

Governance of protected areas in the Arctic

Timo Koivurova*

Introduction

Both polar areas are normally described as places where humans have difficulty in entering due to the difficult climate and environmental conditions. This could well be interpreted as entailing natural protection for the vulnerable Arctic ecosystems, whereby the areas would not require any additional protective measures from the Arctic states. Yet, this image of the Arctic as a polar desert is changing at an increasing pace with the advance of climate change and economic globalization. The Arctic Climate Impact Assessment (ACIA),¹ conducted under the auspices of the Arctic Council, has shown how dramatically the region has already changed and is about to change.² It is warming at twice the rate of the rest of the world, because snow and ice react very swiftly to warming and give rise to not only local and regional impacts (such as retreating sea ice, which will increase navigational possibilities in the region) but also global ones (such as the acceleration of climate change because of changes in the cryosphere in the Arctic).

As was already argued in 2001 in the GLOBIO Report of the United Nations Environment Programme:

‘In the last part of the 20th century, the Arctic has been increasingly exposed to industrial exploration and exploitation as well as tourism. The growth in oil, gas and mineral extraction, transportation networks and non-indigenous settlements are increasingly affecting wildlife and the welfare of indigenous people across the Arctic (...) A 2050 scenario was made using reduced, stable, or increased rates of infrastructure growth as compared to the growth between 1940-1990. The scenario revealed that at even stable growth rates of industrial development, 50-80 % of the Arctic may reach critical levels of anthropogenic disturbance in 2050, rendering most of these areas incompatible with traditional lifestyles of many subsistence-based indigenous communities.’³

* Timo Koivurova is a Research Professor and the Director of the Northern Institute for Environmental and Minority Law, Arctic Centre, University of Lapland (Finland), email: timo.koivurova@ulapland.fi

1 See at <<http://www.acia.uaf.edu>>.

2 See the key findings of ACIA, *Impacts of a Warming Arctic, ACIA Overview Report*, 2004, pp. 10-11: i) The Arctic climate is now warming rapidly and much larger changes are projected; ii) Arctic warming and its consequences have worldwide implications; iii) Arctic vegetation zones are very likely to shift, causing wide-ranging impacts; iv) Animal species' diversity, ranges and distribution will change; v) Many coastal communities and facilities face increasing exposure to storms; vi) Reduced sea ice is very likely to increase marine transport and access to resources; vii) Thawing ground will disrupt transportation, buildings, and other infrastructure; viii) Indigenous communities are facing major economic and cultural impacts; ix) Elevated ultraviolet radiation levels will affect people, plants, and animals; and x) Multiple influences interact to cause increased impacts to people and ecosystems. See also the *Arctic Climate Impact Assessment Final Scientific Report*, 2005.

3 UNEP, United Nations Environment Programme (2001), *GLOBIO. Global Methodology for Mapping Human Impacts on the Biosphere, the Arctic 2050 Scenario*, p. 2, at <<http://www.globio.info/region/polar/#arctic>>.

Hence, developmental pressures are increasing by the day in the Arctic, bringing more people to the region and challenging the way of life of its many indigenous peoples. In this light, there would indeed seem to be a need for measures to protect special areas in the region. This has not gone unnoticed in the Arctic cooperation process, because from very early on – the 1991 Arctic Environmental Protection Strategy (AEPS) – work on protected areas was chosen as a priority, as evidenced by the adoption of the Circumpolar Protected Areas Network (CPAN) under the Conservation of Arctic Flora and Fauna Working Group (CAFF).

There are no universally agreed definitions of protected areas, but two which are widely used are that for protected areas in general in the UN Convention on Biological Diversity (CBD)⁴ and the IUCN definition for marine protected areas (MPA).⁵ According to the most recent update of the protected areas in the Arctic, made under CPAN in 2004, almost 20% of the Arctic land mass is judged to have protected area status in terms of IUCN categories. This is greater than the global average, which stands at some 11.5%. The same does not apply to marine areas, since little of the Arctic marine environment has been designated as marine protected areas (MPA). The 2004 CPAN update argues that the Arctic is not alone here; according to statistics compiled for the 2003 World Parks Congress,⁶ the rest of the world faces the same challenge, with less than 2% of the marine and coastal environment on the globe managed as protected areas or conservation zones.

This article focuses on the work on protected areas carried out in two working groups of the Arctic eight-state cooperation process, CAFF and PAME, both of which first operated under the 1991 AEPS and continued under the Arctic Council, established in 1996. This article will not study the protected area policies of the individual Arctic states for two reasons. First, without the eight-state cooperation process, it would be difficult, if not impossible, to discuss protected areas in the Arctic. Even though the cooperation process cannot produce any legally binding guidance, it has served as a platform for international policy throughout the Arctic and for policy discussion on the issue of protected areas. Without the Arctic-wide process, protected areas could only be discussed as part of a particular state's northern or Arctic protected areas, depending on how the state has decided to describe its northernmost regions internally, for there is no universally agreed definition of the southernmost boundary of the Arctic.⁷

Second, much of the work on protected area policies and laws in the eight Arctic countries has been compiled by CAFF's CPAN project. This includes the following reports prepared for the 1996 CPAN Strategy and Action Plan: The State of Protected Areas in the Circumpolar Arctic (HCR 1), Proposed Protected Areas in the Circumpolar Arctic (HCR 2), National Principles and Mechanisms for Protected Areas in the Arctic Countries (HCR 3), CPAN Principles and Guidelines (HCR 4), and Gaps in Habitat Protection in the Circumpolar Arctic – a Preliminary Analysis (HCR 5).⁸ After the adoption of the CPAN Strategy and Action Plan⁹ there appeared

4 According to Article 2 of the United Nations Convention on Biological Diversity, a protected area is 'a geographically defined area, which is designated or regulated and managed to achieve specific conservation objectives'. See the Convention text at <<http://www.cbd.int/convention/convention.shtml>> and 1992 *International Legal Materials* 31, p. 818.

5 The following was adopted in 1988 by the World Conservation Union (IUCN) 'Any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment'. UN Doc. RES/ 17/38 (1988) by the General Assembly of the IUCN, reaffirmed in UN Doc. RES19/46 (1994). See this and other definitions of MPAs on p. 28 of *Status of Marine Protected Areas in the Mediterranean Sea, A collaborative study by IUCN, WWF and MedPAN*, at <http://cmsdata.iucn.org/downloads/status_lr.pdf>.

