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Prospects of Arctic Governance: A Critical Analysis of Current Trends and Future Scenarios

Eleonora Milazzo*

Abstract

In the coming years the Arctic is going to face an increasing number of challenges, most of which are connected to the impacts of climate change in the northernmost region of the world. In this paper, I aim to carry out an analysis of the prospects of Arctic governance, examining the institutions that allow for multilateral cooperation as well as possible scenarios of their evolution. Firstly, I present the main features of the Arctic, including the main challenges that this region is going to face as a result of climate change. In doing that, I explain why it is important to assess which governance arrangements are best suited to face such challenges. Secondly, I provide an overview of current trends in Arctic multilateral governance arrangements. In the third and last section, I set out four possible governance scenarios and I examine their respective advantages and drawbacks.

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1. Introduction to the Arctic region: features and challenges ahead

The Arctic is conventionally defined as the land and marine areas that stretch north of the Arctic Circle (66°32'N), north of 62°N in Asia, and 60°N in North America. It also includes the marine areas north of the Aleutian chain, Hudson Bay, and parts of the North Atlantic Ocean, including the Labrador Sea (AMAP, 1997). The Arctic region encompasses 21 million square kilometres and includes the Arctic Ocean and the territories of eight Arctic states: Canada, Denmark (through Greenland), Finland, Iceland, Norway, Russia, Sweden, and the United States (through Alaska). Far from being a deserted land, the Arctic is home to around 4 million people, 10 percent of which are indigenous.

The Arctic is governed by a rich set of laws, norms, and practices that shape governance and multilateral cooperation in the region. The United Convention on the Law of the Sea (UNCLOS) is a cornerstone of international law at the global level. It regulates territorial boundaries at sea and the right to enforce laws and exploit resources. It is relevant to the Arctic because it establishes rights and duties of the Arctic states and sets the boundaries of territorial sovereignty from the coast to the high seas. It should be noted that UNCLOS is a framework convention and does not contain substantive regulatory standards for issues such as safety and fishing restriction. At the same time, regulation by single states cannot provide solutions to transboundary issues such as pollution and fisheries management. Therefore, multilateral cooperation within the Arctic and beyond is essential to set sustainable development standards.

The Arctic states that extend on the fringes of the Arctic Circle are the leading actors of the region. When talking about the Arctic states, it is important to point out that they may be divided into two groups: the Arctic Eight, members of the Arctic Council (AC), and the Arctic Five, the Arctic coastal states. The five Arctic coastal states to the Arctic Ocean are Canada, Denmark (via Greenland), Norway, the Russian Federation, and the US. These states together with Sweden, Finland, and Iceland are members of the AC. The AC is the main high-level forum of the region whose decision-making process is based on the principle of consensus. It was established in 1996 with the aim of promoting cooperation, coordination, and interaction among the Arctic states, with the involvement of indigenous people on matters of sustainable development and environmental protection (Arctic Council, 1996, art. 1). The set of rules regulating the AC envisages the possibility of admitting new Permanent Participants and observers but it excludes the admission of new members. Therefore, the AC may be defined as a closed body (Molenaar, 2012, p. 574).

Twelve non-Arctic states have been admitted to the AC as observers.[1] Among these, China, India, Italy, Japan, Republic of Korea, and Singapore were welcomed as observers at the Kiruna ministerial meeting in May 2013. In the course of this meeting, Asian countries were admitted as observers in the AC for the first time. Their admittance represents an acknowledgment by the AC of the growing role of non-Arctic states in scientific research and economic activities in the Arctic.

The Arctic has recently been under the international spotlight due to its immense resource potential. Fisheries constitute a very relevant share of the northern income.

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

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

The region has been witnessing a steady increase in the volume of shipping, as shown by the Arctic Shipping Assessment Progress Report (Arctic Council, 2009). This increase is undoubtedly connected to changing weather conditions. Despite the fact that transit shipping remains quite modest in numbers, for the future it is believed that the volume of traffic will transform passages like the Northern Sea Route and the North West Passage in true competitors of the Suez Canal.

As far as the oil and gas sector is concerned, the US Geological Survey estimates that the area north of the Arctic Circle contains around 30 percent of the world undiscovered gas and 13 percent of the world's undiscovered oil. According to USGS findings, the deep ocean basin areas that are contested in terms of extended continental shelf are not expected to contain considerable hydrocarbons resources. Instead, these resources are considered to lie on the continental shelf or onshore where boundaries are not contested (Johnston, 2010, p. 15). Yet, actual and potential exploitation of the natural resources poses a threat to the environment and a challenge to policy makers.

Regarding the effects of climate change in the region, recent data concerning average temperatures in the Arctic show a worrisome scenario. Annual average temperatures in the Arctic have rose at almost twice the average rate for the world in the last 100 years (IPCC, 2007). According to the US Arctic Research Commission, in 2012 the ice cover of the Arctic Ocean reached its lowest level since 1979 when the National Aeronautics and Space Administration (NASA) first observations were made (USARC, 2013). The average decrease for the period 1979-2012 is estimated to range 3.5 percent to 4.1 percent per decade. This rate grows between 9.4 percent and 13.6 percent per decade for perennial sea ice. In 2012, 40 percent of the sea ice covering the Central Arctic Ocean had melted (USARC, 2013).

The challenges that Arctic governance is facing now and will face in the future arise from two set of issues that combined together pose considerable threats to the equilibrium of the circumpolar region. The first set of issues concerns the effects of climate change *per se*.[2] Rising temperatures are causing drastic changes in the Arctic ecosystem and in Arctic peoples' livelihood. A comprehensive analysis of the effects of climate in the Arctic goes beyond the scope of this analysis. It suffices to say that such damaging effects include permafrost thaw resulting in the release of carbon dioxide (CO2) and methane with impacts on wildlife, vegetation, harvesting activities, and traditional transportation routes. Climate change also causes an increase in short-lived climate pollutants, changes in the marine ecosystem due to ocean acidification, and more extreme weather conditions (USARC, 2013).

Other issues brought to the table by rising temperatures in the Arctic are connected to the risks of intensive development. The High North is becoming more attractive to local and foreign investors who, as a result of rising temperatures, have easier access to the precious potential of the region. Undoubtedly, development is an opportunity for the

[2] By climate change I mean an alteration in the climate consisting in variations that persist over time. The UN has further specified that climate change is a stable or permanent change of climate that is caused by human activity. See IPCC, 2007; United Nations, 1992.

peoples of the High North. Nevertheless, environmental and social challenges connected to that should not be underestimated. On the one hand, rising temperatures are opening up new prospects for development. On the other, environmental hazard remains high and indigenous peoples risk to be cut out of the potential benefits of economic development.

To make some examples of the complex links between climate change, economic development, and environmental and social risk, fisheries will be affected by changes in species composition and harvesting sites, with consequences for indigenous food habits. The mineral industry will suffer from increased production and management costs due to permafrost thaw and erosion. Oil and gas production will benefit from thinner ice for offshore exploration, but the risks and costs of offshore production will remain high due to weather unpredictability. Similarly, onshore production will remain expensive and risky due to thawing frozen ground. As far as shipping is concerned, sea ice shrinkage in summer could open up new navigable routes along the Northern Sea Route and through the Northwest Passage. This could imply cutting the price of trans-ocean shipping by finding an alternative to the Suez Canal, with benefits across all sectors of the economy. At the same time, intensification of icebergs and extreme weather phenomena cast doubts on the actual viability of these new routes (Eskeland and Flottorp, 2006, p. 81).

