pivotal in guaranteeing a strong and effective cooperation regime for the changing Arctic.

[187] *Ibid*., 391
[188] Zou 2016, 412

Chapter 5
The Central Arctic Ocean Fisheries Agreement

This chapter presents the process that led to the drafting of the 2018 Central Arctic Ocean Fisheries Agreement. The latter was the first legally binding instrument negotiated within the A5, whose ad hoc gatherings went beyond their usual role as a regional setting for discussion and successfully became a forum for global cooperation. The CAOFA establishes a protection regime for Arctic ABNJ fisheries by adopting a precautionary approach "to prevent unregulated fishing in the high seas portion of the central Arctic Ocean"[189]. According to the precautionary principle as enshrined in the Rio Declaration on Environment and Development, "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"[190]. Therefore, states shall act with prudence and caution when a serious risk of causing irreversible harm to the environment can be envisaged, even when there is no conclusive scientific evidence of the existence or the seriousness of this risk.[191] This principle is particularly useful when addressing the conservation and management of fisheries, since sound scientific data on the health and status of fish stocks is often difficult to obtain and, in the case of the CAO, carrying out research was made even more difficult by the presence of a thick sea ice cover.

Participants in the CAOFA negotiations included non-Arctic states with significant Arctic interests. In fact, there were serious concerns that major non-Arctic fishing nations would seek to exploit CAO fisheries as soon as the activity would become commercially viable.[192] Warming temperatures and loss of sea ice were making the Polar North increasingly vulnerable to economic activities and resource exploitation. There was, however, a lack of comprehensive and efficient instruments to protect the Arctic high seas – the Arctic Council had no authority or capacity to work as a Regional Fisheries Management Organisation (RFMO), and only some portions of the Arctic high seas fell under the scope of existing RFMOs.[193] Under the UN Fish Stocks Agreement (UNFSA), when there is no regional mechanism for the management of fish stocks "relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock"[194].

---

[189] Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Ilulissat, 3 October 2018, not yet in force) https://www.dfo-mpo.gc.ca/international/agreement-accord-eng.htm accessed 25 August 2020 (CAOFA), Art. 2
[190] Rio Declaration on Environment and Development, Vol I Principle 15
[191] *Southern Bluefin Tuna (Australia/New Zealand v Japan)* [1999] ITLOS Case No 3, 38 ILM 1624, ICGJ 337
[192] Landriault et al. 2019, 33
[193] *Ibid.*
[194] 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 (opened for signature 4 December 1995, entered into force 11 December 2001) A/CONF.164/37 (UNFSA), Art. 8(5)

In this scenario, and while scientific understanding of the impacts of climate change on CAO fisheries remained limited, a process was initiated that would lead to the first regional fisheries agreement being adopted prior to the commencement of fishing in a specific area.[195] The next sections present the most significant aspects that characterised this process, including the environmental disaster that led states to the negotiating table, the 2015 Oslo Declaration, negotiations in the "Arctic 5+5" format, and the main characteristics of the final Agreement.

5.1 The Oslo Declaration

The CAOFA process has been almost ten years in the making: in fact, the issue of fisheries had been at the forefront of Arctic coastal states' discussions since 2010.[196] Some of them had already started to implement fishing moratoriums in areas within their national jurisdictions: in 2009, the United States did so on selected species in its Arctic EEZ, even though no commercial fishing was taking place in the area.[197] Canada followed in 2014, by preventing commercial fishing in its portion of the Beaufort Sea. American concerns on straddling fisheries regulation in the high seas had grown after 1994, when Alaska pollock stocks collapsed in the North Pacific high seas before any legal regime had been put in place.[198] The damage done to the fishery was particularly evident in the small high seas portion of the Bering Sea, the so-called "Donut Hole" where each state is accorded fishing rights under UNCLOS[199]. Some similarities could therefore be drawn between the "Donut Hole" and the Central Arctic Ocean, which are both high seas. Still, even though no fishing activity was yet taking place therein, Arctic states were determined to ensure that CAO fisheries would not suffer the same fate.

In a 2007 joint resolution, the United States Congress directed the nation to initiate discussions and cooperate with other states in a view to "negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean"[200]. In the following years, the A5 began discussions among each other on the matter.[201] Specific gatherings on Arctic fisheries and coastal states' responsibilities over conservation and management began in 2010, alongside with experts' scientific meetings on Arctic fish stocks.[202] Experts' recommendations informed the meetings of the Arctic Five, who reviewed scientific research and discussed fisheries governance issues in the years that followed.[203]

---

[195] Schatz et al. 2019, 195
[196] *Ibid.*
[197] Landriault et al. 2019, 33
[198] *Ibid*., 33-34
[199] UNCLOS, Art. 87(e)
[200] S.J.Res.17 - A joint resolution directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean, 110th Congress (2007-2008) Public Law No: 110-243 (06/03/2008) https://www.congress.gov/bill/110thcongress/senate-joint-resolution/17/text accessed 25 August 2020
[201] Schatz et al. 2019, 205
[202] *Ibid.*, 206
[203] Landriault et al. 2019, 34

Arctic coastal states' 2015 meeting in Oslo, Norway produced a non-binding Declaration that addressed prevention of unregulated high seas fishing in the CAO. It incorporated their commitment to "deter unregulated fishing in the future in the high seas portion of the Central Arctic Ocean"[204]. In particular, the A5 agreed to

> "[…] authorize our vessels to conduct commercial fishing in this high seas area only pursuant to one or more regional or subregional fisheries management organizations or arrangements that are or may be established to manage such fishing in accordance with recognized international standards"[205].

In the absence of any RFMO or RFMA for the CAO, these interim measures effectively enacted a temporary moratorium on commercial fishing, adopting a strong precautionary approach to fisheries management.[206] The A5 also expressed their intent to establish a joint program of scientific research and acknowledged the interest of other states in the matter, wishing to work with them in a broader process that would ensure commitment from all relevant Arctic actors.[207]

5.2 A5+5 Negotiations

The Arctic 5+5 format was created by inviting China, the EU, Iceland, Japan and South Korea (hereafter referred to as "the Other 5") to a December 2015 meeting in Washington DC.[208] China, Japan and South Korea are Arctic Council Observers[209], while the EU enjoys *de facto* Observer status, and all Other 5 are important distant-water fishing states. Inclusion of the EU further guaranteed representation of other Arctic states that had so far been left out of negotiations, namely Sweden and Finland.[210] Arctic indigenous people and environmental NGOS enjoyed limited representation within some of the A5 delegations as well.[211]

This approach reflects Arctic coastal states' ambitions as "stewards of the Arctic"[212] in the spirit of the Ilulissat Declaration – in fact, the A5 had an overarching role throughout the whole CAOFA process.[213] The Other 5 were allowed to join the discussions only once the interim measures had already been decided and, given the circumstances, their choice was between acknowledging what had already been agreed on by Arctic coastal states, or staying outside of the negotiations and agreement altogether.[214] All invited states

---

[204] Oslo Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean (Oslo, 16 July 2015) https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arcticfisheries-16-july-2015.pdf accessed 25 August 2020
[205] *Ibid.*
[206] Landriault et al. 2019, 35
[207] Oslo Declaration, 2015
[208] Zou 2016, 412
[209] Arctic Council website: Observers https://arctic-council.org/en/about/observers/ accessed 25 August 2020
[210] Schatz et al. 2019, 208
[211] *Ibid.*
[212] Ilulissat Declaration, 28 May 2008
[213] Landriault et al 2019, 35-36
[214] Zou and Huntington 2018, 136

chose the former. This approach has been criticised[215], but it can be said that the A5+5 process ensured participation of all relevant stakeholders, upholding the obligation laid out in Art. 8(3) UNFSA to cooperate with all states who show "a real interest in the fisheries concerned"[216].

Between 2016 and 2017, A5+5 policy meetings and experts' science meetings continued to take place in different Arctic cities, outside of the Arctic Council or any other traditional circumpolar forum.[217] Discussions soon highlighted the need to establish "one or more"[218] RFMO or RFMA that would cover the CAO, as well as additional conservation and management measures.[219] Furthermore, negotiations throughout the whole process seemed to emphasise the importance of reaching consensus on all points of the discussion.[220] At the Reykjavik meeting in March 2017, delegations worked on the basis of a Chairman's Text which adopted the format of a legally binding agreement.[221] Soon after, in November 2017, the text of the Draft CAOFA was released, reflecting existing consensus on the legal status of the final Agreement as a legally binding treaty.[222] Hence, after legal and technical review, the final version of the CAOFA was made available and signed by all A5+5 participants on 3 October 2018 in Ilulissat.[223]

4.2.3 The Agreement

The object of the CAOFA is to "prevent unregulated fishing in the high seas portion of the central Arctic Ocean"[224], via the application of the precautionary approach in a "long-term strategy"[225] for the safeguarding of marine ecosystems and the conservation and sustainable use of Arctic fish stocks.[226] The CAOFA contains two main commitments that effectively give expression to the precautionary approach.[227] States parties commit to prohibit the authorization of commercial fisheries in the Agreement Area until conservation and management measures are in place[228], and to establish a Joint Program of Scientific Research and Monitoring that would study CAO ecosystems and assess the viability of future commercial fisheries[229]. The Agreement Area comprises the Arctic high seas, surrounded by the waters where coastal Arctic states exercise their fisheries jurisdiction.[230] Its substantive scope, on the other hand, extends to

[215] Zou 2016, 412
[216] UNFSA, Art. 8(3)
[217] Landriault et al. 2019, 36
[218] Meeting on High Seas Fisheries in the Central Arctic Ocean, Chairman's Statement, Rejkjavik, Iceland, 15-18 March 2017 https://naalakkersuisut.gl/~/media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Eng/Chairmans%20Statement%20from%20Reykjavik%20Meeting%202017.pdf accessed 25 August 2020
[219] *Ibid.*
[220] Schatz et al. 2019, 208
[221] Chairman's Statement 2017, Rejkjavik
[222] Schatz et al. 2019, 208
[223] Schatz et al. 2018, 1
[224] CAOFA, Art. 2
[225] *Ibid.*
[226] *Ibid.*
[227] Balton 2019, 2
[228] CAOFA, Art. 3(1)
[229] *Ibid.*, Art. 4(2)
[230] *Ibid.*, Art. 1(a)

"species of fish, molluscs and crustaceans"[231], while excluding those sedentary species that, as defined under UNCLOS, "are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil"[232]. In light of the sovereign rights that coastal states enjoy over sedentary species under the continental shelf regime, this exclusion ensures that the CAOFA does not affect the CAO seabed, where the outer limits of the A5's continental shelves are still to be determined.[233]

The final text of the Agreement reflects compromises reached in the negotiating arena between the A5 and the Other 5. The latter supported a more utilization-oriented approach to CAO fisheries, while Arctic coastal states wished to play the role of "stewards of the Arctic"[234] and pushed for a more conservationist response.[235] Eventually, consensus was reached on a final package deal with four components: decision-making; requirements for entry into force; duration of the Agreement; recognition of the A5's special interests and responsibilities in the CAO.[236] In regards to decision-making, Art. 6 provides for majority vote in questions of procedure and consensus on questions of substance, but states retain the ability to deem any question as one of substance.[237] Therefore, any formal objection can block the whole decision-making process: scholars have commented that this choice reflects regional politics and the A5's concerns about losing influence as a result of the CAOFA.[238] The Agreement is set to enter into force after ratification from all ten signatory states, and will remain in force for 16 years. However, it can be extended by one or more periods of five more years, unless any state party objects.[239]

It can be said that the A5's role in Arctic governance came out stronger than ever from the CAOFA process: not only are their interests and responsibilities explicitly recognised in the Preamble[240], but many provisions of the Agreement have been significantly shaped by their own political concerns. Arctic coastal states can also be expected to play a central role in regards to future undertakings under the CAOFA, like the establishment of an RFMO/RFMA.[241] More importantly, however, the A5 emerged as a new forum for Arctic cooperation, and the Arctic 5+5 negotiations further set an important precedent for the future of Arctic environmental governance, opening up the informal cooperation regime for the successful engagement of extra regional states.

[231] *Ibid*., Art. 1(b)
[232] UNCLOS, Art. 77(4)
[233] Schatz et al. 2019, 209-210
[234] Ilulissat Declaration, 28 May 2008
[235] Molenaar 2018, Rejkjavik Presentation
[236] *Ibid.*
[237] CAOFA, Art. 6
[238] Schatz et al. 2019, 232
[239] CAOFA, Art. 11, 13
[240] *Ibid*., Preamble
[241] Landriault et al. 2019, 37-38

Chapter 6

Developing a legal framework for the protection of BBNJ

Globally, the high seas cover nearly 64% of the total surface area of the Earth's oceans[242], and are home to a wide array of marine wildlife and some of the world's rarest ecosystems.[243] The interconnected action of all living and non-living components is fundamental in the maintenance and regulation of the ecosystem's essential services and processes[244]: human activities can disrupt this ecological balance and threaten the very existence of essential natural habitats. In the last decades, threats to marine biodiversity have significantly increased both in number and in scope. In fact, economic interests in marine ABNJ have expanded: marine genetic resources are currently exploited and used in a number of industries, ranging from the production of cosmetics and pharmaceuticals to the energy sector.[245] The increasing demand for these products and recent technological advances have pushed resource exploitation beyond states' jurisdictional boundaries and made intrusive procedures technically viable. However, the most significant threat to biodiversity, and the one that is arguably the most difficult to manage directly and comprehensively, remains climate change. The latter has been the direct cause of ocean acidification, warming and deoxygenation, which have led to the destruction of vulnerable ecosystems and affected the lives of many ocean species, potentially causing their widespread extinction.[246]

Existing legal instruments for ABNJ lack the capacity to address these serious threats – in fact, the global management of BBNJ presents serious challenges due to the fragmented nature of the legal regimes that find application therein.[247] In 2015, the United Nations initiated a process for the drafting of an Implementing Agreement under UNCLOS, which would address "the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction"[248]. Therefore, the so-called "BBNJ process" might represent a turning point for global ABNJ governance.