6 See the foreword to the *CPAN Country Updates Report* (CAFF Habitat Conservation Report no. 11), November 2004,.

7 See the discussion in *Arctic Human Development Report*, Chapter 1, pp. 17-18, at <http://www.svs.is/AHDR/AHDR%20chapters/English%20version/AHDR_chp%201.pdf>.

8 These Habitat Conservation Reports (HCR) can be downloaded at <<http://arcticportal.org/arctic-council/working-groups/caff-document-library/habitat-reports>>

9 *Ibid.*, published as Habitat Conservation Report no. 6.

the CPAN Progress Report 1997 and the CPAN 2004 Country Updates Report, which provided a wealth of information on how protected areas are managed and developed in the eight Arctic countries.¹⁰

This article will analyze what has been achieved in Arctic cooperation as regards the protected areas. This will be done primarily by examining how the work of two of the working-groups of the present Arctic Council – the Conservation of Arctic Flora and Fauna (CAFF) and the Protection of the Arctic Marine Environment (PAME) – has evolved. Of particular interest is CAFF's Circumpolar Protected Area Network (CPAN) project, which is designed to coordinate the protected area policies of the Arctic states in their Arctic regions. The main goal of the article is to examine the kinds of functions CPAN is meant to achieve and to discuss whether the project has met its goals. Before doing so, a brief presentation of the very unique structure of Arctic cooperation – now functioning as the Arctic Council – is in order, as this will also show the limits and possibilities of what can be done.

Section 2 will examine in more detail the evolution of CAFF's priorities during its lifetime and in particular the CPAN programme. Also of interest will be the most recent development in the Arctic Council in the field of protected areas, namely the MPAs, which were adopted as one priority action for another Council working group, the Protection of the Arctic Marine Environment (PAME), in its 2004 Arctic Marine Strategic Plan (AMSP). One case study is then briefly taken up to illustrate the recent developments in national law directly connected to the AMSP marine protected area network. In Section 3, all these developments are evaluated by first identifying the trajectories of protected area activities in the Arctic Council and then discussing the possible ways forward. In particular, it is important to analyze whether normative platforms other than the Arctic Council are better equipped to promote work on protected areas in the Arctic and what type of policy focus for protected areas could be assumed in the Council.

1. Evolution of the Arctic cooperation process

There is no agreed definition of the southernmost boundary of the Arctic; several different criteria can be presented as to where this boundary should be drawn. Possible natural boundaries are, for instance, the tree line (*i.e.*, the northernmost boundary where trees grow) and the 10°C isotherm (*i.e.*, the southernmost location where the mean temperature of the warmest month of the year is below 10°C). In Arctic-wide cooperation, the Arctic Circle itself has been used as a criterion for membership, with only those states that possess areas of territorial sovereignty above the Arctic Circle being invited to participate in the cooperation. Accordingly, the states involved comprise the Nordic countries (Norway, Sweden, Finland, Denmark-Greenland, and Iceland), Canada, Russia and the USA (through Alaska).

The first stage of Arctic-wide cooperation started with the 1991 AEPS, adopted in Rovaniemi, Finland. The Strategy identified six priority environmental problems facing the Arctic – persistent organic contaminants, radioactivity, heavy metals, noise, acidification and oil pollution – as well as the international environmental protection treaties that apply in the region and specific actions to counter the threats noted. Four environmental protection working groups were established as part of the environmental protection action by the eight Arctic states:

10 Both were published as Habitat Conservation Reports, the 1997 *Progress Report* as no. 7 and the 2004 *Country Updates Report* as no. 11 in the series. Other published reports include *A Summary of Legal Instruments and National Frameworks for Arctic Marine Conservation* (HCR 8), *Gaps in Habitat Protection in the Russian Arctic* (HCR 9) and *Protected Areas of the Arctic: Conserving a Full Range of Values 2002* (HCR 10). All can be downloaded at <<http://arcticportal.org/arctic-council/working-groups/caff-document-library/habitat-reports>>.

Conservation of Arctic Flora and Fauna (CAFF), Protection of the Arctic Marine Environment (PAME), Emergency Prevention, Preparedness and Response (EPPR), and the Arctic Monitoring and Assessment Programme (AMAP). In addition, a Task Force on Sustainable Development and Utilization was established after the 1993 Nuuk ministerial meeting. Three ministerial meetings were held in this first phase of Arctic cooperation,¹¹ generally referred to as AEPS cooperation. The Arctic Council was established in 1996 and the AEPS activities gradually became part of the Council's work during the period 1996-1998.

The establishment of the Arctic Council in 1996 broadened the mandate of cooperation to all common issues facing the Arctic (excluding matters related to military security), especially those relating to environmental protection and sustainable development; the four environmental protection working groups of the AEPS were integrated into the structure of the Council, and one new working group was established, the Sustainable Development Working Group (SDWG).¹² In the absence of a permanent secretariat, the work of the Arctic Council is heavily influenced by the priorities which the chair-states lay out for their two-year tenure,¹³ at the end of which a ministerial meeting is organized. Senior Arctic Officials (SAO), a group of high-level officials, guides the work of the Council between the ministerial meetings.¹⁴

The Arctic Council has also adopted new programmes related to environmental protection, such as the Arctic Council Action Plan to Eliminate Pollution in the Arctic (ACAP),¹⁵ which was recently turned into a sixth working group, and the Arctic Climate Impact Assessment (ACIA). What is unique in the Arctic Council is the role it has given to the region's indigenous peoples: they are defined as permanent participants, a distinct category of participants between members proper and observers, whom the Council's member states must consult prior to any consensus decision-making. The group of observers is comparatively large, and consists of inter-governmental and non-governmental organizations, as well as states active in the Arctic region.¹⁶ This is the category where one would typically find indigenous peoples in inter-governmental organizations and forums, where they are generally accorded NGO status.¹⁷

It is important to note that there has not been much change in the Arctic cooperation process even though the AEPS was replaced by the Arctic Council in 1996. Some changes took place but the fundamental elements of the cooperation – its legal status, financing and institutional structure – remained the same. Of particular importance where protected areas are concerned is that the Arctic Council is a type of soft-law cooperation; that is, it cannot produce any legally binding rules and standards. Another relevant factor is that the four core working groups (AMAP, CAFF, PAME and EPPR) have functioned from the very inception of Arctic cooperation with the AEPS in 1991, and have thus been able to work continuously for almost 20 years.

11 These were held in Nuuk, Greenland, in 1993; Inuvik, Canada, in 1996; and Alta, Norway, in 1997.

12 See at <<http://portal.sdwg.org/>>.

13 A temporary change has now been introduced by the three next Scandinavian chairs (Norway, Denmark and Sweden), which have established a secretariat in Tromsø, Norway, until 2012 and have also decided that ministerial meetings are to be organized during the spring rather than in the autumn. See *Common objectives and priorities for the Norwegian, Danish and Swedish chairmanships of the Arctic Council (2006–2012)*, at <http://arctic-council.org/article/2007/11/common_priorities>.