Taking these issues into account, in the rest of this paper I address the issue of how multilateral Arctic governance might evolve in order to successfully cope with the effects of climate change and the challenges of economic development.

2. Arctic governance: exploring features and trends

Governance is widely understood as the act of governing or the way organisations, institutions, businesses, and governments manage their affairs. Global governance is defined as 'the sum of laws, norms, policies, and institutions that define, constitute, and mediate relations among citizens, society, market, and the state in the international arena' (Weiss and Thakur, 2010, p. 6). Therefore, the concept of global governance includes all institutions, policies, rules, practices, norms, procedures, and initiatives by which states and citizens strive to bring more predictability, stability, and order to their responses to national and transnational challenges, ranging from climate change to terrorism (Weiss and Thakur, 2010, p. 6). Governance is both a structure made up by institutions and actors, and a process constituted by modes of social coordination. Bötzel and Risse refers to it as 'the various institutionalised modes of social coordination to produce and implement collectively binding rules or to provide collective goods' (Bötzel and Risse, 2010, p. 114). Consistent with these definitions, global governance may be thought of as the highest form of coordination and cooperation between state and non---state actors for the achievement of shared interests.

In the context of the Arctic, the concept of governance has been defined as a key social function centred on generating collective outcomes that are beneficial to society. The core function of governance arrangements in the Arctic is addressing regional societal needs (Corell *et al*., 2010, p. 4). Throughout its history, the Arctic region dealt successfully with different governance challenges by providing effective responses. Indigenous peoples developed the first forms of governance in the High North to administrate living and non-living resources in extremely harsh conditions.

Over time, following the expansion of national and international presence in the region, the web of governance settings became increasingly complex. Arctic governance as we know it today includes global framework agreements, multilateral environmental and economic agreements, regional arrangements, sub-regional arrangements, and national policies. It follows that a very wide range of institutions and bodies is involved across these levels. Furthermore, such governance arrangements are highly fragmented and diversified, ranging from informal to more formal settings, and involving a complex web of multilateral bodies and non-state actors.

Despite such complexity, all governance bodies in the Arctic are called to fulfil a shared set of goals. Specifically, those include production of public goods by ensuring the right level of living resources for human subsistence; avoidance of public bads, namely preventing climate change disasters and ecosystems degradation; internalisation of externalities (e.g. limiting cross-border pollution); and protection of indigenous peoples' rights (Corell *et al*., 2010, p. 4). Multilateral governance in the Arctic should strive to achieve these goals by devising political coordination, rules for conflict resolution, and appropriate regulations for risk reduction (Haftendorn, 2013, p. 12). In the remainder of this section I will therefore provide a broad picture of the way in which Arctic governance has been pursuing these goals so far.

2.1 Arctic international governance: a constitution of the Oceans?

At the international level, UNCLOS is the main regulatory framework for the Arctic. UNCLOS is compounded by a wide range of agreements dealing with specific sectors of marine and terrestrial regulation. Examples of these agreements are the two agreements implementing UNCLOS, namely the Deep-seabed Mining Agreement and the Fish Stock Agreement. Another international rule-making body that pertains to the Arctic is the International Maritime Organisation, with its convention on Safety of Life at Sea; the International Convention for Prevention of Marine Pollution from Ships, the International Convention on Oil Pollution Preparedness, Response and Co-operation; and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Other multilateral agreements tackle sector-specific issues (e.g. fisheries, energy, pollution, mammals), and include the Stockholm Convention on Permanent Organic Pollutants and the United Nations Framework Convention on Climate Change.

The governance setting provided by UNCLOS has been working well since its establishment, devising an effective instrument to solve global challenges and administrate resources. In particular, the successful functioning of the mechanism for extended shelf claims provided the Arctic and the global community with a universal framework of dispute resolution. Undoubtedly, UNCLOS contributed to clarifying the nature of sovereign rights over marine areas, as well as duties of ocean conservation. This is also why Jarashow *et al*. view universal adherence to UNCLOS as the most efficient mechanism to balance all Arctic states' interests (Jarashow *et al*., 2006, p. 1589).

Despite this, UNCLOS provides a rather fragmented and incomplete regulatory framework. In fact, it separates the rule on prevention, reduction, and control of marine pollution from the rules to manage living resources. Moreover, it does not cover marine-related issues such as the conservation of marine ecosystems in areas beyond national jurisdiction. In this respect, Sands and Peel argue that UNCLOS did not turn out to be 'the constitution of the oceans' envisaged in 1982, the year of its establishment (Sands and Peel, 2012, p. 344). In 1992,

Agenda 21 expressed the awareness that UNCLOS provided an international basis for marine protection and sustainable development, but recognised the necessity to take integrative approaches to management and development of marine and coastal areas. This necessity is even more apparent in the case of the Arctic since, being a global treaty, UNCLOS does not set out Arctic-specific rules apart from Article 234 (Sands and Peel, 2012, p. 344).

2.2 Arctic regional governance: towards a new model of governance?

At the regional level, the AC is the main high-level forum of the region. Beside the AC, other inter-governmental arrangements represent the peoples of the North and deal with region-specific issues. These bodies have regional scope but their reach covers the Arctic only in part. In particular, for the purposes of this analysis I will take into consideration the Barents Euro-Arctic Council (BEAC), the Nordic Council of Ministers (NCM), the Northern Dimension (ND), and the Council of Baltic Sea States (CBSS) as meaningful examples of inter-governmental arrangements that shape Arctic governance. The Nordic Council (NC) is a case of inter-parliamentary cooperation in the Arctic. Bilateral agreements have been established on specific issues (e.g. the Norwegian-Russian fisheries regime for the Barents Sea), as well as broader arrangements that involve subnational and regional governments, like the Barents Regional Council (BRC) and the Northern Forum (NF), and indigenous peoples organisations, e.g. the Sámi Parliamentary Council.

Since the Ottawa Declaration was signed in 1996, Arctic regional governance has witnessed a process of progressive expansion of the AC role. The AC substantially consolidated its operation and organisation development through the adoption of regional agreements, the financial support received, and the admission of new observers (RIAC, 2013). By defining the AC as the 'pre-eminent high-level forum of the Arctic region', the Kiruna Declaration shows the will of AC members to strengthen the AC and assign to it policy making capacities, in addition to the existing, more limited policy shaping duties. In addition, the Kiruna Declaration emphasises the possibility of solving conflict by fostering cooperative relationships (Artic Council, 2013).

The Arctic Aeronautical and Maritime Search and Rescue Agreement (2011), known as SAR Agreement, is the first binding agreement concluded by the Arctic states under the auspices of the Arctic Council. It was signed in May 2011 in Nuuk, Greenland. The SAR Agreement is a binding instrument that sets out measures to strengthen search and rescue coordination and cooperation in the Arctic by improving communication and division of responsibilities. The Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (2013) is the second binding agreement signed in 2013 by the eight Arctic states under the auspices of the Arctic Council. The goal of the agreement is 'to strengthen cooperation, coordination, and mutual assistance among the parties on oil pollution preparedness and response in the Arctic' with the view of protecting the marine environment (Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic, 2013).