The present chapter starts by underscoring the importance of putting in place measures for the conservation and management of biodiversity in climate change adaptation. After a short overview on existing legal instruments, the discussion focuses on the on-going process to negotiate a BBNJ Agreement. However, the four ILBI action areas (marine genetic resources, area-based management tools, environmental impact assessments, capacity-building and transfer of marine technology) are not the main focus of the thesis, and are only considered in passing when presenting the BBNJ process. The ILBI Draft Text was

---

[242] Global Ocean Commission, From Decline to Recovery: A Rescue Package for the Global Ocean (Global Ocean Commission Report), 2014, 4 http://www.some.ox.ac.uk/wp-content/uploads/2016/03/GOC_report_2015.July_2.pdf accessed 31 August 2020
[243] Kraabel 2019, 1
[244] Global Ocean Commission Report 2014, 6
[245] Kraabel 2019, 1
[246] Global Ocean Commission Report 2014, 11
[247] Prip 2019, 7
[248] UNGA Res. A/69/292, 19 June 2015

released in November 2019, and it outlines a hybrid approach to its institutional arrangements, with the ILBI heavily relying on regional actors for its implementation. Still, Arctic states have expressed opposition to the global as well as hybrid approaches, expressing their preference for a regional solution that would keep Arctic BBNJ governance mostly "to themselves". However, in the Arctic, like in many other regions of the world, the successful outcome of the ILBI depends on whether or not regional players will be able to effectively enhance their cooperation. Will Arctic stakeholders seize the moment?

6.1 Why biodiversity matters

With the term "biodiversity" we refer to "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems"[249]. Therefore, genetic diversity, species, habitats and ecosystems as well as all their interrelations are included in this definition.

All around the world, healthy marine ecosystems provide vital services such as food security and a wide variety of raw materials.[250] In the Arctic, indigenous communities further rely on the ice and waters of the Arctic Ocean for their subsistence and cultural identity, which are both closely linked to their physical surroundings.[251] However, climate change has put the balance that exists between their lives and their environment at risk.[252] In December 2005, this led the Inuit of the US and Canada, together with the Inuit Circumpolar Conference, to file a petition before the Inter-American Commission on Human Rights.[253] Therein, they argued that the United States government had violated their human rights by failing to reduce its greenhouse gasses emissions, hence contributing to climate change and its damaging effects on the Arctic and its Inuit inhabitants.[254] In particular, the human rights that were allegedly violated included, but were not limited to: the right to use and enjoy traditional lands; the right to enjoy personal property; the right to health and life, and the right to culture.[255] The claimants requested relief, which would include the adoption and implementation of a plan to protect Inuit land and their access to resources, as well as provide them with assistance.[256]

The petition was eventually dismissed, but it was successful in sparking discussions, as the Inuit were the first to argue for the recognition that their human rights were violated because of a global phenomenon

---

[249] Convention on Biological Diversity (signed 5 July 1992, entered into force 29 December 1993) 1760 UNTS 69 (CBD), Art. 2
[250] Geo Blue Planet website: Marine Biodiversity and Ecosystems https://geoblueplanet.org/biodiversity-ecosystems/ accessed 1 September 2020
[251] Atapattu 2017, 384
[252] *Ibid.*, 383
[253] Summary of the Inter American Commission on Human Right Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, EARTHJUSTICE, (Dec. 7, 2005) http://earthjustice.org/sites/default/files/library/legal_docs/summary-of-inuit-petition-to-inter-american-council-on-human-rights.pdf accessed 1 September 2020
[254] *Ibid.*
[255] *Ibid.*
[256] *Ibid.*

such as climate change.[257] Furthermore, the petition raised a number of significant issues. It underscored that the very survival and way of life of indigenous populations depend on the overall health of Arctic ecosystems. Therefore, it proved successful in giving "a human face to climate change"[258] and in proving that, at the circumpolar north, dramatic changes were already taking a toll on the Arctic and its inhabitants.[259] However, the Inuit faced major obstacles in establishing a direct causality link between the United States' greenhouse gasses emissions and the impairment of their human rights.[260] Even though scientific studies[261] have found that the effects of anthropogenic climate change are being felt more strongly in the Arctic, it is almost impossible to determine where air pollution originates and, therefore, to establish causality and legal responsibility. This challenge will always present itself in international human rights litigation when claimants argue that a violation occurred as the result of climate change[262], leaving indigenous people without any possibility for legal remedy or compensation.

In this scenario, it is fundamental that effective adaptation measures for the protection of Arctic biodiversity are put in place – future ecosystem health depends on whether all its biodiversity components grow resilient to the new stressors of the Anthropocene. However, while marine ecosystems are dynamic and interconnected, the current international regime for biodiversity appears limited and fragmented.

6.2 International Law of biodiversity

UNCLOS, as the overall legal framework for marine governance, applies to marine areas both within and beyond national jurisdiction and contains a number of provisions that address marine biodiversity. Along with the general obligation to protect and preserve the marine environment[263], states shall conserve and manage living resources of the high seas and cooperate accordingly[264] and take those measures "necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life"[265]. However, the Convention is silent on a number of relevant issues, for example the legal status of genetic material of living resources in the seabed beyond national jurisdiction (the Area), fostering current debates on whether freedom of the high seas or the principle of common heritage of humankind applies.[266] After nearly forty years from its entry into force and as technical improvements make resource exploitation in areas beyond national jurisdiction a possibility, UNCLOS risks

[257] Atapattu 2017, 385
[258] *Ibid.*
[259] *Ibid.*
[260] Dupuy and Vinuales 2018, 397-398
[261] See the ScienceDaily article, "Arctic clouds highly sensitive to air pollution" as referenced in Chapter 1, n.7
[262] Dupuy and Vinuales 2018, 398
[263] UNCLOS, Art. 192
[264] *Ibid.*, Art. 116-119
[265] *Ibid.*, Art. 194(5)
[266] Oude Elferink 2019, 2

falling short of addressing new stressors and their potentially irreversible damage on the marine environment.[267]

The Convention on Biological Diversity (hereafter: CBD) was signed in 1992 and it covers all aspects of terrestrial and marine biodiversity. Its main objectives include biodiversity conservation and sustainable use, and the fair and equitable sharing of benefits.[268] However, the CBD's authority over ABNJ is limited: its provisions do not apply to ABNJ components of biological diversity, only to those processes and activities carried out therein[269], and its obligations are mostly of a soft law character.

In the Arctic, both these conventions find application: all Arctic states are parties except the United States, which accepts the majority of UNCLOS' provisions as a reflection of customary International Law. Furthermore, a number of international and regional instruments apply to the Polar North. In 2017, the IMO adopted the Polar Code[270], which covers environmental protection matters relevant to ships operating in the icy waters of the Arctic and the Antarctic.[271] The OSPAR Commission, the mechanism by which fifteen European states cooperate alongside the EU in the protection of the North-East Atlantic, and the relative RFMO, the North-East Atlantic Fisheries Commission (NEAFC), partly cover Arctic waters.[272] The Convention area includes a portion of Arctic ABNJ, and OSPAR has agreed to operate therein "with the aim of achieving an ecologically coherent and well managed network of Marine Protected Areas (MPAs)"[273]. The legal regime applicable to the Arctic high seas, lastly, counted a new addition in 2018, when negotiating states finalised the text the CAOFA, which implements the precautionary approach to fisheries management and is set to pave the way for the creation of an RFMO/RFMA.[274]

This short overview confirms that the legal framework for protection of Arctic biodiversity is comprised of a multitude of instruments, both regional and international, general and specific, inclusive and exclusive of ABNJ. However, in this fragmented governance landscape, the mandates of some conventions and/or bodies overlap but no comprehensive, legally binding regime that addresses protection of Arctic biodiversity in its entirety is in place.[275] In fact, the application of many of the biodiversity-related instruments is either limited to a specific industry or activity (see Polar Code) and/or confined to a geographical area that does not include Arctic ABNJ in its entirety (see CBD, OSPAR). The Arctic region would benefit from a legal regime that directly addresses the needs of BBNJ, not just as collateral but as a significant and endangered component of oceans' life.

---

[267] Global Ocean Commission Report 2014, 5
[268] CBD, Art. 1
[269] *Ibid*., Art. 4(a) and (b)
[270] IMO, The International Code for Ships Operating in the Polar Waters (Polar Code) (entered into force 1 January 2017) MEPC 68/21/Add.1 Annex 10 http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf accessed 2 September 2020
[271] Prip 2019, 5-6
[272] *Ibid.*
[273] OSPAR website: MPAs in areas beyond national jurisdiction https://www.ospar.org/work-areas/bdc/marineprotected-areas/mpas-in-areas-beyond-national-jurisdiction accessed 2 September 2020
[274] Prip 2019, 6
[275] *Ibid.*

6.3 History and status of ILBI negotiations so far

The BBNJ process began in 2003, when concerns about the status of biodiversity in global ABNJ were first raised at the 4th meeting of the United Nations Informal Consultative Process on the Oceans and the Law of the Sea.[276] In 2004, the General Assembly established the Ad Hoc Open-Ended Informal Working Group on Marine Biodiversity in Areas Beyond National Jurisdiction (the so-called BBNJ Working Group).[277] In 2011, the latter recommended that "a process be initiated by the General Assembly"[278], envisaging the possibility of developing a multilateral agreement under UNCLOS to address conservation and sustainable use of marine biodiversity in ABNJ.[279] The BBNJ Working Group first identified the four elements of the "package deal": marine genetic resources and questions on the sharing of benefits, measures such as Area-Based Management Tools (ABMTs) and MPAs, environmental impact assessments, capacity-building and the transfer of marine technology.[280] The Working Group's final report to UNGA was released in 2015, and endorsed more vehemently than before the creation of a BBNJ instrument.[281]

These developments led to a 2015 UNGA resolution expressing its commitment to "develop an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction"[282]. The resolution established a preparatory committee (PREPCOM), which was to make "substantive recommendations"[283] to UNGA on the elements of a BBNJ agreement. The PREPCOM submitted its report on 31st July 2017, and UNGA soon after decided to launch an intergovernmental conference (IGC) to discuss its findings.[284]

IGC-I took place in September 2018, and informal working groups were stablished to consider the ILBI's four elements.[285] First proposals were made on the issue of its institutional arrangements, and states' opposing views on the matter soon emerged[286]: proponents of the setting up of a global body with decision-making power clashed with those states that opposed the creation of any hierarchical relationship between

[276] Kraabel 2019, 1
[277] UNGA Res. A/RES/59/24, 'Oceans and the Law of the Sea', 17 November 2004
[278] UN Doc. A/66/119, 'Letter dated 30 June 2011 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly', Annex Section I "Recommendations", 30 June 2011, para 1(a)
[279] *Ibid.*
[280] *Ibid*., para 1(b)
[281] UN Doc. A/69/780, 'Letter dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly', Annex Section I "Recommendations", para 1(e)
[282] UNGA Res. A/69/292 19 June 2015
[283] *Ibid.*
[284] UNGA Res. 72/249, 'International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 24 December 2017
[285] UN A/CONF.232/2018/7, 'Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction: First session' New York, 4–17 September 2018
[286] Oude Elferink 2019, 3-4

the ILBI and regional regimes.[287] During IGC-II, negotiating states agreed on the need to promote coherence and synergies with other frameworks and bodies, but significant issues remained contentious.[288] IGC-III took place in August 2019 and effectively marked the beginning of text-based negotiations, based on a "zero draft" developed by the IGC President.[289] Furthermore, the President was asked to prepare a revised draft text of the ILBI, which would take into account delegations' comments and textual proposals.[290] The result was the Revised Draft Text of the ILBI, released by the President in November 2019. Currently, this is the most comprehensive text to have come out of the on-going BBNJ negotiations, and provides us with a relevant understanding of what the final Instrument might look like. The Fourth session was scheduled to take place in spring 2020 but was postponed due to Covid-19 concerns[291]: states and organisations' text proposals[292], however, were made available, allowing for an interesting case study on how these actors have elaborated on the Draft Text provisions.

6.4 Institutional arrangements of the ILBI

Throughout the three sessions of the IGC that have taken place so far, an important issue soon emerged as particularly contentious: that of the ILBI's institutional arrangements. Since the beginning of the process, UNGA underlined that the BBNJ Agreement "should not undermine existing relevant instruments and frameworks"[293], fostering discussions on how its relations with other bodies and instruments were to be shaped.[294]

So far, three main options have emerged: the global, the hybrid and the regional approach.[295] The proponents of a global approach argue for the creation of a strong global governance mechanism for the protection of BBNJ, entrusted with a broad mandate and decision-making powers in relation to the four action areas.[296] This strong central body would be able to coordinate and guide, as well as review and monitor, the work of existing regional and sectoral instruments.[297] On the other hand, the application of the regional approach would not entail the setting up of new institutions: instead, the ILBI would rely on

---

[287] *Ibid.*
[288] Summary of the Third Session of the Intergovernmental Conference (IGC-III Summary) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 19-30 August 2019, in *Earth Negotiations Bulletin Vol.25 No. 218*, 2
[289] *Ibid.*
[290] *Ibid.*
[291] UN A/74/L.41 , 'Draft decision submitted by the President of the General Assembly', 9 March 2020
[292] Textual proposals submitted by delegations by 20 February 2020, for consideration at the fourth session of the Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the Conference), in response to the invitation by the President of the Conference in her Note of 18 November 2019 (A/CONF.232/2020/3)
[293] UNGA Res. A/69/292 19 June 2015
[294] Kraabel 2019, 2-3
[295] *Ibid.*
[296] Oude Elferink 2019, 5
[297] Kraabel 2019, 4

existing regional and sectoral regimes and frameworks for its implementation.[298] The *status quo* would not undergo any serious transformation, and this is why states with significant regional interests strongly favour this approach.[299] Proposals for a hybrid model first appeared at the third session of the PREPCOM.[300] This model would establish mechanisms for coordination and cooperation between the ILBI, which would set agreed standards at the global level, and existing regional and sectoral instruments, which would then be tasked with their implementation.[301] This approach has found fertile ground at the negotiating table, garnering support among states and inspiring lengthy discussions on how it might be operationalised.[302] Most importantly, the regime that emerges from the ILBI Draft Text seems to reflect the hybrid model.