14 The locations and dates of the meetings are as follows: Iqaluit, 1998, ending the Canadian chair period (Canada 1996–1998); Barrow, 2000 (USA 1998–2000); Inari, 2002 (Finland 2000–2002); Reykjavik, 2004 (Iceland 2002–2004); and Salekhard, 2006 (Russia 2004–2006).

15 See at <<http://acap.arctic-council.org/>>.

16 For a recent analysis see T. Koivurova *et al.*, 'The Arctic Council at 10 Years: Retrospect and Prospects', 2007 *University of British Columbia Law Review* 40, no. 1, pp. 128-159.

17 See T. Koivurova *et al.*, 'The participation of indigenous peoples in international norm-making in the Arctic', 2006 *Polar Record* 42, no. 2, pp. 101-09.

2. The evolution of protected area work in Arctic cooperation

2.1. CAFF priorities – brief overview

The Conservation of Arctic Flora and Fauna (CAFF) Working Group had its origins in the 1991 AEPS, which recognized, in light of scientific and traditional knowledge, that economic development projects, long-range movement of pollutants and the degradation of habitats pose grave threats to Arctic flora and fauna.¹⁸ The AEPS observed that most existing agreements protecting flora and fauna had no special Arctic focus, which was especially problematic given the Arctic indigenous peoples' traditional livelihood and cultures. Hence, the need was identified for a forum whereby scientists, indigenous peoples, and conservation activists could exchange data and information relating to shared species and habitats. The end result was the establishment of CAFF as a working group in 1992, which was later recognized in the 1993 Nuuk Declaration.¹⁹

Various priorities were identified for CAFF at a 1996 ministerial meeting in Inuvik. They included the developing of CPAN²⁰ and assisting countries with the implementation of the Circumpolar Murre Conservation Strategy and Action Plan.²¹ The Inuvik meeting also acknowledged the importance of the UN Convention on Biological Diversity by urging CAFF to develop a draft Arctic strategy relating to the Convention's goals. The 1997 ministerial meeting in Alta continued with these priorities but also welcomed the Strategy for the Conservation of Biological Diversity in the Arctic Region (Biodiversity Strategy), and noted the need to develop a long-term plan to give effect to the Strategy. The Alta meeting also endorsed the further development of the Circumpolar Eider Conservation Strategy and Action Plan.²²

By the time of the first Arctic Council ministerial meeting in Iqaluit in 1998 the focus of CAFF had broadened. The meeting endorsed CAFF's Strategic Plan for the Conservation of Arctic Biological Diversity as an overall framework for the group's activities and furthered the timely implementation of the Plan through the creation of more detailed work plans.²³ It also welcomed CAFF's intention to prepare an overview of the status and trends in changes in ecosystems, habitats, and species in the Arctic. Moreover, CAFF was urged to identify what elements would be needed for a programme to monitor circumpolar biological diversity and to assess, in collaboration with AMAP, the effects of climate change and UV-B radiation on Arctic ecosystems.²⁴

CAFF has undertaken a number of programmes to implement its goals. The Circumpolar Biodiversity Monitoring Program (CBMP), launched in 2004, is aimed at producing reports on how Arctic biodiversity is changing, especially in light of climate change. The CBMP is led by Canada, and is expected to culminate with the publication of a 2010 Arctic Biodiversity Assessment (ABA).²⁵ In addition, through support from the Global Environment Facility, CAFF is collaborating with UNEP/GRID-Arendal and the Russian Federation in implementing a project

18 Arctic Environmental Protection Strategy, Section 9, at <http://arctic-council.org/filearchive/artic_environment.pdf>.

19 See the Nuuk Declaration, Para. 2, at <<http://arctic-council.org/filearchive/The%20Nuuk%20Declaration.pdf>>.

20 See CAFF, *Circumpolar Protected Area Network (CPAN)—Strategy and Action Plan*, 1996, at <<http://arcticportal.org/uploads/3v/kl/3vklGMBX4PY7yUyECXLhAQ/HCR6-CPAN-Protected-Areas-Network-CPAN---Strategy-and-Action-Plan.pdf>>.

21 CAFF, *Circumpolar Murre Conservation Strategy and Action Plan*, 1996, at <<http://arcticportal.org/uploads/f1/2y/f12yfitBbOtxjA0jFibYIw/International-Murre-Conservation-Strategy-and-Action-Plan.pdf>>.

22 Alta Declaration, Para. 9, at <<http://arctic-council.org/filearchive/The%20Alta%20Declaration.pdf>>.

23 CAFF, *Strategic Plan for the Conservation of Arctic Biological Diversity*, 1998, at <<http://arcticportal.org/uploads/hw/Kd/hwKdRxnTLfzt5cewJeEtjg/Strategic-Plan-for-hte-Conservation-of-Arctic-Biological-Diversity.pdf>>.

24 Iqaluit Declaration, Arts. 20-21, at <<http://www.international.gc.ca/polar-polaire/assets/pdfs/iqadec-en.pdf>>.

25 See CAFF, *Framework Document: Circumpolar Biodiversity Monitoring Program, CAFF CBMP Report no. 1, November 2004*, at <<http://arcticportal.org/uploads/9O/uF/9OuFtAawJgMljD8BfMX1sA/CircumpolarBiodiversityFramework.pdf>>.

on Integrated Ecosystem Management in the Russian Arctic (ECORA).²⁶ The project aims to develop and implement ecosystem management strategies in three model areas of the Russian Arctic.²⁷

Overall, the priorities of CAFF have gradually but clearly changed from cooperation on administrative/political issues to a focus on scientific cooperation in biological diversity in the Arctic, carried out through the group's monitoring and assessment projects. This development has had distinct effects on the group's work regarding protected areas, which was one of its priorities when it was first established.