As a matter of fact, by elaborating a growing agenda for action through the AC, the Arctic states promote an expanding concept of their responsibility. Their action is pushed forward through the AC, but the Arctic states continue to view the AC as a policy-making entity by itself (Eichbaum, 2013, p. 10866). In this sense, as argued by Eichbaum, the impact that collaborative governance had in the region is way greater than expected (Eichbaum, 2013, p.

10866). As recently argued, the AC is a remarkable example of how regional arrangements and consensus-based agreements can play an important role in building trust and fostering cooperation, just as in the case of treaty-based international organisations (RIAC, 2013). Despite this positive trend, there are many gaps that require further AC coordinated action. In particular, Eichbaum mentions persistent gaps in short-lived climate pollutants regulation, uniform standards for oil and gas development, and more advanced fishing regulation (Eichbaum, 2013, p. 10867).

The conclusion of two binding agreements under the auspices of the AC suggests the possible development of a new model of governance. As I argue later, this model could be based upon an informal institution playing the part of a high-level forum to negotiate binding agreements (Eichbaum, 2013, p. 10867). This trend may have important implications in the future, especially if we think of the importance of the two agreements signed under AC auspices. To mention one example, the Oil Spill Preparedness and Response Agreement sets out substantive requirements for national governments and establish the need for public effort in its implementation, assigning to the AC an important role in the monitoring process.

Another important element to be taken into account is the Arctic states commitment to limit the current expansion of the AC role. Eichbaum underlines that it is not in the intentions of the Arctic states to develop a comprehensive legally binding agreement that could replace the Ottawa Declaration. Consistent with this, there is no intention on the side of the Arctic states to cede to the AC Secretariat the power to implement decisions taken by the AC (Eichbaum, 2013, p. 10867).

The growing number of non-Arctic states that demand observer status confirms the prestige of the AC as a regional forum. The accession of non-Arctic states as AC observers was saluted as an unprecedented opening to non-Arctic nations. Under no doubt, this opening acknowledges that the valuable contribution of actors like China is growing in the economic and scientific domains. Yet, in Kiruna, together with admitting new observers, the AC reiterated that 'decisions at all levels of the Arctic Council are the exclusive right and responsibility of the eight signatories to the Ottawa Declaration' (Artic Council, 2013). By stating this, the AC clarified once and for all the terms of the Observers' participation to AC activities. Therefore, on the one hand, inclusion of non-Arctic members has been welcomed in the interests of economic and scientific cooperation. At the same time, sovereignty has been reinforced. This is true both with respect to the Arctic Five, which retain sovereign rights as coastal nations, and the Arctic Eight in general.

2.3 Subsidiary function of soft law arrangements

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

None of the intergovernmental and interparliamentary bodies examined in the previous section are international organisations under international law and as such they cannot

produce any legally binding document. Nevertheless, soft law governance arrangements play an important function in Arctic governance. In fact, these bodies contribute to the development of international law by establishing new customs, procedural formalities, and concepts that persist over time (Hasanat, 2013, p. 34).

As I argue later, another strength of soft-law governance bodies has to do with their flexibility. While treaty-based international governance arrangements are rather static, soft-law governance bodies have much more room for manoeuvre and are more responsive to change. In this respect, the BEAC has been cited by example as it introduced the concept of Barents Region, bounding a geographical space not on the basis of state boundaries but on the basis of shared challenges (Hasanat, 2013, p. 34). This way, soft-law regional bodies contribute to the development of international law with respect to environmental issues, facilitate the negotiation of certain agreements, and show what can be achieved through informal procedures, bringing new perspectives to problem solving.

2.4 Arctic states: trends in national policies

In the last years all Arctic states approved their national strategies and policy objectives for the Arctic. That shows the growing strategic importance of the northernmost region of the world. Overall, all Arctic states attach to their Arctic territories crucial strategic importance and are committed to strengthening their leadership.

After conducting a comparative study of Arctic strategies and policies, Heininen identifies the following strategic priorities and interests of the Arctic states: sovereignty and national security (including security/military policy and defence); comprehensive security; economic development (including utilization of natural resources and energy); regional development and infrastructure; transportation; environment (including environmental protection); governance and management (including rescue and safety); peoples (including indigenous peoples); science (including scientific research and cooperation, and knowledge); international cooperation (Heininen, 2012, pp. 77-78).

Significantly, even in a peaceful region where cooperative relations prevail and the AC role is growing, sovereignty and security remain top priorities for the Arctic states. In framing multilateral cooperation and defining national priorities, the Arctic states reacted to climate change challenges with different national Arctic strategies that reflect the way in which they want to safeguard their sovereignty, security, and development. At the same time, these states are aware of the need to cooperate and do recognise the transnational nature of challenges like climate change. Yet, they are concerned not to have their national sovereignty or their room for political manoeuvre circumscribed (Haftendorn, 2013, p. 25).

For this reason, national and multilateral approaches are closely intertwined. It is national strategies that dictate the attitude towards multilateral institutions, and not the latter that influence national priorities. Some countries, namely the Nordic countries, may be more inclined to use the AC as main instrument to advance their policies, while others, like Russia and the US, assign more importance to their own national strategies (Haftendorn, 2013, p. 25).

3. Arctic governance scenario assessment

I will now seek to elaborate a model for Arctic governance that may serve as a basis for scenario analysis. To begin, I will present and describe a tentative model of Arctic governance. Afterwards, I will outline four scenarios of Arctic governance. Each of these scenarios will be critically assessed, questioning its feasibility and desirability. The aim of this section is to address three questions: how can we best conceive a model for Arctic governance scenario assessment? What future scenarios can we formulate for Arctic governance? What objections could be advanced for each? In analysing possible governance scenarios, I start from the assumption that Arctic governance as described above is in need of a reform or, at least, is inevitably going to face substantive challenges connected to climate change.

Humrich and Wolf analyse Arctic governance by taking as variables geographical scope (from national to global), functional breadth (from sectorial to universal), and ethical aspects (from co-existence to establishment of a community) of given governance options. Based on such variables, the authors draw six scenarios for Arctic governance (Humrich and Wolf, 2012, pp. I-III).

In this analysis I take a different approach. In particular, I consider two dimensions in order to assess governance developments, namely a geographical and a legal dimension. On the vertical axis of Figure 1, I take into consideration the geographical scope of possible developments. At one extreme, we find the internationalisation option, consisting of a progressive internationalisation of the Arctic. At the opposite extreme, we have the regionalisation option, entailing a transfer of governance functions to a lower level. The horizontal axis considers the legal aspects of possible governance evolutions, ranging from a pure soft law scenario (on the left) to a hard law framework (on the right).