6.4.1 The Draft Instrument and the hybrid approach

Many of the provisions of the Draft ILBI are still in brackets, as they are scheduled to be discussed during the final stages of the negotiations. However, the Draft Text still contains a detailed and almost comprehensive presentation of the ILBI's potential institutional architecture. Art. 4 contains the "not undermine"[303] rule and Art. 6 addresses international cooperation[304]. The latter provision urges states to cooperate through this agreement and through relevant legal instruments and competent global, regional, subregional and sectoral bodies and members thereof, in order to effectively implement the treaty's objectives.[305] An obligation to "cooperate to establish new global, regional and sectoral bodies, where necessary"[306] is also provided for.[307] Part VI addresses the ILBI's institutional arrangements and its three main components: the Conference Of the Parties (COP), the Scientific and Technical Body and the Secretariat.[308] The COP would monitor the implementation of the ILBI via the adoption of recommendations and decisions, exchanging information and promoting cooperation and coordination "with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies"[309]. Its decisions should be taken by consensus, but the text allows for establishing different mechanisms if efforts to reach consensus prove unsuccessful.[310] The Scientific and Technical Body is tasked with providing

[298] Oude Elferink 2019, 5
[299] *Ibid.*
[300] Kraabel 2019, 3
[301] *Ibid.*
[302] *Ibid.*
[303] ILBI Revised Draft Text, Art. 4(3)
[304] *Ibid.*, Art. 6
[305] *Ibid.*
[306] *Ibid.*, Art. 6(3)
[307] *Ibid.*
[308] *Ibid.*, Part VI
[309] *Ibid.*, Art. 48(4)(c)
[310] *Ibid.*, Art. 48(3bis)

the COP with scientific and technical advice.[311] The Secretariat, on the other hand, would provide administrative and logistical support to state parties by convening and servicing COP meetings.[312]

The specific implications of this institutional structure remain to be seen because many issues regarding its functioning remain unclear, such as the linkages and division of competences between the global and regional level. However, it can be said that the ILBI Draft Text aims to implement a hybrid approach: its focus is on the importance of ensuring cooperation and coordination between the global instrument and other existing legal regimes, be them global, regional, subregional or sectoral in nature. No hierarchical relations, nor a strong, overarching global body are provided for.

6.4.2 Arctic states' preference for a regional approach

The specific environmental and legal conditions of the Polar North have never been directly referenced during BBNJ negotiations, but Arctic states' preference for a regional approach has nonetheless been both vehement and unanimous. Arctic states and states with significant Arctic interests, such as China and Japan, have consistently pushed for the adoption of a decentralised, regional approach.[313] In particular, at IGC-II the US delegation, supported by Norway and Iceland, expressed concerns that applying a strong global model would undermine existing instruments and bodies, while Russia noted that this risk lies in the application of the hybrid approach as well.[314] In the textual proposals submitted for consideration at IGC-IV, Iceland expressly stated its dissatisfaction with the Draft ILBI, which does not adequately reflect the regional approach that many states had advocated for during negotiations.[315]

Furthermore, it can be said that some of the Arctic states' positions regarding the BBNJ process are in contrast with their existing obligations. At the third negotiating session, Russia withheld its support for the description of cooperation in capacity building and transfer of marine technology as a legal obligation under the ILBI, stressing that it should instead be carried out on a voluntary basis.[316] However, the same obligation to cooperate in this respect is imposed by UNCLOS[317]. United States' proposals for consideration at IGC-IV requested to delete Art. 6(2) of the Draft ILBI, according to which "States Parties shall promote international cooperation in marine scientific research"[318]; still, almost identical provisions are enshrined in UNCLOS[319] and in the 2017 Agreement on Enhancing International Arctic Scientific Cooperation[320]. It need be reiterated that the Arctic does not exist in a legal vacuum.[321] Rather, nothing in the ILBI shall prejudice the duties of

[311] *Ibid.*, Art. 49(4)(a)
[312] *Ibid.*, Art. 50(2)(a), (b)
[313] Kraabel 2019, 4
[314] *Ibid.*
[315] Textual proposals submitted by delegations by 20 February 2020, for consideration at IGC-IV
[316] IGC-III Summary, 15, 6
[317] UNCLOS, Art. 266(1)
[318] Revised Draft Text ILBI, Art. 6(2)
[319] UNCLOS Arts. 239, 242(1)
[320] Agreement on Enhancing International Arctic Scientific Cooperation, 11 May 2017, Art. 6(2)
[321] Jacobsson 2013, 362

state parties under UNCLOS[322], among which is the obligation to cooperate "for the protection and preservation of the marine environment"[323].

Arctic states' response to the BBNJ process has been to some extent problematic, and their refusal of the hybrid approach is just one aspect of this. In order to ensure its implementation, regional stakeholders will be required to cooperate with the ILBI as well as among themselves, in a shared commitment to the protection of Arctic BBNJ. During negotiations, such a commitment seemed lacking among Arctic states, both the A5 and the A8. Therefore, an important issue arises: to what extent will strong regional interests deter Arctic states from cooperating and implementing a hybrid ILBI, and perhaps even from accepting to be bound by its provisions at all?

[322] Revised Draft Text ILBI, Art. 4(1)
[323] UNCLOS, Art. 197

Chapter 7
Arctic states' interests and perspectives on the BBNJ project

Past analyses have already stressed the importance of Arctic states' engagement in regional cooperation initiatives, as consent or opposition from a single one of these nations can make or break a successful Arctic policy. For the regional implementation of the ILBI's objectives, strong engagement and cooperation of Arctic states is fundamental. However, while their general response to the BBNJ process has been somehow mixed, a number of issues can be envisaged that would potentially prevent them from participating.

This chapter aims to provide an overview of Arctic states' perspectives on the BBNJ process, taking into account how their direct interest in the region might hinder cooperation and implementation of the ILBI. One of the main issues having arisen so far in connection to the BBNJ process is the regime of the seabed beyond national jurisdiction, and Arctic coastal states' overlapping entitlements to a continental shelf beyond 200 nm in the Central Arctic Ocean further complicate the picture. All five nations have pending submissions to the Commission on the Limits of the Continental Shelf (CLCS), which is yet to determine how the Arctic seabed will be divided in the future. This uncertainty will still exist by the time the BBNJ Instrument enters into force, making Arctic coastal states reticent to accept restrictions on the sovereign rights they enjoy "for the purpose of exploring [their continental shelf] and exploiting its natural resources"[324]. The following section analyses the many problems arising in this regard, and the discussion then moves to consider the possibility of uneven ratification of the BBNJ Agreement among Arctic states, focusing on the likelihood of participation in the ILBI of the United States and Russia.

7.1 Pending submissions to the CLCS

Under the International Law of the Sea regime, each coastal state is entitled to a continental shelf comprising "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory […], or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured[…]"[325]. Coastal states are entitled to an extended continental shelf "where that shelf extends beyond 200 nautical miles from the baselines"[326], and information on its outer limits shall be submitted to the CLCS[327]. The latter is an independent and scientific body, whose mandate is to ensure that states' delineations of the outer limits of their continental shelf comply with the established formula.[328] Therefore, the limits as established in the Commission's recommendation shall be

[324] UNCLOS, Art. 77(1)
[325] *Ibid*., Art. 76(1)
[326] *Ibid.,* Art. 76(7)
[327] *Ibid*., Art. 76(8)
[328] Rothwell and Stephens 2016, 116

final and binding.[329] However, in the last decades the efficiency of the CLCS has been greatly affected by insufficient funding while its workload has steadily increased, currently making it impossible for the Commission to deliver all its recommendations on time.[330]

Canada, Denmark, Norway, and Russia have all presented at least partial submissions to the CLCS for a continental shelf beyond 200 nm.[331] All of the above, except Norway's, are pending.[332] The United States is not a party to UNCLOS and hence cannot make submissions to the CLCS, but it still has an Extended Continental Shelf Project, which is collecting relevant data in the Arctic.[333] Washington, as well as all the other A5, is looking into extending its continental shelf in the Arctic seabed. These extended zones partly overlap and cover most of the seabed below the high seas.[334] These strong interests in the Arctic seabed might push Arctic coastal states' efforts towards the maintenance of the *status quo* – providing for an effective protection regime might prove difficult when the most important players see the area as exploitable. Furthermore, the CLCS will most likely not be able to provide for a precise delimitation of the Arctic seabed by the time the ILBI enters into force, making its implementation more difficult.

According to Art. 4(2) of the ILBI Draft Text, coastal states' rights and jurisdiction on the continental shelf, "within and beyond 200 nm"[335] shall not be affected.[336] Therefore, their obligations in relation to the conservation of biodiversity under UNCLOS would remain applicable. Under Art. 194, "states shall take all measures necessary to ensure that activities under their jurisdiction or control"[337] do not cause damage by pollution to other states, and that the pollution arising from these activities does not spread beyond the areas where coastal states exercise their sovereign rights.[338] Paragraph 5 states the need "to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life"[339], providing a legal basis for the designation of MPAs[340]. Specific obligations are further imposed on coastal states "to prevent, reduce and control pollution"[341] arising from seabed activities subject to their jurisdiction.

Still, some practical issues arise, given the fact that the water column above the extended continental shelf constitutes ABNJ and pollution does not stop at jurisdictional boundaries. As noted by Mossop,

---

[329] UNCLOS, Art. 76(8)
[330] Landriault et al. 2019, 31
[331] CLCS website: Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982 (last updated 3 September 2020) https://www.un.org/Depts/los/clcs_new/commission_submissions.htm accessed 4 September 2020
[332] *Ibid.*
[333] US Department of State website: US Extended Continental Shelf Project, Office of Oceans and Polar Affairs https://www.state.gov/u-s-extended-continental-shelf-project/ accessed 4 September 2020
[334] Prip 2019, 3
[335] ILBI Revised Draft Text, Art 4(2)
[336] *Ibid.*
[337] UNCLOS, Art. 194(2)
[338] *Ibid.*
[339] *Ibid*., Art. 194(5)
[340] Oude Elferink 2018, 445
[341] UNCLOS, Art. 208

activities conducted on the continental shelf can have a serious impact on high seas biodiversity, and vice versa.[342] Extracting activities of oil and gas from the seabed can cause noise pollution, accidental spills and discharge of pollutant substances as by-products.[343] This interplay appears particularly dangerous in the Arctic, where the A5's projections of an extended continental shelf, as presented to the CLCS, would leave only a small area of the seabed to ABNJ governance. Furthermore, many states would not ratify the ILBI if the latter were to infringe on their continental shelf rights. It is necessary to harmonise coastal states' exercise of sovereign rights on their extended continental shelf with protection of high seas biodiversity.[344] The issue of "transboundary impacts" was raised during IGC-III[345], where some states, including Canada, China and the EU, supported the inclusion of a provision similar to UNCLOS Art. 194, which would require state parties to act so as not to transfer pollution from one area to the other.[346] The High Seas Alliance and the Caribbean Community stressed the need to "prevent, reduce and control transboundary impacts of BBNJ, including pollution from proposed or existing activities"[347]. However, in the Draft ILBI transboundary impacts are only considered in relation to environmental impact assessments[348], proving that, although this issue is of major importance, proposed solutions remain scarce.[349]

Arctic states, on the other hand, need to ensure that, before the final version of the ILBI comes into existence, the future application of the BBNJ protection regime is not compromised. For this reason, they should fulfil their existing obligations under UNCLOS to protect and preserve the marine environment[350], cooperating on a global and regional basis to formulate international rules, standards and procedures for activities carried out on their continental shelf, as well as to prevent, reduce and control pollution from seabed activities[351]. As noted by Ribeiro, in fact, coastal states' rights to explore and exploit the natural resources of the continental shelf must always be considered in conjunction with their duty under International Law to protect and preserve the marine environment.[352]

7.2 Ratification of the ILBI by all Arctic states is unlikely

By harmonising activities on their continental shelf with protection of the marine environment, Arctic coastal states would best implement conservation measures as enshrined in the ILBI, and ensure protection of the Arctic Ocean ecosystem in its entirety. However, economic interests in the Arctic seabed are growing – the North Pole holds a significant percentage (up to 25%) of the world's undiscovered oil and gas

[342] Mossop 2018, 445
[343] *Ibid.*
[344] Mossop 2018, 445
[345] IGC-III Summary, 11
[346] *Ibid*., 5
[347] *Ibid.*
[348] Revised Draft ILBI, Art. 26
[349] IGC-III Summary, 11
[350] UNCLOS, Art. 192
[351] *Ibid.*, Arts. 197, 208(5)
[352] Ribeiro 2017, 757

resources, as well as vast deposits of mineral resources such as iron ore, phosphate, bauxite and gold.[353] Currently, no seabed mining is taking place in the Arctic Ocean, but the loss of sea ice will make this endeavour less expensive and lead many companies, as well as governments, to explore this possibility in the near future. Strong economic interests are at play here, and it is easy to infer that Arctic coastal states might refuse to be bound by the ILBI if the latter were to limit their exploration and exploitation capabilities in their extended continental shelves.