2.2. CPAN

As early as 1991, the Arctic Environmental Protection Strategy identified the following as one of its main principles: 'Development of a network of protected areas shall be encouraged and promoted with due regard for the needs of indigenous peoples'.²⁸ This aim was set out in greater detail at the inaugural meeting of CAFF in Ottawa, Canada, in April 1992, and was adopted by the ministerial meeting in Nuuk in 1993 with the following particularly strong wording:

'(...) the Ministers requested the CAFF Working Group to Prepare a Plan for developing a network of Arctic protected areas that will ensure necessary protection of Arctic ecosystems, recognize the role of indigenous cultures, and provide a common process by which Arctic countries may advance formation of circumpolar protected areas.'²⁹

A number of important reports were written within CAFF to define further the main focus of this field of activity, which paved the way for the adoption of the Circumpolar Protected Areas Network (CPAN) – Strategy and Action Plan (CAFF Habitat Conservation Report no. 6). The CPAN was clearly CAFF's priority at the beginning of its work, and it is an ambitious activity, as detailed in the Strategy and Action Plan.

The Strategy and Action Plan outlined the rationale for CPAN. First, it argued that the Arctic is no longer an isolated place but is undergoing a thorough transformation due to increasing development activities, infrastructure build-up and urbanization. The Arctic environment is also seen as very unique, one of global significance and requiring a regional cooperative effort for its conservation.³⁰ A crucial element in conservation in the Arctic is the region's indigenous peoples, whose sustainable use of the environment needs to be accommodated. All the Arctic countries have protected areas and are thus committed to this conservation tool. They have also become parties to treaties laying down obligations to establish protected areas. Principal among these, according to the Strategy and Action Plan, is the UN Convention on Biological Diversity, which in its Article 8 calls upon the contracting parties to 'establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity'. The Strategy and Action Plan anticipates that CPAN will respond to the Convention's recommendation that

26 ECORA, at <[http://arcticportal.org/en/caff/caff-projects-with-observer-organizations-and-affiliates/ecora ---overview](http://arcticportal.org/en/caff/caff-projects-with-observer-organizations-and-affiliates/ecora---overview)>.

27 *Ibid.* The areas include Kolguev Island in the eastern Barents region, the Kolyma River Basin in Yakatia and the Beringovskiy District in Chukotka.

28 See Chapter 2.2. (Principles), viii, p. 11, at <<http://arcticportal.org/en/arctic-council2>>.

29 Report from the Nuuk 1993 ministerial meeting, p. 13, on file with the author.

30 The Strategy and Action Plan lists the following considerations: a) the harsh environment of the Arctic is the reason behind high adaptivity in Arctic fauna and flora; b) biodiversity and productivity of Arctic ecosystems is focused on certain key areas; c) Arctic ecosystems are highly sensitive *e.g.* toward human-induced pollution; d) the Arctic hosts various animals, which require large tracts of relatively undisturbed environment for them to sustain; e) in a global context, the Arctic flora and fauna are still relatively intact, although vulnerable; and f) these relatively undisturbed environments now already represent a heritage of global significance, but will do so even more in the future when natural ecosystems in other parts of the world become rarer.

countries should examine means of implementing the Convention and its clauses on a regional level.³¹

The main goal of CPAN, which uses the IUCN classification criteria for protected areas,³² is:

‘(...) to facilitate implementation of initiatives to establish, within the context of an overall Arctic habitat conservation strategy, an adequate and well managed network of protected areas that has a high probability of maintaining the dynamic biological diversity of the Arctic region in perpetuity.’³³

The network of protected areas created under CPAN is intended to represent as fully as possible the wide variety of Arctic ecosystems and to contribute effectively to maintaining viable populations of all Arctic species and sustaining ecological and evolutionary processes. To achieve these goals, the following tasks have been identified in the Network’s Strategy and Action Plan:

- identify gaps in existing and proposed protected areas;
- expand and create protected areas to fill the identified gaps;
- strengthen national mechanisms for creating and managing protected areas;
- integrate the needs of protected areas into national policies and planning frameworks;
- expand public and political support for protected areas;
- improve the legal and institutional framework;
- provide adequate funding for protected areas; and
- monitor the state of protected areas.’³⁴

According to this document, a wide range of tasks must be undertaken to meet CPAN’s goal – seventeen at the national and seven at AEPS level. Examples of national level actions are:

- identify the most significant gaps in the national networks of protected areas, and select candidate sites for further action, for the first time in 1997, giving priority to gaps in critical habitat areas with threatened species, ecosystems with poorest representation and areas under imminent threat;
- identify needs and opportunities for modifying (i.e., expanding and buffering) existing protected areas and for improving connectivity between them and take action as feasible and appropriate;
- (...)
- involve local and indigenous people, and their needs, concerns, and knowledge in the identification, establishment and management of protected areas;
- as appropriate, give a major marine focus to national and international plans and programs addressing Arctic protected areas.’³⁵

31 See the *CPAN Strategy and Action Plan*, p. 12.

32 *Ibid.*, p. 10.

33 *Ibid.*, p. 18.

34 *Ibid.*, p. 18.

35 *Ibid.*, see pp. 20-21.

The actions at the AEPS level include measures:

- to evaluate the progress made by CAFF members with respect to the implementation of CPAN, and, in consultation with competent national authorities to, compile lists of country-specific issues and issues of common concern that warrant priority consideration;
- to, on the basis of the common “CPAN Principles and Guidelines” and circumpolar gap analysis with input from member countries, secure the establishment of a Pan Arctic Protected Area Registry of terrestrial, freshwater and marine candidate sites for future action, including, inter alia, present protected sites under threat and priority sites not currently under protection;
- (...)
- to assess and evaluate the need for marine protected areas and special protection of dynamic regions of ice edge ecosystems and international migratory routes as part of an integrated strategy for the protection of the marine environment, including marine areas which fall outside individual or shared national jurisdiction;
- to co-operate with and contribute to IUCN’s efforts to establish a global system of representative marine protected areas covering all major biogeographic types and ecosystems, within CAFF’s area’.³⁶

In the 1996 Inuvik ministerial meeting, the ministers asked for a progress report on implementation in 1997. This extensive document was compiled in time, encompassing the responses from all eight Arctic states to the seventeen actions called for in the 1996 CPAN Strategy, and drew the conclusion that significant progress was being made in the implementation of the CPAN at the national level.³⁷ Circumpolar actions identified in this progress report were presented in the form of discussion papers, of which one was a report produced by Canada entitled ‘Protection and Maintenance of Marine Ecosystems in the Circumpolar Arctic’. The report described the jurisdictional responsibilities and protection mechanisms relating to marine ecosystems, and is said to have provided a basis for future circumpolar efforts pertaining to marine protected areas. It is worth noting the amount of emphasis that was placed on MPAs from the very beginning of the CPAN.