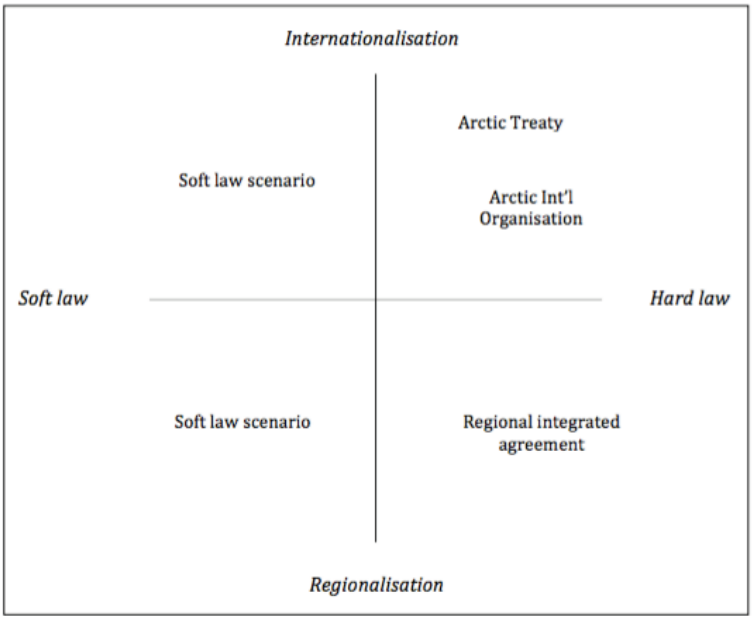

Figure 1 Scenario assessment model

This choice of scenario assessment model arises from three factors. First of all, this model tries to direct the focus to the legal framework regulating the Arctic since the main modifications of Arctic governance are likely to happen at this level and only secondarily at

the functional level. Another reason for choosing this model is to be found in the fact that geographical scope and legal nature of governance arrangements constitute the bottom level of analysis. Only after singling out these two variables and analysing them, it is possible to take into consideration other elements like the functional breadth and the moral aspects of governance changes. Thirdly, the present model will focus only on inter-state cooperation in the Arctic and its impact on governance. The geographical and legal scope of governance changes will be addressed as the most relevant one in multilateral relations.

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

According to this logic, I leave out non-cooperative options like the one suggested by Humrich and Wolf (2012, pp. I-III). In fact, it is apparent from our previous analysis that the Arctic states are in search of a cooperative framework and there are no premises of full-fledged conflicts to break out in the Arctic. Similarly, the complex web of bilateral and multilateral cooperative arrangement makes any go-alone option unrealistic. In order to make our scenario analysis more meaningful, I also account for the way in which each governance scenario may contrast with other opposing demands. To achieve this, I consider the arguments in support of a given scenario and I provide possible objections to it.

3.1 Arctic treaty: hard law as a governance pathway for the future

The scenario entailing the conclusion of an Arctic comprehensive binding agreement or Arctic Treaty takes the lead from the claim that deep changes have occurred in the Arctic region in the last decades. As a result of geopolitical and economic progress, Arctic governance is in need of a deep and comprehensive reform in order to answer emerging regulatory needs. The present scenario argues for the conclusion of an international treaty covering the Arctic region and addressing its challenges with specific regulation. Such treaty would regulate territorial rights, environmental protection, and sustainable development, enforcing a system of obligations upon all signatories.

A comparison with the Antarctic

In order to explore this scenario and define the Arctic Treaty in more detail, it may be useful to draw a comparison with the Antarctic. Arctic governance differs deeply from that of the Antarctic, mainly because the Arctic is not subject to one encompassing treaty. In the Antarctic, legal regulations have developed amid the opposing stances of some states who claimed sovereign rights over it and others that viewed the Antarctic as a global common and, therefore, not subject to the exclusive jurisdiction of any state. This is an important difference because the Arctic land and coastal waters are subject to the undisputed jurisdiction of the coastal states.

Beyond this core distinction, the two Poles differ deeply also in geographic and geopolitical

terms. The Antarctic is an ice-covered land mass surrounded by the ocean and defined as a *terra firma*. By contrast, the Arctic is not a land mass and presents a semi-closed ocean almost completely surrounded by land. In addition, the Arctic is inhabited by more than 4 million indigenous and non-indigenous peoples, while nobody resides on a permanent basis in the Antarctic and short-term presence is limited to scientific expeditions. Similarly, economic activities in the Antarctic consist only of seasonal tourism and research. On the contrary, in the Arctic industrial activity is vast and diversified. To complete the picture, the Antarctic has been declared a nuclear free zone and demilitarised. This is not the case in the Arctic where military activity has always been relevant, especially during the Cold War.

During the International Geophysical Year held from July 1957 to December 1958, scientific research conducted at the southern Pole brought to light the importance of the Antarctic for scientific developments and for the entire world. New interest for the region and competing territorial claims paved the way to negotiations that resulted in the Antarctic Treaty, signed in December 1959 and with effect in 1961, after having been ratified by twelve nations (Eichbaum, 2013, p. 10864).

The Antarctic Treaty addressed the conflict arisen from overlapping claims to part of the Antarctic. With the Antarctic Treaty these claims were neither recognised nor annulled. Rather, territorial claims in the Antarctic were put on hold (Sands and Peel, 2012; Rayfuse, 2007). In fact, Article 4 of the Antarctic Treaty states that 'no acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica' (Antarctic Treaty, 1959, art. 4). This provision is the result of a compromise that allowed the parties to come to an agreement, but it leaves open the issue of territorial disputes.

Despite this, the Antarctic Treaty represented a great achievement for the southern pole insofar as it provided a solution to Cold War tensions and paved the way to fruitful scientific cooperation. The Antarctic Treaty was later enriched by the provisions of the Convention on the Conservation of Antarctic Seals (1972), the Convention for the Conservation of Antarctic Living Marine Resources (1982), and the additional Protocol on Environmental Protection (1991). The latter essentially establishes the region as a natural reserve (Antarctic Treaty, 1959, artt. 1-3).

All these documents taken together are commonly known as Antarctic Treaty System (ATS). The ATS has been defined as a regional co-operative effort since it addresses one specific region of the world, establishing that the Antarctic should be used for peaceful purposes, research, and international cooperation (Vidas, 2000). Therefore what really allows to take the Antarctic as model for Arctic governance is that the Antarctic treaty and its ATS are successful examples of management of a harsh region with unique features, high environmental risk, and competition over the right to natural resources (Duyck, 2011, pp. 684-685).

The case for a comprehensive international treaty of the Arctic

The EU advanced a reform of Arctic governance entailing the conclusion of a comprehensive international agreement. In its Resolution on Arctic governance, the European Parliament advised that the European Commission should be prepared to the opening of international negotiations leading to the adoption of an international treaty for the protection of the Arctic. The Parliament also added that the negotiations shall be inspired by the Antarctic

Treaty as supplemented by the environmental protocol of 1991 (EU Commission, 2008; Hasanat, 2013; European Parliament, 2011). On this point, Young notes that, despite their different arguments, all scholarly opinions advocating the conclusion of an Arctic treaty would like to see the conclusion of a comprehensive, legally binding convention or treaty, open to participation of stakeholders beyond the boundaries of the Arctic region (Young, 2009, p. 438).