I already presented how the majority of Arctic states strongly opposes a global institutional framework for the ILBI and argues for a regional approach. In the following section, I remind my reader that there is a strong possibility that some key Arctic players, in particular the United States and Russia, might not become parties to the ILBI. Still, I am unable to go beyond speculation on the matter, as the scope of ratification will depend on what the final ILBI looks like. Unfortunately, as with many environmental treaties, the choice seems to be between ensuring a sufficient degree of protection and achieving widespread ratification, a balance that many environmental instruments have failed to achieve. In particular, the hybrid approach as it was envisaged in the Draft Instrument might be a hard pill to swallow for some of the A5, and even uniform ratification among the other Arctic Council members is not certain. The lack of uniform ratification of the ILBI within the Arctic could very well frustrate efforts to bring all relevant players to cooperate on the same terms, missing an important opportunity to draw a new path for regional and international cooperation and environmental protection in the Arctic Ocean.

7.2.1 The case for the United States

The United States is the only Arctic nation that is not a party to UNCLOS. It did not sign the Convention in 1982, and even after the UN Secretary-General sought to address concerns via the 1994 Implementing Agreement, opposition within the Senate prevented the US from ratifying UNCLOS.[354] In fact, a majority vote of two-thirds of the standing Senators is required to approve ratification of an international treaty. In the case of UNCLOS, Congress failed to agree to its ratification even though Bill Clinton, George W. Bush and Barack Obama, as well as environmentalists and "Big Oil" lobbyists all supported the Convention.[355] Isolationist sentiment was widespread among Republican senators, which successfully blocked ratification.[356]

During the BBNJ negotiations, the Washington delegation never denied that it will become a party to the ILBI, but opposition in the Senate would make ratification difficult.[357] The high majority requirement is almost impossible to achieve without bipartisan support but, in the case of UNCLOS, non-ratification did not

[353] Smith 2009, 651
[354] Rothwell and Stephens 2016, 18-19
[355] Bonner 2013, 135
[356] *Ibid*., 142
[357] Balton 2019, 4

prevent Washington from accepting to be bound by its provisions as a reflection of international customary law. It is also noteworthy that the United States became a party to UNFSA, the UNCLOS implementing agreement about conservation and management of straddling and highly migratory fish stocks.[358] The US Senate Foreign Relations Committee favoured the Agreement and urged for its ratification, but at the same time it expressed concerns in relation to the "no reservations" clause included in Art. 42[359].[360] The inclusion of such a provision proved problematic for Senate ratification in the past, as it prevents the Senate "from exercising its constitutional duty to give advice and consent to a treaty"[361]. The Draft ILBI contains such a clause in Draft Art. 63 [362], in bracketed text, and it remains to be seen whether it will become part of the final Agreement. Still, these concerns can be overruled if the overall treaty is deemed beneficial to states' specific interests, as it happened with UNFSA.

It can be said, however, that the Trump administration has routinely expressed a strong isolationist sentiment, both in its trade wars with China and in the international (and Arctic) arena. The decision to withdraw from the Paris Climate Agreement is a strong indicator of where climate change stands in the list of the current administration's priorities. Therefore, a lot is at stake in the 2020 Presidential elections, not only for the United States but for the world at large – four more years of Trump might very well exacerbate geopolitical tensions and stifle any significant development in Arctic governance. However, it is important to remember that important contributions came from the US delegation during the CAOFA process, and Washington successfully ratified the Agreement in August 2019.[363] One cannot help but hope the cooperative spirit that made the CAOFA process a success story did not get lost along the way.

7.2.2 The case for Russia

Russia's approach to the BBNJ negotiations has been standoffish: its delegation has argued that existing mechanisms are sufficient and that the ILBI should not modify existing regimes, expressing constant opposition to the creation of new instruments and/or bodies with decision-making powers.[364] The positions expressed by the Moscow delegation have often been at odds with those of other negotiating states, making

---

[358] United Nations Department of Public Information, May 2010 https://www.un.org/depts/los/convention_agreements/reviewconf/FishStocks_EN_C.pdf accessed 6 September 2020
[359] UNFSA, Art. 42
[360] Senate Executive Report 104-20: Agreement for the Implementation of the UN Convention of the Law of the Sea relating to Fish Stocks, June 26 1996 https://www.foreign.senate.gov/imo/media/doc/executive_report_104-20.pdf accessed 6 September 2020
[361] *Ibid.*
[362] Revised Draft Text ILBI, Art. 63
[363] The United States Ratifies Central Arctic Ocean Fisheries Agreement, US Department of State, Office of the Spokeperson Media Note, 27 August 2019 https://translations.state.gov/2019/08/27/the-united-states-ratifies-central-arctic-ocean-fisheries-agreement/ accessed 6 September 2020
[364] Written Submission of the Russian Federation to Prepcom, 2015 https://www.un.org/depts/los/biodiversity/prepcom_files/streamlined/Russian_Federation.pdf accessed 6 September 2020

their perspectives difficult to reconcile.[365] Russia sees the BBNJ process as mostly unnecessary[366] and, therefore, it is very likely that it will decide not to become a party to the ILBI if it does not deem the final text satisfactory.

On the other hand, Russia is a party to both UNCLOS and UNFSA, and the factors and objectives that drive Moscow's Arctic policy are often unclear.[367] Throughout the last decades, the main focus of its activities in the Arctic has been the implementation of economic projects, considered essential for the country's social and industrial development.[368] The Kremlin has vested economic interests in energy and resource extraction and shipping, and up to 20% of Russia's Gross Domestic Product (GDP) is generated within its Arctic territories.[369] Furthermore, as the Arctic coastal state with the largest maritime zones in the Arctic Ocean, Russia is often preoccupied with the risk of impositions over its sovereignty and jurisdiction.[370] Because of this approach, Moscow is often weary of new governance initiatives that risk imposing a heavier burden on Russia than on the other Arctic states[371], which might explain its veiled opposition to the BBNJ process.

Russia proved itself to be an important cooperative actor in Arctic governance, both within the Arctic Council and in the A5, and it included "cooperation and peaceful settlement of all disputes in the Arctic" as one of the main objectives in its 2020 Arctic policy.[372] Still, it is difficult to infer the likelihood of its future participation in the ILBI, since the Moscow delegation never expressed the same openness to the BBNJ process as other regional players such as Canada and Denmark.

At this point, many variables are at play, considering that we do not even know when the ILBI will be ready to be ratified. This chapter has proved as a reminder that political and economic rationales will always hold significant weight in international relations, especially at a time when climate change is opening up new and untapped possibilities for exploitation, and the road to ILBI ratification and implementation is possibly still long and uncertain. The governance strategy I identify in the following chapters, however, would channel the cooperative spirit that led to the CAOFA towards the creation of a strong governance infrastructure for the changing Arctic, which would successfully implement the ILBI as well as fulfil the most pressing environmental and geopolitical needs of today.

---

[365] Balton 2019, 4
[366] Russia's Written Submission to Prepcom, 2015
[367] Devyatkin 2019, 1
[368] *Ibid.*
[369] *Ibid.*
[370] Molenaar 2017, 63-64
[371] *Ibid.*
[372] Kroeker 2020, ModernDiplomacy article

Chapter 8
A new strategy for Arctic cooperation

Arctic implementation of the ILBI presents a good opportunity to finally strengthen many aspects of a governance framework that risks being unable to face current challenges of the Polar North.[373] It can be an incentive to create a comprehensive protection regime that explicitly addresses not only CAO biodiversity issues, but other wide-ranging changes taking place in the Arctic marine environment.[374] The regional implementation of the ILBI, in particular, represents a good testing ground for Arctic stakeholders to adopt a new governance strategy, which would help best tackle the challenges arising in connection to the new Agreement. In fact, regions themselves are stakeholders in the BBNJ process, and their responsibility to adapt global standards to their own needs, cooperating successfully with the ILBI, should not be understated.[375]

According to the 2019 Draft Text, the COP is to promote cooperation and coordination "with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies"[376]. Much is still unclear as to how this mechanism might be operationalised, however, and the following analysis focuses on how Arctic cooperation can be successfully engaged to build a strong dialogue with the ILBI. The following sections look at the strengths and weaknesses of the CAOFA process, as the best example of A5 cooperation, and consider to what extent an A5-led process is desirable. The potential of the Arctic Council is assessed next, analysing the significance of its past contributions to Arctic science and policy. Furthermore, since the Draft ILBI allows for such a possibility[377], I evaluate the need to establish a new global, regional and sectoral body to complement the work of the Council. After concluding that it would be best to build on the Arctic Council's existing role and expertise, I argue for a new governance approach that would make the most out of the two existing fora. I present the untapped potential of ensuring complementarity between the A5 and the Arctic Council, a strategy which is susceptible of vast applications and which would draw a path towards a new era for Arctic environmental governance.

8.1 Learning from the CAOFA

The 2018 CAOFA is not only the most recent among Arctic governance policy instruments, but it is also particularly relevant to the present study. Since the initiative originated among the A5, the whole process constitutes the most interesting case study to look at when assessing the possibilities and limitations of

[373] De Lucia et al. 2018, 264
[374] Prip 2018, 7
[375] Blanchard et al. 2019, 7
[376] ILBI Revised Draft Text, Art. 48(4)(c)
[377] *Ibid*., Art. 6(3)

having Arctic coastal states leading governance efforts.[378] Furthermore, the CAOFA process was successfully tailored to address a number of political and environmental changes that were taking place in the Arctic. First, this Agreement mirrored the surge in regional participation from non-Arctic actors, which will continue to be significant in shaping future Arctic policies. These states' legal rights, as recognised by UNCLOS[379], to undertake activities in the Arctic high seas made them important stakeholders in the CAOFA negotiations[380], and the same can be said of regional ILBI implementation. The CAOFA "exemplified preventive governance"[381] by addressing the issue before it became a serious concern or even a crisis, hence setting a good example for Arctic environmental governance. The Agreement further implemented the precautionary principle and the ecosystem approach, two principles which have been deemed essential[382] in devising a successful strategy to tackle the effects of climate change. For all the afore-mentioned reasons, looking at the CAOFA efforts has the potential to make future cooperation a success story.

8.1.1 Overarching role of the A5

The CAOFA process started within A5 circles. Eventually, the new Arctic 5+5 format was created, but these players were allowed to join the discussions only once the interim measures had already been decided.[383] Coastal states still played the role of the primary stewards during negotiations as reflected in the CAOFA Preamble, which recognises "the special responsibilities and special interests of the Central Arctic Ocean coastal States"[384] in relation to sustainable management and conservation of fish stocks.[385]

This approach has been criticised, with Zou arguing that Arctic coastal states' aim in the CAOFA was to unlawfully extend their jurisdiction and influence beyond their EEZ and into the high seas.[386] However, this conclusion seems far-fetched. The applicable law, contained in UNCLOS and its Implementing Agreement UNFSA, recognises the importance of cooperation between coastal and fishing states for the management and conservation of straddling and highly migratory fish stocks in the high seas and between the EEZ and the high seas[387]. This objective was achieved in the CAOFA process: the A5 managed to ensure acceptance of conservation-oriented measures across the board, even though for the Other 5 it would have been more advantageous to favour commencement of high seas fishing as soon as it would become viable.[388] Non-Arctic perspectives needed be included, but Arctic coastal states still had the

[378] Landriault et al. 2019, 36
[379] UNCLOS, Art. 87
[380] Landriault et al. 2019, 37
[381] *Ibid.*
[382] ILBI Revised Draft Text, Art. 5(e) and 5(f)
[383] Zou 2016, 412
[384] CAOFA, Preamble
[385] *Ibid.*
[386] Zou 2016, 419
[387] UNCLOS, Art. 63(2), 64(1)
[388] Molenaar 2018, Reykjavik Presentation

Arctic knowledge and ability they needed to kick-start the process and lead the way during negotiations towards a successful outcome. Non-Arctic states welcomed the invite to the negotiations as an opportunity to play a substantive role in Arctic governance; therefore, it seems like the ones who complained the most about the late inclusion of non-A5 states were commentators.

Ensuring that non-Arctic stakeholders are included will also be important for the implementation of the ILBI. In fact, even though it is most likely that fisheries will not be covered by the future BBNJ Agreement, non-Arctic states' activities in Arctic ABNJ can still affect the implementation of the ILBI, therefore all these players must be reserved a seat at the table. The mere inclusion of extra-regional states in the Arctic Council as Observers is not enough: these states are accorded inferior participatory status within the intergovernmental forum, as it is custom within regional bodies with a similar mandate.[389] Observer participants are in fact relegated to a merely consultative role in a number of regional seas conventions and bodies, ranging from the IMO[390] to the Barcelona Convention[391]. Still, choosing the Arctic Council as the forum for negotiations can better ensure that other important regional voices are heard, such as those of indigenous peoples' organizations. This is where the need to ensure that both these fora complement each other's work comes into play.