The dominance of the CPAN as a priority of CAFF was readily seen in the progress report submitted to the 1996 Inuvik ministerial meeting.³⁸ The next progress report, submitted to the 1997 ministerial meeting in Alta, changed this and the overarching document for the future work of CAFF was adopted, the Co-operative Strategy for the Conservation of Biological Diversity in the Arctic Region.³⁹ At the seventh meeting of the CAFF’s International Working Group in 1999, a standing committee was established for the CPAN and the group nominated the US to lead the committee and the CPAN project in general.⁴⁰ The CPAN Standing Committee held a meeting on 10 September 2000 at which a discussion paper on recommendations from the Circumpolar Marine Workshop was debated and an updated CPAN map for the CAFF Overview

³⁶ *Ibid.*, p. 21.

³⁷ *CPAN Progress Report* (CAFF Habitat Conservation Report no. 7), p. 25, at <<http://arcticportal.org/uploads/cy/ee/cyeeYLubi9FU7ENcUjzyAw/Habitat-report-no.-07.pdf>>.

³⁸ See Chapter 3.1 of the Report, at <http://arcticportal.org/uploads/Hi/hz/HihzCetVkhTNleqaP1_jwQ/CAFF-Report-to-Ministers-1996.pdf>.

³⁹ See at <<http://arcticportal.org/uploads/IJ/nf/IJnfcgQR18OPo6nOaHFXgQ/CAFF-Report-to-SAO-1997.pdf>>.

⁴⁰ See p. 14. The report of this meeting is available at <<http://arcticportal.org/uploads/s6/OE/s6OEMf-51jrbs-B83-NTTrw/Seventh-Meeting-of-the-CAFF-International-Working-Group-CAFF-VII-Yellowknife-1999-Summary-Report-1999.pdf>>.

was presented.⁴¹ In 2002, the CPAN Expert Group had a draft charter at its disposal, and the completion of a compendium of ecologically important marine areas was discussed, a project led by Canada. Yet, at the tenth CAFF International Working Group meeting, in 2004, the CPAN came to a complete halt. As was noted in the minutes of the 2005 CAFF board meeting:

‘All three co-chairs of CPAN resigned in Anchorage at CAFF X. Norway has no resources to host the Chair of CPAN; Greenland has no resources; Iceland no interest; US holds the Chairs of CFG and CBird; too much work for Sweden Rep at this time; Finland will look into possibilities.’⁴²

The executive secretary of CAFF was assigned responsibility for CPAN. This is surprising, given that the CPAN Country Updates Report that appeared in November of 2004 stated the following in its foreword:

‘The report represents a compilation of responses from the Arctic Council countries. It shows clearly that Arctic countries have made significant progress in establishing new protected areas and contributing to a circumpolar network, as well as improving the legislative and policy base for managing such areas (...) Arctic countries have also made significant strides in updating and creating legislation and policies to provide an improved basis for managing protected areas.’⁴³

The role of CPAN was further taken up in the concluding remarks:

‘CPAN due to its mandate and its position as part of the larger Arctic Council structure is well placed to respond to the global priorities for protected areas as expressed through the Plan of Implementation of the WSSD, the CBD Program of Work on Protected Areas and the outputs of the Vth World Parks Congress (...) In addition, in all northern countries there is growing awareness of the importance of protecting cultural and ethnographic landscapes that are important to indigenous and local communities and which can contribute to national and international protected area systems. CPAN can play a useful role in this new field of endeavor.’⁴⁴

Hence, there seemed to be at least some enthusiasm for CPAN in the CPAN Experts Group, who prepared the report together with the CAFF secretariat, which assisted in putting the report together. Yet, CPAN became practically dormant in 2005, and in CAFF’s 2006 board meeting it was decided that CPAN would ‘not move forward until a country steps up to take the lead’,⁴⁵ and no such country has taken that initiative. Still, at the working group’s recent board meeting,

41 See *CAFF Board Meeting in Stockholm, April 2-4, 2001*, pp. 8-9 at <<http://arcticportal.org/uploads/30/pQ/30pQMqXacyL9TIdGswDtQQ/CAFF-Board-Meeting-Stockholm-April-2-4-2001.pdf>>.

42 See *CAFF Management Board Meeting Minutes 1-3 February 2005 Helsinki, Finland*, Chapter 8.3, at <http://arcticportal.org/uploads/t-/9F/t-9FpbaWsOdX3RSz_UyIFw/CAFF-Board-Meeting-Helsinki-Finland-February-1-3-2005.pdf>.

43 *CPAN Country Updates Report* (CAFF Habitat Conservation Report no. 11), November 2004, Foreword.

44 *Ibid.*, p. 34.

45 See *CAFF Management Board Meeting Minutes 13-15 February 2006 Helsinki, Finland, Record of Decisions*, p. 4, at <<http://arcticportal.org/uploads/5M/C8/5MC8GnfbIMKz7pe4f-DwTg/CAFF-Board-Meeting-Helsinki-February-2006.pdf>>.

in February 2008, interesting suggestions were made as to the direction in which CPAN should be developed.⁴⁶

Currently, CPAN itself is dormant and it was decided at the recent CAFF biennial meeting in Ilulissat that CPAN would not be placed in the 2009–2011 CAFF work plan. However, the executive secretary of CAFF has pointed out that there are activities under way that do promote CPAN's goals. According to him, the Arctic Highlights Report, a component of the Arctic Biodiversity Assessments 2010, includes a protected areas indicator as developed by CAFF's cornerstone programme, the CBMP.⁴⁷ Canada will also lead a project in CAFF's new 2009–2011 work plan to update the circumpolar map of protected areas. A workshop on monitoring and protected areas led by Canada and the USA is scheduled for early 2009.⁴⁸

On balance, CPAN has moved from being a top-priority project to being practically non-existent. Interestingly, the CAFF website still contains a link to the CPAN website with nominated experts from each Arctic Country and other participants and the CPAN charter as if the Network were still up and running.⁴⁹ In a recent book on protected areas in international law, CPAN is taken up as a regional approach to protected areas that uses IUCN classification criteria but the work makes no mention of the Network's current status.⁵⁰ What is important to realize, even though it is now dormant, is that CPAN has placed a great deal of emphasis on MPAs from the very outset.