Taking all into account, it is time to review the reasons why a comprehensive international treaty of the Arctic would address pressing governance demands. The first argument has to do with hard law broadly understood. In fact, since the Nuuk meeting and the adoption of the two binging agreements, it has emerged a trend toward the legalisation of Arctic governance, meant as the progressive adoption of binding agreements. In this respect, the adoption of a binding tool would fill a regulatory gap by imposing legal obligations upon all signatories and ensuring the enforcement of all its provisions. In matters of environmental protection, like in the case of oil spills prevention and response, pollution from shipping, and sustainable fishing, an Arctic Treaty would ensure that all signatories have a legal obligation to fulfil their duties.

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

A third argument that could be advanced in support of the Arctic Treaty scenario has to do with membership and stakeholders. At the moment, Arctic governance is essentially left to an informal system of consensus for decision making within the Arctic Eight group (Young, 2009, p. 430). In this case the argument could be made that, with more interests and more actors involved, Arctic governance cannot be left to coastal states only but should be reasonably extended to a broader range of non-Arctic actors, beyond the Arctic Eight. As mentioned earlier, the Arctic has been opening up to new stakeholders from lower latitudes, Asia, and even non-state entities, like the EU, with growing stakes in the region. An Arctic Treaty open for signature to those with a proven economic interest in the region – like the Antarctic Treaty – could engage a larger number of investors in fields like scientific research, economic development, and energy, to the ultimate benefit of Arctic development itself.

Hard law options and weaknesses of binding regimes

At a closer look, the Arctic Treaty scenario fails to address several governance demands. In particular, at the level of the AC, this scenario does not meet the clear demand for a simple and flexible set of regulation contained in the Ilulissat Declaration in favour of the *status quo*. As seen, the Arctic Five stated that there is 'no need to develop a new comprehensive international legal regime to govern the Arctic Ocean' (Arctic Ocean Conference, 2008).

It may be useful to dig deeply into the reasons why this scenario should be disregarded. To begin a critical discussion of the Arctic Treaty scenario, we need to consider the plausibility of taking the Antarctic Treaty as reference point. It is true that, despite the difference

between the two Poles, a comparison with the Antarctic Treaty System may prove useful to grasp the shortcomings of Arctic governance. Still, at least one difference does not allow us to think of the Arctic as a global common and object of a treaty resembling the Antarctic Treaty. In fact, the existence of sovereign territorial rights on Arctic lands and marine areas cannot be overcome. The legal regulation of the Arctic by a comprehensive treaty could not touch the sovereign rights of the coastal states. Therefore the internationalisation of the Arctic under such a treaty shall be excluded under international law. Regarding the area of the Central Arctic Ocean that could potentially be unregulated, it must be pointed out that, even if sea-ice shrinkage is a reality in the Arctic, it is also true that the prospects of a Central Arctic Ocean completely free from ice or even navigable are clouded in doubt.

Another considerable obstacle to the conclusion of a comprehensive treaty of the Arctic is the lack of political will on the side of the Arctic states. Even more than the others, the Arctic Five would not reasonably support a treaty that could potentially hinder their sovereign rights. This is in line with the above mentioned Ilulissat Declaration. In this respect, Young argues that every effort towards a comprehensive legally binding treaty will be at least politically charged (Young, 2009, p. 438). The Arctic coastal states stated in Ilulissat that they 'see no need to develop a new comprehensive international legal regime' for the Arctic Ocean, not to mention the circumpolar region as a whole (Arctic Ocean Conference, 2008, paras. 3-4).

Furthermore, the issue of the legal status of potential signatories that do not belong to the Arctic Five or the Arctic Eight would remain unsolved. Being an international treaty, the Arctic Treaty would be opened for signature to all nations that, as in the case of the Antarctic Treaty, demonstrate a true interest in the region. Again, that may work well in a region where there are no sovereign rights recognised under international law. Yet, in the Arctic such scenario is confronted with the need of defining the rights of potential non-Arctic signatories without hindering the Arctic Five's territorial rights. In part, we have already witnessed a debate regarding the admission of new observers to the AC and their status within the regional forum. As seen earlier, the solution found within the AC was to admit new observers to recognise and foster their contribution to scientific and economic development. Nevertheless, the Arctic states clearly stated that these countries will be excluded from the decision making process within the AC. Therefore, there is no room for speculation that an Arctic Treaty could give observers any larger power.

In addition to all these arguments, we should also consider the fact that such an agreement may not be desirable. Young mentions several reasons why such a treaty may not improve Arctic governance. First and foremost, it is true that legally binding treaties imply stronger obligations, but they also set a number of limitations when it comes to devising effective governance in dynamic systems. By dynamic system in this context it is meant a system that experiences non-linear or even abrupt changes (Young, 2009, pp. 435-438). Legally binding agreements generate more normative pull and more obligations than non-binding ones, thus solving the problem of compliance in the international arena. Nevertheless, legally binding agreements require lengthy negotiations and they often leave out contentious issues in the interest of building consensus. Moreover, legally binding agreements are not adjustable to changing systems in a timely manner. Last but not least, the role that they accord to non-state actors is not comparable to the role that the latter play in a soft law framework (Young, 2009, pp. 435-438).

In sum, the main strength of the Arctic Treaty scenario consists in the fact that it could provide a full set of legally binding and Arctic-specific regulation for the entire Arctic region. This scenario could build upon the current trend for the conclusion of binding agreement insofar as the latter suggests that binding regulation is needed in the Arctic. Nevertheless, the Arctic Treaty scenario has remarkable weaknesses that make its realisation highly unlikely. Overall, the scenario itself is put under discussion by the opposing demand for flexible and simple regulations made explicitly by the Arctic states. Last but not least, this scenario could threaten the Arctic states' sovereign rights and pose serious limitations to Arctic governance itself.

3.2 From an Arctic Council to an Arctic International Organisation

This scenario entails the internationalisation of the AC within a legally binding framework. As seen before, many organisations that insist on the Arctic and are not full-fledged international organisations. The AC is the main case in point. It is a high-level forum based on a non-legally binding document, the Ottawa Declaration. It is a forum for discussion and cooperation, and it does not have the power to adopt binding decisions. To be sure, so far the AC has allowed more room for cooperation and, in general, has provided a flexible framework to compose the interests of all Arctic stakeholders. Since its establishment the AC has contributed to environmental protection and sustainable development of the region, providing a venue for cooperation and coordination. Furthermore, it has organised the efforts of the Arctic states, providing science and information to policy makers, and conveying a positive image of the Arctic in the world. Yet, a claim could be made that the very soft-law nature of the AC prevents it from creating binding obligations under international law, limiting the effectiveness and the impact of its work.

The case for the reform of the Arctic Council

Attempts to establish an international organisation in the Arctic region were made in the past without any meaningful success. The debate preceding the drafting of the Ottawa Declaration revolved around the legal nature to be given to the would-be AC. In 1991, Pharand drafted a treaty model of the Arctic Regional Council (ARC) suggesting the establishment of an international organisation in the Arctic. His work was published by the Canadian Arctic Resource Committee. Pharand's proposal was drafted as a treaty exactly because 'a treaty is favourable to a Declaration or a Memorandum of Understanding because of their questionable legally binding nature in international law' (Pharand, 1991). In his project, the first requisite for the establishment of the ARC was the conclusion of a treaty. The ARC should be established by the Arctic Eight with the aim of facilitating cooperation and protecting the environment.