8.1.2 Strengths and weaknesses of the CAOFA

The CAOFA imposes a temporary moratorium on unregulated commercial fishing "until the effects of climate change on fisheries in the CAO are better understood and science-based management is in place"[392]. Negotiators succeeded in finding agreement on the need to apply the precautionary principle before any fishing activity in the area were to be commenced. Monitoring fish stocks presents scientists with particular difficulties, and therefore represents the prime example of the need to apply precaution.[393] Science meetings complemented the CAOFA negotiations, and saw the participation of scientists from China, Iceland and South Korea.[394] The creation of a Joint Program of Scientific Research and Monitoring was also envisaged, in order to tackle existing uncertainties on the "ecosystem of the Agreement Area"[395]. This shall incorporate indigenous and local knowledge, which should be considered "as a basis for fisheries conservation and management"[396].

It is noteworthy that negotiating states managed to accommodate conflicting interests of the A5 and the Other 5. By ensuring that compromise solutions were reached on a number of issues, they managed to

[389] *Ibid.*
[390] IMO website: Membership http://www.imo.org/en/About/Membership/Pages/Default.aspx accessed 20 August 2020
[391] Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (amended version adopted 10 June 1995, entered into force 9 July 2004) NEP(OCA)/MED IG.6/7 (Barcelona Convention), Art. 20(2)
[392] Schatz et al. 2019, 196
[393] *Ibid.*, 219
[394] Molenaar 2017, Kobe Presentation
[395] CAOFA, Art. 4(2)
[396] *Ibid.*, Preamble

strike a balance between freedom of the high seas and protection and conservation of fish stocks. One example of this is the issue of exploratory fisheries, which soon became contentious due to negotiating states' interest in exploring potential future opportunities.[397] This led to the adoption of some safeguards in relation to exploratory fishing, which states can only authorize pursuant to conservation and management measures and sound scientific research[398], in order to ensure that the application of the protection regime is not compromised.

Furthermore, the package deal of the Agreement was the result of the incorporation of non-A5 participants' concerns over the exercise of "multilateral creeping coastal states jurisdiction"[399] by Arctic coastal states.[400] With this expression, we indicate the phenomenon of coastal states seeking to expand their maritime claims and/or legal influence beyond their allocated rights.[401] CAOFA provisions were introduced that would entrust individual state parties with the power to block the decision-making procedure, and even prevent the renewal of the Agreement.[402] This issue is one that is very likely to arise again during ILBI cooperation – during the BBNJ negotiations, the question arose whether coastal states enjoyed a special role in relation to the establishment of ABMTs in ABNJ. The relevant provisions contained in UNCLOS and in the CBD, however, do not confirm the existence of special competences of coastal states in this regard.[403] The primary responsibility rests on all states that carry out activities affecting biodiversity in ABNJ, and they are to cooperate.[404] It cannot be denied that the CAOFA model set an important precedent in this regard.

Still, some significant weaknesses can be identified in the CAOFA process and its rules. The first one regards its area of application: the territorial scope of the Agreement does not reflect the principles of ecosystem-based governance but rather a division that is mostly based on legal considerations.[405] Still, Art. 3(6) directly addresses the issue of "compatibility of conservation and management measures for fish stocks that occur in areas both within and beyond national jurisdiction"[406]. This provision makes express reference to Art. 7 UNFSA, which requires a certain degree of cooperation between coastal states and states fishing in the high seas to guarantee compatible conservation measures are put in place for the protection of straddling and highly migratory fish stocks.[407] So far, these efforts for consistency have been scarce, but it must be noted that no fishing activity is currently taking place in the EEZ areas that border the CAO.[408]

It remains to be seen whether states will take action on a matter that has the power to undermine the effectiveness of the ecosystem and precautionary approach to fisheries management. The ecosystem

[397] Schatz et al. 2019, 226
[398] CAOFA, Arts. 3(3), 5(1)(d)
[399] Molenaar 2018, Reykjavik Presentation
[400] *Ibid.*
[401] Mossop and Schofield 2020, 6
[402] CAOFA, Arts 6(2), 13(2)(b)
[403] Oude Elferink 2018, 446
[404] *Ibid.*, 463
[405] Schatz et al. 2019, 214
[406] CAOFA, Art. 3(6)
[407] UNFSA, Art. 7(2)
[408] Zou and Huntington 2018, 133

approach, in particular, aims to integrate land, water and living resources, and is based on the idea that only a holistic approach to conservation can address the needs of an interconnected ecosystem.[409] This principle also appeared early during the BBNJ negotiations, and the Draft Text includes it among the general principles and approaches that shall guide states parties towards the achievement of the ILBI's objectives.[410]

Another shortcoming of the CAOFA process has been its failure to include indigenous voices. The EU was the only non-state actor invited to participate, while NGOs and intergovernmental organisations representing indigenous peoples' interests were excluded.[411] As a result, the issue of indigenous participation in the CAOFA is left unclear – they are accorded no vote of their own under the decision-making procedure and even though the importance of "indigenous and local knowledge"[412] is recognised in the Preamble, negotiating states fell short of implementing a role of their own for indigenous communities in research and scientific cooperation.[413] The CAOFA process followed in the path laid out by other RFMO/RFMA negotiations, where it is generally acknowledged that states, and in particular coastal states, play a key role.[414]

8.2. The Arctic Council

The Arctic Council has developed into the leading intergovernmental forum for Arctic cooperation, with a specific focus on fostering environmental protection.[415] Biodiversity is one of its main areas of cooperation, and relevant activities are mainly carried out by the CAFF (Conservation of Arctic Flora and Fauna) Working Group. The latter is comprised of national representatives from all participants in the Council: member states, Permanent Participants, and Observer states and organisations.[416] Originally, CAFF was conceived as a forum for regulatory cooperation on biodiversity, but most of its efforts in this sense were frustrated by the political realities of the region.[417] A striking example of this is the CAFF's failure to create a Circumpolar Protected Areas Network (hereafter: CPAN) that would ensure protection of Arctic ecosystems and provide a common process for Arctic states to create circumpolar protected areas.[418] Arctic states were suspicious of the project, which would affect their sovereignty and touch upon politically sensitive issues.[419] The project was terminated in 2004 and since then the Working Group's activities have been more focused on fostering knowledge and scientific understanding of Arctic biodiversity rather than on proposing policy recommendations for its conservation and management.

---

[409] De Lucia 2017, 3
[410] ILBI Revised Draft Text, Art. 5(f)
[411] Molenaar 2017, Kobe Presentation
[412] CAOFA, Preamble
[413] Dodds 2019, 550-551
[414] Zou and Huntington 2018, 136
[415] Arctic Council website https://arctic-council.org/en/ accessed 16 May 2020
[416] CAFF Working Group website https://www.caff.is/ accessed 16 May 2020
[417] Prip 2016, 41
[418] *Ibid.*, 40
[419] Prip 2019, 4

In this, the work of the CAFF proved successful and led to the release of an important and comprehensive study, the Arctic Biodiversity Assessment (hereafter: ABA) in May 2013. This report explicitly invited Arctic states to recognise the importance of marine ecosystem-based management and commits the Arctic Council to providing a knowledge base for its implementation.[420] The ABA also contained 17 recommendations for policy-makers, and in 2015 the CAFF published the Action Plan for Arctic Biodiversity in an effort to guide their implementation.[421] Christian Prip has identified the ABA as "the furthest CAFF has moved in the direction of policymaking and norm-setting"[422]. This statement is true; however, it must be put into perspective: in fact, the majority of ABA recommendations merely concerned generating knowledge and sharing data, developing future scientific work within the Arctic Council.[423]

These examples highlight the perceived inability of the CAFF, and therefore of the Arctic Council, to go beyond the soft law nature of its recommendations and lead regional policy initiatives on protection of biodiversity. The failure of the CPAN project further makes evident that Arctic states often do not commit to the Arctic Council and oppose its initiatives.[424]

In the last decade, the Council has showed potential as the forum for negotiations of binding agreements, on Cooperation on Aeronautical and Maritime SAR in the Arctic (2011), Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (2013) and on Enhancing International Arctic Scientific Cooperation.[425] However, the failure of the 2015 Task Force on Arctic Marine Cooperation (TFAMC) has led scholars to wonder whether the Arctic Council currently has enough power to enact future dialogue with the future ILBI and its COP.[426] In this scenario, proposals have emerged for the ILBI to fill existing governance gaps.

8.2.1 Evaluating the need to create a new regional body under the ILBI

The Arctic Council lacks the competence to adopt binding measures for the Central Arctic Ocean, only being able to offer recommendations. Furthermore, it would be difficult for this forum to ensure the participation of non-Arctic states, since Observers do not enjoy the same formal role or weight in deliberations as the other eight member states.[427] The Council's recent success in facilitating the conclusion of legally binding agreements occurred only to a limited extent in relation to environmental protection and biodiversity, and their provisions could become binding for Arctic Council member states only.[428] For these reasons, the Arctic Council alone seems unable to facilitate the cooperation needed to implement the ILBI's objectives in

[420] CAFF, ABA 2013
[421] Prip 2016, 43
[422] Prip 2019, 4
[423] *Ibid*.
[424] Humrich 2017, 87
[425] Prip 2019, 4
[426] De Lucia et al. 2018, 265
[427] Landriault et al. 2019, 14
[428] Prip 2019, 4

the region. The ILBI Draft Text takes into account the possibility of existing bodies "not being up to the task" when it affirms that "States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary"[429]. A similar paragraph is contained in Article 15, which envisages the scenario where no global, regional, subregional or sectoral body exists that can establish MPAs.[430]

The creation of a new Arctic body would appear appropriate, given the fact that the Arctic Council has no competence over ABNJ. A significant gap in biodiversity management and protection can be envisaged, and the setting up of a new regional body would be compatible with both the ILBI's hybrid approach and Arctic states' preferences for a strong regional role in the implementation. However, it must be said that their response to this possibility has been somewhat mixed. During IGC-III, the United States requested deleting *in toto* the provision contained in Art. 6(3)[431], and maintained this position in the textual proposals submitted for consideration at IGC-IV[432]. Canada expressed the value of establishing such bodies especially in regards to ABMTs, while Iceland's and Russia's positions were more nuanced.[433] Russia preferred referring to existing bodies, allowing for this possibility only when no sectoral or regional bodies exist.[434] The 2020 Icelandic textual proposals expressed favour towards the creation of a new body, while highlighting the proactive role of coastal states and states undertaking activities in Arctic ABNJ in such a creation.[435] Therefore, it is unclear whether involved states would be able to reach an agreement on the matter, keeping in mind that China, Japan and Singapore, all states with significant Arctic interests, at IGC-3 all sided with the United States on the need for a new regional body[436]. What is certain, however, is that undertaking such an initiative would be a lengthy and complicated process and would potentially make the Arctic governance framework more fragmented than it already is.

The creation of another regional institution by states and for states would end up relegating the Arctic Council on the sidelines of new initiatives for the protection of biodiversity beyond national jurisdiction. In the CAOFA process, states' cooperative efforts failed to ensure synergy with the work of the Council, which still has a lot to bring to the table in terms of expertise and policy-making potential. At the same time, the creation of a new regional body would be an unnecessary waste of time and financial resources, which, even if successful, would take the focus off of what can lead to the most cost-effective results: ensuring complementarity between the work of the Arctic Council and the A5.

[429] ILBI Revised Draft Text, Art. 6(3)
[430] *Ibid.*, Art. 15(2)
[431] IGC-III Summary, 6
[432] Textual proposals submitted for consideration at IGC-IV
[433] IGC-III Summary, 6
[434] *Ibid.*
[435] *Ibid.*
[436] IGC-III Summary, 6

8.2.2 Proposals for effectively building on the Arctic Council's existing role

While the Arctic Council, as it is today, lacks the institutional capacity to be at the forefront of the efforts for ILBI implementation in the Arctic, it is important to ensure its inclusion. In fact, its broad substantive and spatial competence, as well as its expertise in harmonising interactions between global and regional regimes should not be forgotten.[437] For example, the Council played an important role in the implementation of global instruments in the negotiating process that led to the drafting of the 2011 Arctic SAR Agreement.[438] This instrument, as well as the 2013 Agreement on Marine Oil Pollution, Preparedness and Response, also includes responsibilities that apply to ABNJ.[439] The Arctic Council's soft law contributions have proved useful in fostering knowledge-based cooperation on a variety of issues. Therefore, similar initiatives can and should be undertaken for protection of the environment and, more specifically, of biodiversity.