2.3. Marine protected areas

2.3.1. Brief overview of the priorities of PAME

At the 1991 Rovaniemi meeting establishing the AEPS, the eight Arctic states committed themselves to take preventive and other measures, directly or through competent international organizations, so as to protect the Arctic's marine environment from various sources of pollution. The AEPS established priorities related to this commitment, to not only take preventive measures directly or through competent international organizations, but also to follow the relevant provisions of the UN Convention on the Law of the Sea,⁵¹ to maintain international standards regarding the discharge of pollutants, to take part in international cooperation to fortify the

46 See the minutes of the board meeting in Nuuk, Greenland, from 12 to 14 February 2008, p. 11: 'CPAN needs a lead country to proceed and in order for a lead country to be able to step forward then CPAN also needs to have a clear strategy. It needs to be clear on what the value added is for international cooperation and what are the circumpolar issues which will benefit from CPAN. In response to this a number of ideas were suggested: Marine protected areas are recognised as the big gap in protected arctic areas, terrestrial protected areas are acknowledged to be well covered. So a possible action item could address the concept of marine protected/sensitive areas e.g. how they are defined and what criteria are used. What marine areas are protected? A potential way forward is to focus on the relationship between tourism and protected areas. The concept of circumpolar and bilateral parks e.g. the potential international protected area between Russia and the US (Berenjia) or the idea that Sweden, Finland and Norway could have a joint protected area. The compatibility of tourism and PP values. Ilulissat was mentioned as a model of good understanding between PPs and a Government. The relationship between important biological areas and local areas which have significant cultural value. The CAFF/RAIPON report on *Sacred sites* was also discussed as a relevant development in this area. Climate change and protected areas – what are the effects and influences? A sharing of experiences of best practices in the monitoring of protected areas'. See the records at <http://arcticportal.org/uploads/Tr/Tx/TrTx1wrrK4J_N6MGY3MAzw/CAFF-Board-Meeting-Nuuk-February-2008-Records-of-Decisions.pdf>.

47 Email from the executive secretary of CAFF, Tom Barry, on 24 December 2008. See also CAFF's CBMP Report no. 12, p. 8, which states: 'Coverage of Protected Areas – this indicator will illustrate trends in the amount and type of protected areas found within the circumpolar Arctic and the extent to which they are representative of the various ecosystems found across the North', at <<http://arcticportal.org/uploads/ic/hi/ichiwKYJbqc39sCZhO1A9Q/CBMP-Report-No.12.pdf>>.

48 *Ibid.*

49 See at <<http://arcticportal.org/en/caff/cpan>>.

50 A. Gillespie, *Protected Areas and International Environmental Law*, 2007.

51 1982 United Nations Convention on the Law of the Sea, 1982 *International Legal Materials* 21, p. 1261.

recognition of the sensitivity of ice-covered parts of the Arctic Ocean and to ensure the protection of the Arctic marine environment from accidental pollution.⁵²

The PAME Working Group was established at the 1993 Nuuk ministerial meeting to implement the priority areas identified in the AEPS. In the 1993 Nuuk Report, which accompanied the Nuuk Declaration, the ministers expressed their concerns – on the basis of the information provided by AMAP – regarding radioactive waste disposal that was taking place in Arctic waters (Russian waters in particular). They were also concerned about threats to the Arctic marine environment from land-based and maritime sources identified in other studies. Consequently, the Nuuk meeting established the working group as a joint process to ensure the protection of the marine environment from both radioactive waste disposal and pollution caused by land-based and marine sources.⁵³ More specific priorities for the group's work were identified by the 1996 Inuvik ministerial meeting. PAME was asked to develop both a Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities (RPA) and guidelines for offshore petroleum activities. The working group was also asked to collect information on present and future shipping activities and their effect on the environment and to evaluate the effectiveness of existing international arrangements.⁵⁴

The 1998 Iqaluit ministerial meeting confirmed the priorities identified by the previous meeting. PAME had already started to work on how the RPA could be implemented in Russia. The 1998 Iqaluit meeting requested PAME to support Russia's development and implementation of a Russian Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities (Russian NPA-Arctic).⁵⁵ The meeting also directed PAME to assess the current and potential shipping activities in the Arctic in the light of what, if any, additional Arctic shipping measures were required. This was followed up in the 2000 Barrow ministerial meeting, which instructed PAME to determine whether further Arctic shipping measures, in addition to those adopted by the International Maritime Organisation's Polar Code,⁵⁶ were necessary in light of a Norwegian-led snapshot analysis of maritime activities in the Arctic. The Barrow meeting also confirmed other priority areas, and urged representatives involved in the RPA and ACAP to develop complementary activities to avoid overlaps.⁵⁷ The 2002 Inari meeting, again endorsing PAME's existing priorities, requested the group to develop a strategic plan for the protection of the Arctic marine environment, which would be used to lay the foundation for a more coordinated and integrated approach to managing the challenges of the Arctic coastal and marine environments.⁵⁸ The Inari ministerial meeting also endorsed the revised Arctic Offshore Oil and Gas Guidelines, first developed by PAME in 1997.

The 2004 Reykjavik ministerial meeting urged the implementation of the Arctic Marine Strategic Plan (AMSP). PAME developed the AMSP through not only the various Arctic Council working groups and mechanisms, but also regional and global bodies. The Reykjavik meeting encouraged the Arctic Council's members, working groups, and relevant regional and international bodies to apply the ecosystem approach to the Arctic marine environment as outlined in

52 AEPS, Section 7.

53 The Nuuk Report recommended 'a joint process to execute the outcome of the United Nations Conference on Environment and Development (UNCED)'. The PAME Working Group was established to manage the initiative and to report findings before the next ministerial meeting. Nuuk Report on file with the author.

54 Inuvik Declaration, Para. 6.

55 Iqaluit Declaration, Para. 25.

56 Guidelines of Ships Operating in Arctic Ice-Covered Waters were subsequently adopted by IMO as recommended provisions. See IMO MSC/Circ. 1056, MEPC/Circ. 399 (23 December 2002), at <http://www.imo.org/includes/blastDataOnly.asp/data_id%3D6629/1056-MEPC-Circ399.pdf>.

57 Barrow Declaration, Para. 11.

58 Inari Declaration, Para. 5.

the AMSP. The Reykjavik meeting addressed environmental problems resulting from shipping activities in the following ways: by endorsing the Arctic Waters Oil Transfer Guidelines, by requesting PAME to evaluate the existing measures pertaining to port reception facilities for ship-generated waste and cargo residues and by requesting that PAME undertake a comprehensive Arctic marine shipping assessment.

The AMSP has clearly been PAME's most ambitious initiative. The Plan provides an impetus to apply the ecosystem approach in the Arctic and calls for the establishment of representative networks of marine protected areas. The AMSP urges actions in many areas of policy, reflecting its wide-ranging goals and acknowledging that the two largest drivers of change in the Arctic are climate change and increasing economic activity. The Plan has suggested actions on the following fronts: conducting a comprehensive assessment of Arctic marine shipping; developing guidelines and procedures for port reception facilities for ship-generated wastes and residues; examining the adequacy of the Arctic Council's Offshore Oil and Gas Guidelines; identifying potential areas where new guidelines and codes of practice for the marine environment are needed; promoting the application of the ecosystem approach; promoting the establishment of marine protected areas, including a representative network; considering a revision of the RPA; calling for periodic reviews of both international and regional agreements and standards; and promoting the implementation of contaminant-related conventions or programmes and possible additional global and regional actions.