As for the ARC composition, Pharand envisages the possibility of establishing an assembly and a commission as main organisms, as well as a secretariat having subsidiary function. The draft treaty included the possibility of admitting new member states, governmental and non-governmental organisations, and territorial and regional governments. All these actors were considered eligible for membership if they demonstrated a 'substantial interest in the work of the Council and a capacity to further its purposes' (Pharand, 1991). The admission of new members was to be approved by the assembly based on the recommendation of the Commission with a two-third majority of the founding members (Pharand, 1991).

The debate regarding the nature and the role of the AC continued long after the Ottawa Declaration. Criticisms and reform attempts regarded especially the AC structure and decision-making procedure. In 2001, Pekka Haavisto, Finnish consultant and former Finnish Minister of the Environment, drafted a report commissioned by Finland during its AC chairmanship. The report was submitted to the Senior Arctic Officials (SAOs) and proposed a reform of the AC with the view of restructuring its organisation and improving its effectiveness (Arctic Council, 2001).

The study identified several problems and called for a far-reaching improvement in the AC's efficiency and effectiveness. Among other things, the report stated that the fact that the AC was only for governments and permanent participants and not an international organisation constituted an obstacle to effective cooperation. The consensus-based decision making procedure involved the risk that a minority could block the proposals of the majority. The report also lamented the lack of a broad and equally-shared basis for funding to support the activities of the AC Working Groups, as well as the lack of a permanent secretariat with autonomous resources. The proposed long-term solution to the AC organisational and functional problems was the establishment of a permanent secretariat with a permanent funding mechanism (Haavisto, 2001; Arctic Council, 2001).

The conclusions of the Haavisto study prompted the Arctic states to reform the way the AC operated. Since then, reforms have proceeded slowly due to the need for consensus (Haavisto, 2001). In the Nuuk Declaration, the ministers introduced the AC Permanent Secretariat in Tromsø, Norway, operational since May 2013.

The most recent and drastic proposal to transform the AC into an international organisation came about with Finland's Strategy for the Arctic Region, published by the Office of the Finnish Prime Minister in 2013. The Strategy included statements in support of recognising the AC as 'a treaty-based international organisation', including the establishment of a permanent secretariat the conclusion of binding international agreements (Prime Minister of Finland, 2013, p. 14).

The arguments advanced in support of these statements revolve around the global role acquired by the AC. In Finland's reasoning, 'Arctic issues have global implications, such as environmental change and the opening of new sea routes' (Prime Minister of Finland, 2013, p. 44). Therefore, the AC is called to establish dialogue with actors outside the Arctic and take on a global role. Moreover, from the strategy it emerges that opening up the AC to new observers is inevitable and will provide the AC with resources and stronger multilateral cooperation. The proposal rests also on the assumption that the AC role has already been strengthened with the establishment of the Permanent Secretariat and with the conclusion of two binding agreements between the AC member states. Even more than that, the agenda of the AC expanded to cover also economy and international law. On these grounds, the AC action could be extended to new sectors and its political relevance fostered by holding international Arctic Summits (Prime Minister of Finland, 2013, p. 44).

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

Since its establishment and even before then, the nature of AC has been subject to debate and its reform has been attempted more than once. Established as a soft law organization, the AC has been strengthened and enriched with more functions. Institutionally, the appointment of

the Permanent Secretariat and the conclusion of two binding international agreements, namely the Arctic Aeronautical and Maritime Search and Rescue Agreement and the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response, suggests a development toward a hard law framework. Even more than that, the Kiruna Declaration signals the need to strengthen the AC's role and expand its functions from policy-shaping to policy-making. Overall, the extension of the AC agenda and its growing role in the international arena seem to show that the AC is gradually evolving into an international treaty-based organisation with global interests and global responsibilities.

A treaty-based AC would have a new status both inside and outside the Arctic. Within the Arctic region, that would grant more coordination, coherence, and effectiveness to the action of Arctic states and permanent participants. The problems of lack of coordination, duplication of functions, and lack of coordinated management would be effectively tackled by such an arrangement. Outside the region, the AC would benefit from a legally binding basis in terms of visibility. Through a 'legalised' AC, the Arctic would have a stronger voice and a much more visible position in the international arena. In addition, from the strictly legal point of view, the AC would ensure compliance with all legally binding documents, like the two agreements on Oil Pollution and Search and Rescue, approved by the Arctic states.

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

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

What basis for an international organisation of the Arctic?

At a closer examination of the AC current features, it emerges that, despite potential demands for its institutionalisation, changes to its soft-law nature may be slower and more marginal than one may think. As observed in the case of the Arctic Treaty scenario, the proposal of a hard law basis for the AC disregards the demand for a simple and flexible set of regulation contained in the Ilulissat Declaration. The transformation of the AC into an international organisation with the power to create obligations upon its members would entail the conclusion of a binding agreement establishing such organisation. Therefore, some of the arguments put forward for the Arctic Treaty scenario applies also to this scenario.

Koivurova notes that it would be misleading to think that the AC could easily turn into a treaty-based organisation due to the lack of political will in support of a change. In fact, as an intergovernmental forum the AC has not changed significantly in its nature since 1991 and has taken a strong no treaty approach (Koivurova, 2010, p. 149). Therefore, the AC as a governance structure is resistant to change and, while some evolution is underway, no far-reaching reform seems imminent.

Another objection could be based on membership and structure issues. It is not by chance

that the proposal for the transformation of the AC into an international body came from Finland and not from other Arctic states, notably the Arctic Five. Since the Ottawa Declaration, the Arctic Five have been strong supporters of a body without legal personality to guide cooperation in the region. In the Ilulissat Declaration, they stressed their commitment to maintain the status quo in governance matters, as well as the clear will to maintain their leadership position *vis-à-vis* the other Arctic states. Given the conservative positions of AC members like Russia, US, and Canada, it is unlikely that they will concede on the establishment of an international body that would *de facto* put on equal footing all AC member states.

The AC has been strengthening its role for a while. The establishment of the Permanent Secretariat and the conclusion of two binding agreements under AC auspices show that. The establishment of the AIO rests on the assumption that this trend will continue and that the evolution of the AC into an international organisation will meet the demands of all stakeholders involved. According to this logic, the lack of political will and, most of all, the lack of consent on the side of the Arctic Five present the greatest challenge to this scenario. To conclude, these arguments explain why, while many authoritative voices call for a reform of the AC, the option of a complete transformation into an international organisation has been excluded to date. The AC will continue to play what Young calls 'a generative role'. Yet, it will not evolve into a regulatory body with authority to create obligations and implement binding agreements (Young, 2009, p. 437).

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

After having considered two hard law scenarios, I will now move to examine a soft law option. This scenario of Arctic governance, entirely based on soft law, takes the lead from trends and development that were underlined in the previous section.

Soft law is a relatively new concept, developed in the 1970s to account for an emerging phenomenon in international law. In particular, soft law emerged as an alternative to the conclusion of treaties to regulate international issues. Some scholars define soft law as anything that is not hard law (Sztucki, 1990). Others maintain that soft law comprises all legal and non-legal obligations that create expectations and are used to avoid disputes (Gruchalla-Wesierski, 1984, pp. 39-40). Despite the fact that other scholars include in this definition all politically or morally binding agreements, Klabbers notes that it is more accurate to say that soft law does not include political and moral commitments, since their legal nature is rather controversial (Klabbers, 1996, p. 168).