As Koivurova and Caddell underlined, "there appears to be particular scope to advance the four thematic priorities of the ILBI through the Arctic Council"[440]. This statement is particularly true in regards to MPAs: it suffices to reference some important contributions that have mostly come from the CAFF and PAME Working Groups. The former's CPAN has already been mentioned, and CAFF also contributed to the 2005 Arctic Climate Impact Assessment (ACIA).[441] This instrument holds particular significance because it was the first one to single out climate change as the biggest threat to Arctic biodiversity.[442] Alongside with other Arctic Council Working Groups, during a 2013 assessment the CAFF identified 95 areas that were deemed worthy of protection.[443] This initiative contributed significantly to the work undertaken by the CBD on identifying Ecologically or Biologically Sensitive Areas (EBSAs) around the world.[444] The CAFF provided scientific and technical support and became an important Arctic referent for the global process.[445] One such EBSAs was the multi-year ice of the Arctic Ocean, and extended to the high seas – even though designation did not immediately translate into the establishment of MPA, this example still holds particular significance for the future establishment of MPAs under the ILBI.[446]

The PAME Working Group has undertaken important work, especially on protection of the Arctic environment from shipping and on developing the concept of the ecosystem-based approach to management.[447] In 2019, its contributions led to the drafting of the Arctic Council's Guidelines for Implementing an Ecosystem Approach to Management of Arctic Marine Ecosystems. As we have seen,

[437] Molenaar et al. 2013, 400-401
[438] *Ibid.*, 406
[439] VanderZwaag 2018, 407
[440] Koivurova and Caddell 2018, 136
[441] Prip 2019, 4
[442] *Ibid.*
[443] Prip 2016, 41-42
[444] *Ibid.*
[445] *Ibid.*
[446] Koivurova and Caddell 2018, 136
[447] Prip 2019, 4

under the Draft ILBI this principle shall guide States in the implementation, in particular when it comes to the identification and monitoring of MPAs.[448]

Therefore, ensuring that the Arctic Council is part of ILBI cooperation and implementation would provide negotiators with the opportunity to build on its past work and expertise and effectively transform its scientific work into policy that is knowledge-based and takes into account all relevant Arctic voices. The intergovernmental forum provides representation to indigenous peoples and communities via its six Permanent Participants. This is particularly significant in light of the fact that the Draft ILBI repeatedly references indigenous peoples' traditional knowledge and the importance of their involvement in BBNJ protection.[449] Studies have shown that indigenous people, although they comprise less than 5% of the world's population, protect 80% of the global biodiversity, and they are starting to be regarded as important stewards of the Earth.[450] Their participation would be best ensured within the Arctic Council, since the CAOFA example has made evident negotiating states' failure to include non-state actors. However, the soft law nature of Arctic Council's recommendations still poses a problem for implementation and enforcement of the ILBI's objectives, and the fact remains that the Arctic Council is unable to contribute on its own to regional efforts for protection of BBNJ. For this reason, the trick to ensure successful cooperation and implementation of the ILBI is making sure that the two models we analysed complement each other. The next section presents how complementarity can be achieved, in order to ensure that harmonised efforts coming from both the A5 and the Arctic Council are engaged to yield the best possible results.

8.3. How to ensure complementarity between the two models

The A5 has established itself as "the second most prominent agglomeration focused on Arctic governance"[451]. A5 initiatives such as the Ilulissat Declaration paved the way for the rise of this new forum, which, unlike the Artic Council, lacks independent power or existence separated from the States that are part of it.[452] Cooperative efforts that led to the CAOFA were initiated and mostly developed among Arctic coastal states. At the same time, this process occurred for the most part in isolation from the Arctic Council and its non-state participants.[453] Commentators have argued that a certain degree of competition exists between the two fora, with A5 initiatives having been accused of undermining the primacy role of the Arctic Council in regards to Arctic cooperation.[454] However, a simple analysis of the strengths and weaknesses of the two fora makes evident that they can successfully complement each other – Arctic cooperation overall

[448] ILBI Revised Draft Text, Art. 16(1), 21(4)
[449] *Ibid.*, Art. 5(i), Art. 10(bis)
[450] Raygorodetsky 2018, National Geographic article
[451] Kuersten 2019, 264
[452] Kuersten 2016, 390
[453] Dodds 2019, 551
[454] Zou 2016, 413

can benefit from the two of them working together, and the BBNJ process can provide the perfect opportunity for applying this new approach.

Both forums reflect Arctic states' interests, first and foremost – in the Arctic Council, the eight member states are the only ones with decision-making power, which occurs via consensus.[455] Therefore, envisaging the Council as a conservationist counterpart that balances out Arctic coastal states' self-interested efforts would be a mistake. Still, together they can ensure that cooperation and implementation of the ILBI includes all important stakeholders: non-Arctic states can be best engaged by the A5, and indigenous communities and NGOs by the Arctic Council. The participation of all states, either Arctic or not, that engage in activities in Arctic ABNJ is fundamental. In fact, each state enjoys certain rights and obligations therein, and their cooperation is essential for an effective protection regime to find application. States such as China have reiterated that it is important cooperation occurs on the same level with Arctic states, and this cannot happen in the Council due to the limited powers non-Arctic states enjoy as Observers. Indigenous participation, on the other hand, would ensure their traditional knowledge is engaged in the negotiations, an objective which the Draft ILBI deems very important. Participation from NGOs, on the other hand, would be needed to emphasise the Arctic's environmental significance.[456] In terms of ILBI implementation, this approach would be the most effective because it would combine the A5's political leverage with the Arctic Council's expertise in science and policy. The important work undertaken by CAFF and PAME should be channelled towards implementation efforts, and the interplay of regional frameworks and bodies with the ILBI would be mutually beneficial in the promotion of regional conservation tools.[457]

In the author's opinion, fruitful dialogue between the A5 and the Council should be guaranteed at each stage of the negotiations. The Arctic Council could provide for better scientific understanding of Arctic ABNJ, which in turn should inform BBNJ negotiations. Once the Arctic Council has the political backing of coastal states, it can undertake research on sensitive areas, for example on the extended continental shelf, and the relevant findings would be pivotal in establishing a knowledge-based, protection regime for CAO biodiversity.

At the same time, however, it would make sense for Arctic coastal states to be the first to set the tone of the negotiations. Their *ad hoc* meetings would provide for a more efficient forum for cooperation than the Arctic Council, for a number of reasons. Arctic coastal states' special interests would be best addressed among the A5, a forum where they are the only participants and their perspective are more or less homogenous.[458] In their gatherings, potentially any stakeholder can be invited and there is no established hierarchy – however, Arctic coastal states would still preserve their stewardship role by virtue of their established primacy in Arctic affairs. Meaningful discussions among involved states would, by doing so, frame relevant issues prior to their introduction within the Arctic Council, where further discussion would

[455] Kuersten 2016, 390
[456] Wilson Rowe 2018, 31
[457] Koivurova and Caddell 2018, 136-137
[458] Kuersten 2016, 392

ensue with the participation of non-state actors and conclusions would reflect all participants' perspectives.[459] This solution best operationalises the provisions of the ILBI on international cooperation[460], by strengthening relevant Arctic instruments and successfully engaging global actors in a historical commitment to the protection of Arctic BBNJ.

[459] *Ibid.*, 393
[460] ILBI Revised Draft Text, Art. 6(1)

Chapter 9

How this new strategy could help tackle other future challenges

In the previous chapter, the untapped potential of a governance model that engages both the A5 and the Arctic Council has been presented in connection with ILBI cooperation and implementation. Therefore, my analysis has taken into account the needs of Arctic high seas biodiversity as well as the BBNJ Agreement's main objectives, from ensuring the ecosystem-based approach finds application to devising a governance strategy for the establishment of MPAs in the Central Arctic Ocean. This has been a necessary exercise, considering that the next best opportunity for this new governance model to find application will most likely be the regional implementation of the ILBI.

Still, the Arctic currently faces an uncertain future due to recent geopolitical, socioeconomic and environmental challenges, which have led to the onset of a period of governance impasse after the 2019 Rovaniemi Ministerial meeting. The latter marked the failure of the Arctic Council's Task Force on Arctic Marine Cooperation and the first time in the Council's history where states proved unable to reach agreement on a shared Ministerial Declaration.[461] Here, states appeared divided and unable to agree on a common Arctic strategy, right after the Task Force had stressed the need to increase cooperation for the conservation and management of Arctic marine areas. Furthermore, the Covid-19 pandemic has exacerbated existing geopolitical tensions and shifted the focus of states away from the international arena, affecting institutions, economies and social relations.[462] In the meantime, environmental problems have continued to rampage the region, leading to extreme climatic events such as temperature anomalies and wildfires, the resulting permafrost thaw displacing entire native Alaskan communities.[463] The United States is further set to formally withdraw from the Paris Agreement on 4 November 2020, one day after the presidential election; the Democratic nominee Joe Biden has pledged to immediately rejoin the Climate Accord if elected, but uncertainty will remain until November the 3rd.

In the present chapter, I present how important it is that Arctic stakeholders agree on the need to enhance the existing regime for environmental governance by applying the model I presented in the previous chapter. In fact, channelling harmonised efforts from both the A5 and the Council towards cooperation would lead to a successful response to current Arctic challenges, and further reflect the guiding values and principles that the TFAMC identified in its 2017 Report. In fact, the latter stated that "Arctic marine cooperation should develop among the Arctic States and evolve within the Arctic Council, consolidating and strengthening the Council's marine work"[464]. Given the number and scope of the current political and environmental challenges facing the Arctic, the governance response should focus on ecosystem-based

[461] Balton and Zagorski 2020, 1
[462] Durfee 2020, Arctic Institute article
[463] Herrmann 2020, The Guardian article
[464] TFAMC Report to Ministers 2017, 7

management and adaptation measures for the Arctic Ocean, and include all regional stakeholders' voices – it is time to bring to fruition a comprehensive process to strengthen ocean conservation and management.

The following sections present the current geopolitical climate and the shifting landscape of Arctic politics, which is seeing increasing tensions between Russia, China and the West, and the increased prominence of non-Arctic states.[465] I aim to provide an overview of the state of international relations in the region, focusing on significant game changers for the Arctic regime: the existential threat presented by climate change, the opposed geopolitical maneuvering by Russia, China and the United States in the region, and the Covid-19 crisis. My analysis then moves on to consider what a successful governance response might look like, and argues for Arctic stakeholders to build on the cooperation model I have described in the previous chapter.

9.1 The current Arctic geopolitical climate

The Polar North has undergone tremendous change in the last decades, which has in turn had new and far-reaching implications for Arctic governance.[466] In particular, the last five years have seen a surge in extra regional interests in the Arctic, underscoring the inability of the Council to tackle many current issues. Oran Young convincingly explained that "the Arctic Council is too big to handle some problems, yet too small to handle others"[467]. In fact, it is easier for two Arctic states to discuss their disputes or draft bilateral agreements outside of its arena. At the same time, issues that involve consideration of Arctic ABNJ require the participation of extra regional states, who all enjoy fishing and shipping rights in the Arctic high seas but can only partake into the activities of the Council as Observers.[468] Today, the need for a comprehensive and ecosystem-based approach for climate change adaptation raises a number of issues, which are transregional in character and therefore cannot be addressed without including a range of non-Arctic states in the discussion.[469] It is easy to further infer that the Council lacks the political and legal power to impose any meaningful regulation that would protect the Arctic Ocean and its ecosystems in their entirety – in a nutshell, the intergovernmental forum lacks the power to guide the regional response to climate change on its own.

On the other hand, however, the strong spirit of cooperation and pragmatism that marked the CAOFA process seems to now be lost on the A5. The failure of the Rovaniemi Ministerial meeting has been one of the symptoms of a larger, more fundamental issue. Current geopolitical tensions, as well as Arctic states' varying attitudes towards climate change, have made environmental governance increasingly difficult to pursue.[470] While at Rovaniemi, the United States delegation turned climate change into a political and

[465] Young 2016, 209
[466] Young 2019, 1
[467] Young 2016, 212
[468] *Ibid.*, 212-213
[469] *Ibid.*, 214
[470] Balton and Zagorski 2020, 10

debatable issue, and it was therefore impossible for Arctic ministers to create a level playing field to discuss and negotiate on the most pressing environmental concerns.

Furthermore, new economic and political conditions have emerged due to the coronavirus pandemic, leading states to look inward rather than outward in an effort to face the crisis. This new reality has had many wide-ranging implications – the steep decline in oil market prices has worsened in the last six months and might lead to the opening up of more pristine Arctic land to drilling. Norway has recently unveiled plans for the opening up of nine new Arctic oilfields in the Barents Sea off the Svalbard archipelago, a move which has been strongly opposed by scientists and NGOs alike.[471] In fact, the project is susceptible of leading to oil spills and threaten Arctic ecosystems, as well as increasing tensions with Russia, for which the area has huge strategic importance.[472] The US Department of Interior is also likely to start selling the first leases for oil and gas drilling in the Alaskan land that is part of the Arctic National Wildlife Refuge, in an effort to strengthen an industry which was hit especially hard by the global pandemic.[473] We are living in unprecedented times, and it does not come as a surprise that, during an economic downturn like no other, pursuing international cooperation is low on states' list of priorities.

In recent months, relations between China, Russia and the West have been further strained by the Covid-19 pandemic, leading great power diplomacy back to center stage in the Arctic and elsewhere. China, Russia and the United States are flexing their muscles in an effort to reiterate their superpower status in the Arctic.[474] However, this new shift in Arctic politics is nothing new, nor a mere product of the Covid-19 crisis. In fact, scholars have identified significant geopolitical shifts that have been taking place for years now. The biggest game changer has been climate change – the latter has emerged as a dominant force within the circumpolar Arctic, "generating profound consequences both for the human residents of the Arctic itself and for outside actors who have begun to think about the Arctic through a new lens"[475]. The characterisation of the Arctic as a peripheral region is no longer valid today, and matters of environmental protection and sustainable development must be addressed in international terms.[476] The response to an international problem cannot merely be a regional one. The Covid-19 crisis has highlighted the need to implement comprehensive strategies to cope with what is yet to come in terms of existential security threats.[477] This example shall be kept in mind when devising a successful strategy for the adaptation to climate change, since the latter, very much like a global pandemic, risks seriously undermining human security, unless the world is given "a chance to adjust to the long-term warming reality"[478].