2.3.2. Marine protected areas

As noted above, MPAs already received a great deal of emphasis in CPAN's 1996 Strategy and Action Plan. Even during the last stages of CPAN, the project involving a compendium of ecologically important marine areas was taken up by Canada, which directly influenced the work on the 2004 Arctic Marine Strategic Plan (AMSP) of the PAME working group.⁵⁹ Thus, the 2004 AMSP also included strategic action to 'Promote WSSD actions related to the marine and coastal environment, including the application of an ecosystem approach and establishment of marine protected areas, including representative networks'⁶⁰. It was noted on many occasions throughout CPAN's work on protected areas that MPAs are under-represented in the Arctic. Yet, even though accepted as one strategic action of the AMSP, PAME has taken no action to implement such a network of Arctic MPAs and this part of the AMSP remains dormant. The work plans for the years 2004-2006 and 2006 and 2008 contain no action regarding MPAs;⁶¹ this suggests that MPAs have not been selected as principal priorities in implementing the Plan, an assessment that accords with discussions with responsible officials.⁶²

2.4. Case study: the Beaufort Sea LOMA

Canada has clearly been the most active member state of the Arctic Council with regard to MPAs. It produced the discussion paper 'Protection and Maintenance of Marine Ecosystems in the Circumpolar Arctic' as part of implementing circumpolar actions under the CPAN Strategy and Action Plan. It also began work on a compendium of ecologically important marine areas, a project that clearly contributed to the creation of the AMSP.

59 See *CAFF Management Board Minutes Homer, Alaska from November 18 to 20 2003*, p. 5, at <<http://arcticportal.org/uploads/Vr/3d/Vr3dRCNt5XngrhmkuFtUw/CAFF-Board-Meeting-Homer-Alaska-November-18-20-2003.pdf>>.

60 See Chapter 7.3.2. of the AMSP, p. 11, at <http://arcticportal.org/uploads/vx/IW/vxIWcyCi_7UnSBwZDbPVug/AMSP-Nov-2004.pdf>.

61 See at <<http://arcticportal.org/pame/pame-document-library/framework-documents-and-workplans>>.

62 Telephone discussion on 6 October 2008 with responsible officials from Finland to the PAME working group.

Canada's interest derives from its pioneering oceans policy, which has its roots in the 1996 Oceans Act.⁶³ This legislation identified MPAs as important tools for integrated ocean management and tasked the Department of Fisheries and Oceans (DFO) with creating a national network of MPAs together with Environment Canada and Parks Canada Agency, the outcome of which was the 2005 Federal Marine Protected Areas Strategy.⁶⁴ The MPAs are meant to nest with the larger integrated management schemes, such as Large Ocean Management Areas (LOMA). According to VanderZwaag, the first and still the only integrated ocean management process that has been adopted under the Oceans Act is the Beaufort Sea LOMA, which is still in its early planning stages.⁶⁵

The Beaufort Sea LOMA is located in the extreme northwestern corner of Canada and covers the marine portion of the Inuvialuit Settlement Region (ISR) agreed between indigenous peoples of the western Arctic Inuit and the federal level of Canada.⁶⁶ The LOMA covers approximately 1,107,694 km² and its coastal area extends some 750 km along the mainland from the Alaska–Yukon border at 141°W, east through the Mackenzie Delta to Clinton Point at 121°W, the entrance to Dolphin and Union Strait. It should be noted that the LOMA's western border is still to be delimited between the US and Canada, both holding differing opinions on where the maritime border ought to be drawn.⁶⁷ The LOMA includes four geographic regions: the Beaufort Sea, the Mackenzie Delta, the Yukon North Slope and the Arctic Islands. The Beaufort Sea region comprises marine offshore waters, whereas the Mackenzie Delta and Yukon North Slope refer to coastal waters along the southwestern portion of the Canadian mainland. The LOMA is relatively pristine and is characterized by a marine environment that includes permanently and seasonally ice-covered regions and a coastal area influenced by the mixing of marine and fresh water. The major communities within the LOMA include Paulatuk, Aklavik, and Inuvik.⁶⁸

According to VanderZwaag, the first Arctic marine protected area under the Oceans Act is in the process of designation, and it lies within the Beaufort Sea LOMA. In effect, it consists of three coastal areas referred collectively as Tarium Niriyutait.⁶⁹ In accordance with the principles of integrated oceans management in Canada, the Tarium Niriyutait MPA nests within a larger integrated management area, the Beaufort Sea LOMA. The MPA has been created to balance between protecting values fundamental to Inuvialuit culture and the conservation objectives of the MPA. Most importantly, the goal is to manage Beluga whales in such a way that their stock remains in healthy numbers and whaling can be continued on the basis of the Beaufort Sea Beluga Management Plan.⁷⁰ Interestingly, the creation of this MPA is directly connected to the Arctic Council's AMSP:

‘By establishing Canada’s first Arctic MPA, Fisheries and Oceans Canada, in collaboration with its partners, will be well underway to fulfilling commitments under Canada’s Oceans

63 See Sections 35 and 36 of the Oceans Act, at <<http://laws.justice.gc.ca/en/O-2.4/>>.

64 See at <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/mpa-zpm/fedmpa-zpmfed/index_e.asp#toc>.

65 Professor David VanderZwaag's presentation, webcast from the Arctic Frontiers Conference, viewed on 10.40-11.15 CET, at <[http://leo.infotek.no/uit4/Viewer/Viewers/Viewer320BR.aspx?mode=Default&peid=01f5346e-8e05-45d1-9fd4-41dcfd621e6&pid=cb0c95aa-c9c6-48b9-8e96-2b577bb01150&playerType=WM7#](http://leo.infotek.no/uit4/Viewer/Viewers/Viewer320BR.aspx?mode=Default&peid=01f5346e-8e05-45d1-9fd4-41dcfd621e6&pid=cb0c95aa-c9c6-48b9-8e96-2b577bb01150&playerType=WM7#>)>. See also the LOMA website at <<http://www.dfo-mpo.gc.ca/oceans/marineareas-zonesmarines/loma-zego/index-eng.htm>>.