From all these definitions, it emerges that soft law is a rather controversial concept where many definitions are possible. According to Klabbers, the term characterises in a loose way all instruments that 'are considered as giving rise to legal effects, but do not (or not yet perhaps) amount to real law' (Klabbers, 1996, p. 168). Therefore, we may consider soft law all declarations, statements, codes of conduct, UN General Assembly resolutions, and all other non-binding instruments that do not create legal obligations.

Interestingly, Gruchalla-Wesierski identifies five main elements of soft law regulation: the subject matter and the means of formation of soft law regulation have international nature since they are formed by international organisations or states; soft law includes both legal and non-legal instruments; soft law creates expectations that norms will be respected and

has the purpose of avoiding or solving disputes by establishing links of cooperation; lastly, soft law norms are difficult to interpret for third parties because the extent to which they must comply with the norms is determined by the parties themselves (Gruchalla-Wesierski, 1984, p. 44-45).

The case for a soft law scenario

In a pure soft law scenario, regulation of environmental issues of shared concern would be left uniquely to non-binding instruments. In a certain way, this scenario is the closest one to the *status quo* among those that we have considered so far. Nevertheless, in this case we are considering a governance arrangement that presents a strong use of soft law instruments for cooperation, shifting away from hard law solutions.

UNCLOS would remain the only legally binding framework. In the Ilulissat spirit, no other convention, international or regional agreement would be added. Agreements like the Oil Spill Preparedness and Response Agreement or the SAR Agreement would remain isolated cases. On the contrary, systematic cooperation would continue within the AC and at the bilateral level, mainly through declarations and informal agreements. For example, Stokke argues that existing soft law institutions in the Arctic, and the AC in particular, have contributed to fostering environmental governance by strengthening the knowledge base, providing practical guidance on risk reduction, increasing Arctic visibility in international fora, and supporting national implementation of all measures by single states (Stokke, 2007, p. 407). These achievements and the lack of political consensus on the conclusion of a comprehensive binding treaty confirm that this flexible approach could be the key to the future of Arctic governance.

This scenario is plausible because the premises are already in place and it has on its part the commitment of the Arctic states in Kiruna. Arctic governance developed using primarily a soft law approach, starting from the Ottawa Declaration in 1996 and finishing with the Kiruna Declaration. Parallel to that, there are also other organisations which lack a legally binding basis. Overall, soft law arrangements prevail in Arctic governance and have contributed consistently to the management of environmental and non-environmental issues. Moreover, intergovernmental and interparliamentary bodies have so far played a key role in the development of international law in the Arctic, preserving their soft law nature.

In addition, by its nature soft law allows parties to conclude informal agreements that do not impose legal obligations upon them but grant reasonable expectations of compliance and coordination. The greatest strength of soft law norms is the avoidance of legal obligations and the discretion regarding the terms of these obligations. To be sure, this does not mean that soft law arrangements are necessarily less effective. On the contrary, the political value of soft law agreements in some cases equals a legal obligation.

Soft law agreements and declarations are normally concluded in a very short period of time. Parties are encouraged to find a common ground by the very non-binding nature of their commitment. While an Arctic Treaty would be incompatible with the necessity of responding to environmental challenges in a timely manner, soft law instruments would allow for immediate action and timely solutions to abrupt changes. A soft law scenario would be more flexible, quick, and less demanding, but potentially more effective. This applies to inter-state agreements, intergovernmental and interparliamentary bodies, but also to sector-specific regulation at the regional level (Hasanat, 2013).

Hasanat notes that soft law offers another advantage. It allows for bottom-up initiatives to be heard at a higher governance level, allowing for increased direct civil society participation (Hasanat, 2012, p. 185). In the case of the Arctic, this is particularly true with regards to indigenous peoples organisations. Thanks to the soft law nature of the AC, these organisations have the peculiar status of PPs and special participatory rights. This grants non-members more extensive participatory rights than in international organisations. The latter do not allow civil society groups to sit with states, even when those groups are directly affected by the decisions taken. The Arctic Circumpolar Declaration on Arctic Sovereignty adopted by Inuit communities during the Arctic Council Ministerial Meeting is an example of the new margin for cooperation opened up by soft law tools of governance.

On this point, Hasanat underlines that soft law allows non-state actors to express their claims. He goes on by saying that this might amount to a reconceptualization of the meaning of *limited sovereignty* and *responsible sovereignty* by recognising that the claims of these communities must be voiced to face global challenges like environmental protection (Hasanat, 2012, p. 187).

Soft-law scenario: too soft?

If it is true that soft law tools address the demand for more flexible and inclusive instruments, it is equally true that the Arctic is facing a growing need for enforceable rules, especially with regards to risk prevention and response in environmental matters. In this respect, one major weakness of soft law is that it does not create legally binding obligations. A forum established by a non-binding declaration like the AC is not able to enact legally binding regulations and enforce its principles upon unwilling states.

Another interesting objection to a soft law scenario regards the fact that states may use soft law as a test to understand whether they want to commit to more demanding solutions or not (Hasanat, 2012, p. 187). This could often lead to inaction on issues covered by soft law regulation.

To sum up, the discussion of the soft law scenario has brought up a number of interesting points. On the one hand, the soft law scenario relies on the good record of soft law arrangements that are already in place in the Arctic. The concretisation of this scenario would ultimately require only expanding the soft law basis already in place. On the other hand, it must be taken into account that the soft law scenario does not address the need for binding regulation. Though soft law has shown good level of compliance in the Arctic, it is difficult to exclude that more binding instruments will not be needed in the future.

3.4 Regional solutions to global problems: an integrated regional agreement

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

A regional agreement concluded among the Arctic states and focused on environmental

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

EBM is an integrated way to provide goals and frameworks for the protection of land and wildlife in specific areas. EBM as a policy method aims to grasp the interaction between socioeconomic and biologic environment and act accordingly in order to tackle environmental problems. These interconnections are studied for areas that have the same characteristics and that may be considered as systems on their own. More specifically, the term EBM shows that, within a given ecosystem, all human activities, including economic activities, are managed and considered from an ecosystem perspective.

The main peculiarity of EBM is that, in contrast to more traditional forms of regional planning and management, it provides a peculiar comprehensive, transdisciplinary, and transboundary focus, taking into account people, their activities, and the ecosystem where they operate (Slocombe, 1998, pp. 31-32). Such an approach describes the area considered dynamically and not statically, in relation to its natural characteristics. It aims to define goals and plan processes in a dynamic and sustainable way. Slocombe notes that the main strength of EBM consists in the fact that society or ecosystems are seen as self-defining and self-maintaining units that interact with each other. EBM as an approach to regional planning works at its best for protected areas with peculiar environmental challenges (Slocombe, 1998, pp. 31-32).