[471] Sutterud and Ulven 2020, The Guardian article
[472] *Ibid.*
[473] Federman 2020, Politico article
[474] Young 2019, 1
[475] *Ibid.*, 5
[476] *Ibid.*, 6
[477] Durfee 2020, Arctic Institute article
[478] *Ibid.*

9.2 What a successful governance response looks like

In the spirit of Mikhail Gorbachev's Murmanks speech, the Arctic response to climate change must start from international cooperation and transnational governance. In fact, these can pave the way to the successful implementation of an international legal regime for the Arctic. In regards to the region's specific needs in terms of environmental governance, those identified in the previous chapter when addressing ILBI cooperation and implementation still stand in the face of climate adaptation. First, the ecosystem-based and precautionary principle to Arctic Ocean management must be guaranteed application – targeted measures must apply to maritime areas both within and beyond national jurisdiction, therefore the engagement of all interested states and actors is fundamental, including non-Arctic states. Furthermore, the strategy must provide for a better scientific understanding of Arctic ecosystems, which would in turn inform comprehensive proposals for management measures and monitor their effects and outcomes.[479]

As I suggested in the previous chapter, this interplay between science and policy can be best achieved with the engagement of the Arctic Council, building on its past contributions and commitment to the ecosystem-based management.[480] Its Working Groups have already undertaken an ambitious project to investigate the current state of the Central Arctic Ocean, working towards an integrated ecosystem assessment of the waters surrounding the North Pole.[481] The joint ICES/PICES/PAME Working Group on Integrated Ecosystem Assessment for the Central Arctic Ocean (WGICA) was established in 2016, and its relevant findings will provide scientific advice and further assess the ecosystem's sensitivity to activities such as shipping and seabed mining.[482] Once again, the Arctic Council has the potential to shape future Arctic politics via its scientific contributions.

At the same time, however, an increase in A5-led project could broaden the scope of Arctic environmental governance, putting Arctic coastal states to center stage and renewing the spirit of cooperation that marked the CAOFA process. Within this forum, cooperation could take place on the same terms with extra-regional states and stakeholders, and allow negotiators to address other topics that are outside the Council's mandate, such as issues of military security and maritime ABNJ governance. Still, a renewed international commitment to the Arctic Council is needed after the Rovaniemi failure – international engagement of the intergovernmental forum's decades-long experience in fostering cooperation can lead to a stronger regime through which to implement effective marine management. The Council would incorporate indigenous and local knowledge and perspectives into its work, and establish a dialogue with the A5 to ensure that the measures identified for the Arctic Ocean are implemented within the Arctic Ocean

[479] Balton and Zagorski 2020, 13-14
[480] *Ibid.*, 16
[481] Arctic Council website: Integrated Ecosystem Assessment (IEA) of the Central Arctic Ocean https://arctic-council.org/en/projects/iea/ accessed 14 September 2020
[482] *Ibid.*

irrespectively of jurisdictional boundaries, in compliance with the ecosystem-based approach.[483] Furthermore, successful interplay with the A5 might build support for and initiate a process for the enhancement of the Arctic Council's policy-making powers and the creation of a subsidiary body tasked with Arctic Ocean management.

While it is impossible to foresee when Arctic states will manage to overcome the current governance impasse, history has showed that in the past they have managed to find common ground and successfully face common threats. My analysis has showed that it is by ensuring complementarity between the two Arctic fora that the most effective governance regime for the Polar North can be put in place, but the success of this model would still heavily rely on regional and extra-regional states' commitment to cooperation. It is imperative that, in the face of current geopolitical tensions, the pressing need for climate change adaptation overrides national concerns, as extreme climatic events have shown that this is the last call for the Arctic environment and its inhabitants.

[483] Balton and Zagorski 2020, 21

Chapter 10
Conclusion

My research has dealt with Arctic cooperation, in light of the recent developments that have set a precedent for the future of regional governance. Both the A5 and the Arctic Council have established their roles as the main avenues for regional and global cooperation. In the Arctic, where 'soft law' cooperation has so far been the rule, recent developments have raised high hopes for the creation of a strong and comprehensive regime for environmental governance. In the last few years, the BBNJ process has underscored the need to cooperate in a global effort to strengthen existing governance regimes for maritime ABNJ. The hybrid approach as enshrined in the Draft ILBI will require coordination with existing regional and sectoral bodies for the implementation of its objectives. Therefore, my research has argued for a cooperative mechanism that engages both the A5, which have the political leverage needed to kick-start negotiations, and the Arctic Council, which has the scientific and policy expertise to match. The last chapter further argued that this strategy might be implemented not only in relation to the BBNJ Agreement, but also in the shaping of a stronger governance infrastructure for climate change adaptation and Arctic Ocean management.

On the other hand, my analysis of Arctic states' views on the BBNJ process has underscored their opposition to a global, and even a hybrid approach for the ILBI, and highlighted how their suggested proposals during negotiations were often aimed at restricting the scope of obligations imposed on states parties. Arctic coastal states share concerns in relation to potential restrictions on their sovereign rights and superpower status in the region, and recent stressors such as the Covid-19 pandemic have exacerbated existing tensions. The geopolitical climate has definitely shifted, and the increase in Arctic states' cooperation that marked the drafting of the CAOFA seems to have recently come to a halt. The following paragraphs reflect further on the challenges ahead.

In previous chapters, I have often stressed how the A5's conservative response to the BBNJ process might stifle the regulatory developments that are needed to address growing threats to the Arctic Ocean and its ecosystems. Furthermore, one cannot fail to ascribe a certain weight to the failure of the 2019 Rovaniemi Ministerial Meeting to produce any shared commitment to the Arctic Council. On this occasion, participants managed to agree only on a one-page long statement with very vague wording and objectives. Therein, the BBNJ process is not even mentioned once.[484] If the Rovaniemi meeting is to set the tone for future Arctic Council Chairmanships, then achieving a shared Arctic commitment to the protection of the Arctic Ocean might become a chimera. In particular, the lack of a long-term strategic plan, as well as heightened geopolitical tensions between China and the United States, make this phase a particularly challenging one for the Arctic Council and for Arctic politics at large.[485] My research has showed that, without states'

[484] Rovaniemi Joint Ministerial Statement, 7 May 2019
[485] Balton and Zagorski 2020, 7

support, new normative efforts for the region become almost impossible to carry out. It is therefore necessary that Arctic stakeholders manage to agree on the need to enhance the existing regime for environmental governance. By channelling harmonised efforts from both the A5 and the Council, cooperation would engage all relevant stakeholders and amplify all Arctic voices, setting up a governance structure that will successfully address the challenges of the Anthropocene.

The next task for Arctic governance will be to organise regional efforts under the ILBI, and thus ensure that its provisions and guiding principles find application in the Central Arctic Ocean. The states involved should embrace this process and start working towards establishing a strong Arctic referent for the ILBI, drawing a path towards a comprehensive governance regime for climate change adaptation. Frameworks and bodies that would guarantee both the success of their cooperative efforts and widespread participation of all regional voices already exist – now it is up to the main players, namely the A5, to take the lead.

Bibliography

International and Regional Agreements

- Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947), 15 UNTS 295

- International Convention on Maritime Search and Rescue (signed 27 April 1979, entered into force 22 June 1985), 1403 UNTS 118

- United Nations Convention on the Law of the Sea (signed 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397

- Convention on Biological Diversity (signed 5 July 1992, entered into force 29 December 1993) 1760 UNTS 69

- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (amended version adopted 10 June 1995, entered into force 9 July 2004) NEP(OCA)/MED IG.6/7

- 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 (opened for signature 4 December 1995, entered into force 11 December 2001) A/CONF.164/37

- Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic (Arctic SAR Agreement) (12 May 2011) https://oaarchive.arctic-council.org/bitstream/handle/11374/531/EDOCS-3661-v1-ACMMDK07_Nuuk_2011_SAR_Search_and_Rescue_Agreement_signed_EN_FR_RU.PDF?sequence=5&isAllowed=y accessed 17 August 2020

- Agreement on Enhancing International Arctic Scientific Cooperation, signed at the Fairbanks Ministerial Meeting, 11 May 2017 https://oaarchive.arctic-council.org/handle/11374/1916 accessed 17 August 2020

- Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Ilulissat, 3 October 2018, not yet in force) https://www.dfo-mpo.gc.ca/international/agreement-accord-eng.htm accessed 25 August 2020

International Jurisprudence

- *Southern Bluefin Tuna (Australia/New Zealand v Japan)* [1999] ITLOS Case No 3, 38 ILM 1624, ICGJ 337

United Nations Reports and Documents

- UNGA Res. A/RES/59/24, 'Oceans and the Law of the Sea', 17 November 2004

- United Nations Department of Public Information, May 2010 https://www.un.org/depts/los/convention_agreements/reviewconf/FishStocks_EN_C.pdf accessed 6 September 2020

- UN Doc. A/66/119, 'Letter dated 30 June 2011 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly', 30 June 2011

- UN Doc. A/69/780, 'Letter dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly', 13 February 2015

- UNGA Res. A/69/292 'Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 19 June 2015

- UNGA Res. 72/249, 'International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 24 December 2017

- UN A/CONF.232/2018/7, 'Intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and

sustainable use of marine biological diversity of areas beyond national jurisdiction: First session' New York, 4–17 September 2018

- A/CONF.232/2020/3 Annex, 'Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction', 18 November 2019

- Meredith, M., M. Sommerkorn, S. Cassotta, C. Derksen, A. Ekaykin, A. Hollowed, G. Kofinas, A. Mackintosh, J. Melbourne-Thomas, M.M.C. Muelbert, G. Ottersen, H. Pritchard, and E.A.G. Schuur, 2019: Polar Regions. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. In press.

- UN A/74/L.41, 'Draft decision submitted by the President of the General Assembly', 9 March 2020

Literature

- Atapattu S., 'Climate Change, Indigenous people and the Arctic: the changing horizon of International Law' *Michigan State International Law Review Vol 22:1 2017,* 377-408

- Balton D., 'Will the Task Force on Arctic Marine Cooperation deliver?' originally appeared in The Circle: Arctic biodiversity in the spotlight, 1 October 2018 https://arcticwwf.org/newsroom/the-circle/arctic-biodiversity/will-the-task-force-on-arctic-marine-cooperation-deliver/ accessed 20 August 2020

- Balton D., 'What will the BBNJ Agreement mean for the Arctic fisheries agreement?', *Marine Policy 2019,* https://doi.org/10.1016/j.marpol.2019.103745 accessed 3 May 2020 accessed 12 September 2020

- Balton D. and Zagorski A., 'Implementing Marine Management in the Arctic Ocean', *Russian International Affairs Council 2020*

- Blanchard C. et al., 'Socio-ecological resilience and the law: Exploring the adaptive capacity of the BBNJ agreement' Marine Policy 108 (2019) 103612 https://www.sciencedirect.com/science/article/pii/S0308597X19303641 accessed 9 September 2020

- Bloom E. T., 'Current Developments: the Creation of the Arctic Council' *The American Journal of International Law, Jul., 1999, Vol. 93, No. 3* (Jul., 1999), pp. 712-722

- Bonner P.J., 'Neo-Isolationists Scuttle UNCLOS' *SAIS Review of International Affairs*, vol. 33 no. 2, 2013, p. 135-146

- Chivers C.J., 'Russians Plant Flag on the Arctic Seabed' *The New York Times* (New York, 3 August 2007) https://www.nytimes.com/2007/08/03/world/europe/03arctic.html accessed 21 August 2020

- De Lucia V., 'The BBNJ Negotiations and Ecosystem Governance in the Arctic' *Marine Policy 86 (2017)*

- De Lucia V. et al., 'Arctic Marine Biodiversity in the High Seas between Regional and Global Governance' *Arctic Review on Law and Politics, Vol. 9, No. 1*, 2018, pp. 264–266

- Devyatkin P., 'Russia and the Arctic' in *Russian Strategic Intentions: A Strategic Multilayer Assessment (SMA)* White Paper, May 2019

- Dupuy P. and Vinuales J.E., *International Environmental law* (2nd edition, Cambridge University Press, 2018)

- Dodds K., ''Real interest?' Understanding the 2018 Agreement to prevent Unregulated High Seas Fisheries in the Central Arctic Ocean' 2019 *Global Policy Volume 10 Issue 4*, 542-553

- Durfee M., 'Existential Security: Lessons from the Pandemic and the Arctic' *The Arctic Institute*, March 31 2020 https://www.thearcticinstitute.org/existential-security-lessons-pandemic-arctic/ accessed 13 September 2020

- Federman A., 'The Man Determined To Deliver Trump's Alaskan Oil Promise' *Politico* (Washington DC, 8 August 2020) https://www.politico.com/news/magazine/2020/08/08/trump-alaska-oil-wildlife-refuge-388548 accessed 11 September 2020

- Herrmann V., 'As the Tundra Burns, We Cannot Afford Climate Silence: a Letter from the Arctic' *The Guardian* (London, 11 August 2020)

https://www.theguardian.com/commentisfree/2020/aug/11/arctic-tundra-paris-climate-agreement accessed 10 September 2020

- Humrich C., 'Coping with Institutional Challenges for Arctic Environmental Governance' in K. Keil, S. Knecht (eds.), *Governing Arctic Change: Global perspectives* (Palgrave McMillan UK, 2017)

- Jacobsson M., 'Cooperation in the Arctic Region: Legal Aspects'in P.A. Berkman and A.N. Vylegzhanin (eds.), *Environmental Security in the Arctic Ocean* (Springer Science+Business Media Dordrecht, 2013)

- Kao S. et al. 'Adoption of the Arctic Search and Rescue Agreement: A Shift of the Arctic Regime Toward a Hard Law Basis?' *Marine Policy 36 (2012)* 832-838

- Koivurova T. and Caddell R., 'Symposium on Governing High Seas Biodiversity: Managing Biodiversity Bejond national Jurisdiction in the changing Arctic' (2018) *Volume 112 American Society of International Law* https://www.cambridge.org/core/journals/american-journal-of-international-law/article/managing-biodiversity-beyond-national-jurisdiction-in-the-changing-arctic/34BE3549098CA4ABBF2F0CC383CD6A1D accessed 15 September 2020

- Kraabel K. D., 'Institutional arrangements in a BBNJ treaty: Implications for Arctic marine science', *Marine Policy 2019* https://doi.org/10.1016/j.marpol.2019.103807 accessed 12 August 2020

- Kroeker J. R., 'Canada and Russia in the Arctic: Competition or Cooperation?' ModernDiplomacy article, 4 September 2020 https://moderndiplomacy.eu/2020/09/04/canada-and-russia-in-the-arctic-competition-or-cooperation/ accessed 6 September 2020

- Kuersten A., 'The Arctic Five Versus the Arctic Council', *Arctic Yearbook 2016*, 389-395

- Kuersten A., Book Review: *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors*, Akiho Shibata, Leilei Zou, Nikolas Sellheim, and Marzia Scopelliti (eds), Routledge, 2019, *The Northern Review* 261-266

- Landriault M. et al., *Governing Complexity in the Arctic Region* (1st edition, Routgers, 2019)

- McCannon J., *A History of the Arctic: Nature, Exploration and Exploitation* (1st edition, Reaktion Books 2012)

- Molenaar E. J. et al., 'Interactions between Global and Regional Regimes: Trends and Prospects' in Erik J. Molenaar, Alex G. Oude Elferink and Donald R. Rothwell (eds.), *The Law of the Sea and the Polar Regions: Interactions between Global and Regional Regimes* (Brill, 2013)

- Molenaar E. J., 'The Arctic, the Arctic Council, and the Law of the Sea' in Robert C. Beckman, Tore Henriksen, Kristine Dalaker Kraabel, Erik J. Molenaar, J. Ashley Roach (eds.), *Governance of Arctic Shipping: Balancing Rights and Interests of Arctic States and User States* (Brill, 2017)

- Molenaar E. J., "The Five-Plus-Five Process on Central Arctic Ocean Fisheries in the Context of the Evolving International Law Relating to the Sea and the Arctic" Presentation to the Symposium The Role of Non-Arctic States /Actors in the Arctic Legal Order, Kobe, 7 Dec 2017

- Molenaar E. J., "The CAOF Agreement: Key Issues of International Fisheries Law" Presentation to the conference on New Knowledge and Changing Circumstances in the Law of the Sea. 28–30 June 2018. Reykjavik, Iceland

- Mossop J., 'The relationship between the continental shelf regime and a new international instrument for protecting marine biodiversity in areas beyond national jurisdiction', *ICES Journal of Marine Science (2018), 75(1)*

- Mossop J. and Schofield C., 'Adjacency and due regard: the role of coastal States in the BBNJ treaty', *Marine Policy 2020*

- Oude Elferink A., 'Coastal States and MPAs in ABNJ: Ensuring Consistency with the LOSC', *The International Journal of Marine and Coastal Law 33 (2018),* pp. 437–466

- Oude Elferink A., 'Exploring the future of the institutional landscape of the oceans beyond national jurisdiction' *RECIEL 2019*;00:1–8 https://onlinelibrary.wiley.com/doi/full/10.1111/reel.1230 accessed 24 August 2020

- Pan M. and Huntington H. P., 'A precautionary approach to fisheries in the Central Arctic Ocean: Policy, science, and China' *Marine Policy Volume 63*, 2016, 153-157

- Pedersen T., 'Debated over the role of the Arctic Council' *43 Ocean Development & International Law 146 2012*, 146-156

- Prip C., 'The Arctic Council and Biodiversity – Need for a Stronger Management Framework?' *Nordisk Miljörättlig Tidskrift/Nordic Environmental Law Journal 2016:2 ISSN: 2000-4273*, 37-53

- Prip C., 'A global treaty on BBNJ: threat or opportunity for Arctic Ocean governance?', 7 November 2018 https://www.researchgate.net/publication/329423738_A_global_treaty_on_the_conservation_and_sustainable_use_of_marine_biodiversity_of_areas_beyond_national_jurisdiction_threat_or_opportunity_for_Arctic_Ocean_governance accessed 12 September 2020

- Prip C., ''Arctic Ocean governance in light of an of an international legally binding instrument on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction', *Marine Policy 2019* https://doi.org/10.1016/j.marpol.2019.103768 accessed 10 September 2020

- Raygoredetsky G., 'Indigenous people Defend Earth's Biodiversity – but They're in Danger', *The National Geographic* (Oriente Region, Ecuador, 16 November 2018) https://www.nationalgeographic.com/environment/2018/11/can-indigenous-land-stewardship-protect-biodiversity-/ accessed 11 September 2020

- Ribeiro M. C., 'South Atlantic Perspectives on the Future International Legally Binding Instrument under the LOSC on Conservation and Sustainable Use of BBNJ', *The International Journal of Marine and Coastal Law 32 (2017)*, 733-764

- Rothwell D. R. and Stephens T., *The International Law of the Sea* (2nd edition, Hart Publishing 2016)

- Rottem S. V., 'A Note on the Arctic Council Agreements', *Ocean Development & International Law, 46:1,* 2015, 50-59

- Schatz V. et al., 'The 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean: A Primer', *EJIL: Talk! 2018*

- Schatz V. et al., 'The 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean: a Critical Analysis' *The International Journal of Marine and Coastal Law 34 (2019),* 195-244

- Sengupta S.,'U.S. Pressure Blocks Declaration on Climate Change at Arctic Talks' *The New York Times* (New York, 7 May 2019) https://www.nytimes.com/2019/05/07/climate/us-arctic-climate-change.html accessed 13 September 2020

- Smieszek M., 'The Agreement on Enhancing International Arctic Scientific Cooperation: From Paper to Practice' *Arctic Yearbook 2017*

- Smith A.C., 'Frozen Assets: Ownership of Arctic Mineral Rights Must Be Resolved to Prevent the *Really* Cold War' *41 Geo. Wash. Int'l L. Rev. 651 (2009-2010),* 651-680

- Sutterud T. and Ulven E., 'Norway Plans to Drill for Oil in Untouched Arctic Areas' *The Guardian* (London, 26 August 2020) https://www.theguardian.com/environment/2020/aug/26/norway-plans-to-drill-for-oil-in-untouched-arctic-areas-svalbard accessed 11 September 2020

- VanderZwaag D. L., 'Governance of the Arctic Ocean beyond National Jurisdiction: Cooperative Currents, Restless Sea' *Ocean Law Debates, Brill 2018,* 401-418

- Wilson Rowe E., *Arctic Governance: Power in Cross-border Cooperation* (Manchester University Press, 2018)

- Young O. R., *Creating Regimes: Arctic Accords and International Governance* (Cornell University Press, 1998)

- Young O. R., 'Is it time for a reset in Arctic governance?' *Sustainability 2019, 11 4497;* https://doi.org/10.3390/su11164497 accessed 15 September 2020

- Zellen B. S., *Arctic Doom, Arctic Boom: the Geopolitics of Climate Change in the Arctic* (1st edition, Praeger Security International 2009)

- Zou L.,'Stirred Waters Under the Ice Cap: An Analysis on A5's Stewardship in the Central Arctic Ocean Fisheries Management', *Arctic Yearbook 5 2016*, 411-424

- Zou L. and Huntington H. P., 'Implications of the *Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea* for the management of fisheries in the Central Arctic Ocean', *Marine Policy 88(2018)*, 132-138

Regional Declarations

- Iqaluit Declaration on the occasion of the First Ministerial Meeting of the Arctic Council, Iqaluit, Canada, September 17-18 1998 https://oaarchive.arctic-council.org/bitstream/handle/11374/86/01_iqaluit_declaration_1998_signed%20%282%29.pdf?sequence=1&isAllowed=y accessed 10 August 2020

- Ilulissat Declaration, Arctic Ocean Conference, Ilulissat, Greenland 28 May 2008 https://cil.nus.edu.sg/wp-content/uploads/2017/07/2008-Ilulissat-Declaration.pdf accessed 29 August 2020

- Nuuk Declaration on the occasion of the Seventh Ministerial Meeting of the Arctic Council, 12 May 2011 https://oaarchive.arctic-council.org/bitstream/handle/11374/92/07_nuuk_declaration_2011_signed.pdf?sequence=1&isAllowed=y accessed 17 August 2020

- Iqaluit Declaration, Iqaluit, Canada, 24 April 2015 https://oaarchive.arctic-council.org/bitstream/handle/11374/662/EDOCS-3431-v1-ACMMCA09_Iqaluit_2015_Iqaluit_Declaration_original_scanned_signed_version.PDF?sequence=7&isAllowed=y accessed 19 August 2020

- Oslo Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean (Oslo, 16 July 2015) https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arctic-fisheries-16-july-2015.pdf accessed 25 August 2020

Other Documents and Reports

- Mikhail Gorbachev's speech in Murmansk, 1 October 1987 https://www.barentsinfo.fi/docs/Gorbachev_speech.pdf accessed 7 August 2020

- Senate Executive Report 104-20: Agreement for the Implementation of the UN Convention of the Law of the Sea relating to Fish Stocks, June 26 1996 https://www.foreign.senate.gov/imo/media/doc/executive_report_104-20.pdf accessed 6 September 2020

- S.J.Res.17 - A joint resolution directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean, 110th Congress (2007-2008), Public Law No: 110-243 (06/03/2008) https://www.congress.gov/bill/110th-congress/senate-joint-resolution/17/text accessed 25 August 2020

- European Parliament, Resolution of 9 October 2008 on Arctic governance https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-474 accessed 29 August 2020

- Arctic Ocean Coastal States meeting, Chelsea, March 29, 2010, Summary by Lawrence Cannon, Foreign Affairs Minister of Canada https://www.arctic-report.net/wp-content/uploads/2012/01/2010.03-Arctic-Ocean-Coastal-States-meeting-Chelsea-Canada-March-2010.pdf accessed 21 August 2020

- Chairman's Statement, issued by the Five Arctic Ocean Coastal States at Meeting on Future Arctic Fisheries held at Washington, U.S., 29 April-1 May 2013

- CAFF 2013. Arctic Biodiversity Assessment (ABA). Status and trends in Arctic biodiversity. Conservation of Arctic Flora and Fauna, Akureyri

- Global Ocean Commission, From Decline to Recovery: A Rescue Package for the Global Ocean (Global Ocean Commission Report), 2014, 4 http://www.some.ox.ac.uk/wp-content/uploads/2016/03/GOC_report_2015.July_2.pdf accessed 31 August 2020

- Written Submission of the Russian Federation to Prepcom, 2015 https://www.un.org/depts/los/biodiversity/prepcom_files/streamlined/Russian_Federation.pdf accessed 6 September 2020

- IMO, The International Code for Ships Operating in the Polar Waters (Polar Code) (entered into force 1 January 2017) MEPC 68/21/Add.1 Annex 10 http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf accessed 2 September 2020

- Meeting on High Seas Fisheries in the Central Arctic Ocean, Chairman's Statement, Rejkjavik, Iceland, 15-18 March 2017 https://naalakkersuisut.gl/~/media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Eng/Chairmans%20Statement%20from%20Reykjavik%20Meeting%202017.pdf accessed 25 August 2020

- Arctic Council Task Force on Arctic Marine Cooperation, Report to Ministers of the Task Force on Arctic Marine Cooperation. Arctic Council Task Force on Arctic Marine Cooperation (TFAMC), 2017

- Rovaniemi Joint Ministerial Statement on the occasion of the Eleventh Ministerial Meeting of the Arctic Council, Rovaniemi, Finland, 7 May 2019 https://oaarchive.arctic-council.org/bitstream/handle/11374/2418/Rovaniemi_Ministerial_Statements.pdf?sequence=1&isAllowed=y accessed 20 August 2020

- Summary of the Third Session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 19-30 August 2019, in *Earth Negotiations Bulletin Vol. 25 No. 218*

- Textual proposals submitted by delegations by 20 February 2020, for consideration at the fourth session of the Intergovernmental conference on an international legally binding instrument under the

United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the Conference), in response to the invitation by the President of the Conference in her Note of 18 November 2019 (A/CONF.232/2020/3)

Websites

- Arctic Centre, University of Lapland, https://www.arcticcentre.org/EN accessed 28 July 2020

- Arctic Council website, https://arctic-council.org/en accessed 12 September 2020

- CAFF Working Group website, https://www.caff.is/ accessed 28 August 2020

- CLCS website: Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982 (last updated 1 May 2020) https://www.un.org/Depts/los/clcs_new/commission_submissions.htm accessed 4 September 2020

- EarthJustice website: Summary of the Inter American Commission on Human Right Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, EARTHJUSTICE, (Dec. 7, 2005) http://earthjustice.org/sites/default/files/library/legal_docs/summary-of-inuit-petition-to-inter-american-council-on-human-rights.pdf accessed 1 September 2020

-

- Encyclopaedia Britannica website: Arctic article, written by Terence Edward Armstrong et al. https://www.britannica.com/place/Arctic accessed 26 August 2020

- Encyclopaedia Britannica website: Arctic Ocean article, written by Ned Allen Ostenso https://www.britannica.com/place/Arctic-Ocean accessed 26 August 2020

- Geo Blue Planet website: Marine Biodiversity and Ecosystems https://geoblueplanet.org/biodiversity-ecosystems/ accessed 1 September 2020

- IMO website: Membership http://www.imo.org/en/About/Membership/Pages/Default.aspx accessed 20 August 2020

- OSPAR website, https://www.ospar.org/ accessed 2 September 2020

- ScienceDaily website: University of Utah, "Arctic clouds highly sensitive to air pollution." *ScienceDaily*, 3 January 2018 www.sciencedaily.com/releases/2018/01/180103101136.htm accessed 28 August 2020

- US Department of State website: US Extended Continental Shelf Project, Office of Oceans and Polar Affairs https://www.state.gov/u-s-extended-continental-shelf-project/ accessed 4 September 2020

- World Wildlife Fund website: articles on Arctic Wildlife, https://arcticwwf.org/work/wildlife/ accessed 28 August 2020