The case for a regional agreement and EBM in the Arctic

Huebert and Yeager defend the conclusion of a regional seas agreement for the management of the Arctic Ocean as the most effective solution to governance gaps in facing new challenges. According to them, the main advantage of this agreement would be the provision of the necessary tools for a holistic management of the Arctic Ocean (Huebert and Yeager, 2008, p. 28). In their opinion, this agreement could build upon the United Nations Environmental Programme (UNEP) for regional seas already in place. In alternative, an independent regime could be established based on the example of the OSPAR Convention for the North East Atlantic. Interestingly, many region-based treaties are cited as examples, such as OSPAR, the Cartagena Convention, the Special Areas and Wildlife Protocol (SPAW Protocol) in the Caribbean, the Helsinki Commission (HELOCOM) in the Baltic region (Huebert and Yeager, 2008, p. 28).

In particular, the agreement could contribute to bringing the Arctic to the attention of governments and not only of environmental agencies. In addition, such an arrangement would combine goals of sustainability with obligations on the Arctic governments regarding targets, timetables, and duties to protect the environment (Huebert and Yeager, 2008, p. 28).

As far as EBM is concerned, the AC has been long promoting the idea of EBM discourse for the Arctic. In 1997 with the State of the Arctic Environment Report, then in 2004 with the Arctic Climate Impact Assessment (ACIA), and in 2009 with the Arctic Marine Shipping Assessment (AMSA), the AC disseminated reports that clarify that biophysical changes in the Arctic do not happen in isolation but, on the contrary, they are clearly linked to what happens in the rest of the world. Doing this, the AC has been promoting what Young calls the 'EBM discourse' to react to these changes (Young, 2009, p. 432, 441).

As already mentioned, EBM provides an alternative policy discourse that looks at the Arctic as a complex and dynamic socio-ecological system. Essentially, EBM takes into account the sociological and ecological dimension of systems (or ecosystems). The focus is on large socio-ecological systems, overcoming jurisdictional fragmentation (Young, 2009, p. 432, 441). For instance, EBM in relation to living marine resource means that both the impacts of fisheries on the ecosystem and the constraints that the ecosystem places on fisheries must be taken into account (Hoel, 2009, p. 453). Therefore, the ecosystem perspective is applied to the management of a given economic sector or, ideally, to all economic sectors.

The first advantage of this scenario is that the legal basis for the conclusion of a regional seas agreement is already available. Huebert and Yeager note that the premises to build such a regional treaty are already in place. The two scholars mention in particular UNCLOS as international framework, the AC as a political forum to foster the conclusion of the agreement, the Polar Code for shipping guidelines, and the OSPAR Convention and other regional agreements providing the model for pollution control (Huebert and Yeager, 2008, p. 28).

It is interesting to note that Huebert and Yeager refer to Article 123 of UNCLOS in combination with Article 234 as the ground for the regional agreement (Huebert and Yeager, 2008, p. 28). Article 123 provides that states bordering an enclosed or semi-enclosed sea area shall cooperate through an appropriate regional organisation with the aim of managing living and non-living resources, and protect and preserve the environment (United Nations, 1982, art. 123). An enclosed or semi-enclosed sea is defined by Article 122 as 'a gulf, basin or sea surrounded by two or more States and connected to another sea or the oceans by a narrow outlet or consisting entirely or primarily of the territorial sea and exclusive economic zones of two or more coastal states' (United Nations, 1982, art. 122). Pursuant to Article 234, states may enact special legislation to protect ice-covered waters within their EEZ (United Nations, 1982, art. 234). From these two articles combined together we derive the possible legal basis for this scenario. This argument is based on the admissibility of the definition of the Arctic Ocean as semi-enclosed sea almost completely surrounded by the territories of the coastal states.

The second strength of this scenario consists in devising targeted and integrated solution to governance challenges. Young refers to EBM as an alternative policy discourse to frame the Arctic. In his analysis, EBM captures non-linear changes that affect a given socio-ecological system, like a large marine ecosystem, going beyond the fragmentation of national claims and devising cooperative regimes to address interrelated issue in an integrated manner (Young, 2010, p. 176).

Development of sectorial arrangements is not excluded (e.g. regimes for oil and gas development, fishing, and shipping). Yet, the core of this policy discourse remains in the attempt to go beyond jurisdictional boundaries and deal with complex socio-ecological systems in a holistic manner while at the same time paving the way to inclusive collaborative management (Young, 2010, p. 176). Therefore, the main strength of this approach is that it helps devise cooperative regimes and addressing interrelated issues in an integrated way (Young, 2010, p. 176).

In addition, a regional seas agreement like the one described could reinforce and, at the same time, be strengthened by the EBM approach. A regional agreement would reinforce EBM management of marine and coastal areas in the Arctic by providing a comprehensive and

region-specific framework of binding regulation where EBM could be best enforced. On the other hand, EBM in the Arctic would make compliance to the regional agreement much easier.

Tortuous pathway towards a regional integrated agreement

As mentioned above, this scenario rests on the admissibility of defining the Arctic Ocean as a semi-enclosed sea. Yet, this qualification appears rather problematic. Rayfuse defines the debate around this issue as 'a vexed question' (Rayfuse, 2007, p. 210). Despite the fact that there seems to be a general agreement that the Arctic Ocean meets all conditions to qualify as semi-enclosed sea, part of the academia rejects this hypothesis (Franckx, 1993, pp. 240-243; Rothwell, 1996, pp. 289-290).

Another substantial objection to the argument proposed by Huebert and Yeager is the fact that the US is not part to UNCLOS to date. One of the pitfalls of the scenario is that the regional agreement could rest on UNCLOS international framework as legal basis. The US would need to ratify UNCLOS for such an agreement to be approved under UNCLOS. Furthermore, it could be objected that this scenario would risk replicating existing sectorial and international regulation insisting in the Arctic, bringing as back to the argument made for the Arctic Treaty scenario. To add to this, most threats to the Arctic environment such as greenhouse gases, are generated outside the region and, what is more important, their regulation would not be subject to control by an agreement for the Arctic Ocean (Young, 2009, p. 433).

At a closer look, EBM may present more problems than expected. In fact, its implementation in the Arctic is still at a very initial stage and presents many challenges. Among these, we may list the production of knowledge to support the process at the local level, the use of appropriate policy instruments, and cooperation across different governance levels and sectors (Hoel, 2009, p. 454). Overall, EBM is still a work in progress and its implementation will vary deeply depending on local conditions, geography and specific needs.

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

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

Conclusion

The Arctic is a fascinating land of extremes where worrisome threats and incredible opportunities are unfolding. Governance of the Arctic needs to merge political, economic, social, and environmental considerations in order to preserve indigenous peoples' livelihood, a unique ecosystem, and the immense potential of the region. In this paper I provided a snapshot of possible future prospects of Arctic governance. After having introduced the main features and challenges of this region, I identified pitfalls and trends of its current governance framework. Afterwards, I defined a model for scenario analysis and outlined four scenarios for the future of Arctic governance. The fact of excluding all proposed scenarios does not amount to a failure. On the contrary, the scenario analysis served the purpose of shedding light on which solutions are viable for the future of Arctic governance, which ones are feasible, and which ones are desirable. Even more than that, I hope that it helped our understanding of how governance demands often contrast with each other and call for a careful balancing of interests and voices.

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