66 See the Inuvialuit Final Agreement, at <<http://www.irc.inuvialuit.com/publications/pdf/Inuvialuit%20Final%20Agreement.pdf>>.

67 See T. Koivurova, *Environmental Impact Assessment in the Arctic: A Study of International Legal Norms*, 2002, p. 61.

68 See the website of the Beaufort Sea LOMA, at <<http://www.beaufortseapartnership.ca/bslom.html>>.

69 See VanderZwaag, *supra* note 65.

70 See at <http://www.beaufortseapartnership.ca/ttmp_area.html>.

Act, Canada's Ocean Strategy, Canada's Oceans Action Plan and international plans *such as the Arctic Marine Strategic Plan.*⁷¹ (Emphasis added)

This interesting reference to the AMSP tells more about Canada's own Arctic policy than the reality of creating a network of Arctic MPAs as urged by the AMSP. As observed above, Canada has been at the forefront of pushing through the idea of Arctic MPAs in the Arctic Council. Presenting Tarium Niryutait MPA as one MPA fulfilling Canada's commitments under the AMSP does give more credibility to the AMSP strategic action. Yet, as was also noted, at least to date no action has been taken to create such a network.

3. Conclusions

As noted in Section 2, it is clear that the protected area work has faced serious problems. Work on CPAN is currently dormant, with no country willing to lead the project and the CPAN Expert Working Group no longer convening; however, Canada has expressed its willingness to update the protected area map created by CPAN during the period 2009-2011. All in all, it would be good at this juncture to admit what has happened and delete the information on the 'current' status of CPAN from the CAFF website, thereby preventing people from misunderstanding the status of the programme. A network of marine protected areas, envisaged as one of the priorities of PAME, has not even been started, although Canada has tried to present the Beaufort Sea LOMA as a marine protected area in the sense of AMSP. Overall, work on protected areas, although viewed as one of the priorities in the early phases of the Arctic cooperation process, has almost ceased to exist in recent years. Even with the demise of CPAN and other protected area work in Arctic cooperation, it is important to recognize that especially CPAN has produced a wealth of important information on protected areas in the Arctic, work that will continue to some extent with the updating of the Network's protected area map by Canada.

What are the reasons for this demise of protected area work? We can analyze this issue from various points of view. If one examines the issue only from the perspective of CAFF, it is clear that other activities within the group⁷² have been found to be more fruitful; for example, its limited resources have been directed towards the Circumpolar Biodiversity Monitoring Programme (CBMP) and the Circumpolar Biodiversity Assessment (CBA). Another reason that civil servants involved in the work of CAFF cite as an explanation for the demise of work on protected areas is the competing efforts under the UN Convention on Biological Diversity (CBD). Why would the mapping and gentle persuasion work carried out under CPAN need to be done if all the countries (except the USA) need to report regularly on their protected areas to the CBD protected area working group?⁷³ The executive secretariat of CAFF adds that some of the activities within the CBA and especially the CBMP – especially the work on indicators of protected areas – continue the work of CPAN to some extent.

71 *Ibid.*

72 Email from the Executive Secretary of CAFF Tom Barry on 24 December 2008.

73 Telephone interviews with two officials at the Finnish Ministry of the Environment on 6th October 2008. Their analysis is verified on pp. 16-17 of the minutes of the CAFF board meeting, which took place on 18-20 November 2003, just before CPAN became dormant. The country representatives referred to protected areas as an in-country process, where CPAN's involvement can only be limited, and took up the possible overlap with the CBD work. See the minutes at <<http://arcticportal.org/uploads/Vr/3d/Vr3dRCNt5XngrhmkuFtUw/CAFF-Board-Meeting-Homer-Alaska-November-18-20-2003.pdf>>.

Both these explanations seem correct. It does seem difficult for CAFF to produce something beyond what is already being done in the CBMP and the CBA. The shift in the direction of CAFF's work towards assessing and monitoring biodiversity seems to be very much in line with the overall operating format of the Arctic Council: the Council's working groups are increasingly conducting scientific assessments and have succeeded in making clear management impacts by sponsoring such extensive assessment projects. The shift away from administrative cooperation relating to protected areas, which tends to be a strongly national affair, to scientific cooperation also seems natural since it does not require as deep a level of commitment.⁷⁴

Work under the CBD in particular seems to compete with the work within the Arctic Council on protected areas. This is most closely, but not exclusively, related to the Convention's working group on protected areas which certainly challenges the Arctic states to think why there would be a need for a specific Arctic programme on protected areas.⁷⁵ It does not seem to be any coincidence that CPAN became practically dormant in 2004, precisely when the Programme of Work on Protected Areas was adopted at the seventh meeting of the Conference of the Parties to the UN Convention on Biological Diversity.⁷⁶

Overall, it seems that the work in the Council on protected areas has moved in the right direction in the sense that it is now more realistic as to what should be done in this important area of environmental protection. It can well be argued that the Arctic Council should focus on scientific cooperation – its current focus is on the ABA and CBMP programmes in CAFF – rather than the administrative/legal cooperation required by CPAN.

First of all, such a focus is more realistic in the sense that it does not require the member states to cooperate in administrative and legal issues related to nature conservation in their Arctic areas, given that such cooperation requires a deep level of commitment, not the soft-law cooperation that is now practised in the Arctic Council. Scientific cooperation has been one of the clear strengths of the Council, one which has enabled it to influence even regional and global environmental protection processes, such as the negotiations on the Stockholm POP Convention, to which it submitted scientific information produced by AMAP.⁷⁷ With scientific cooperation on biological diversity in the region, it can well be argued that the Arctic Council is doing its utmost to help the member states fulfil their CBD obligations in their Arctic areas.

Yet, the rationale for the regional implementation of CBD obligations with the help of CPAN that was identified in the CPAN Strategy and Action Plan is still valid: the Strategy explicitly identified the fulfilment of the obligations under the CBD in protected areas as best accomplished via the regional approach, given the unique character of Arctic ecosystems. In fact, CPAN would seem to be an ideal programme for fulfilling the obligations of CBD in protected

74 As put at the recent management board meeting of CAFF in February 2008: 'An overview was provided of the accomplishments of CPAN to date and a review of its various activities. Its last output was a Country Update Report in 2004. The challenge which faces CPAN now is how best to continue? CPAN has in the past run into difficulties as each CAFF country has its own protected areas policy and therefore may not need any outside suggestions on how these policies should be structured. Thus in order to proceed CPAN needs to focus more on generalities and the international context'.

75 CBD also has another working group which is relevant from the Arctic viewpoint, the Programme of Work on the Implementation of Article 8(J) and Related Provisions of the Convention on Biological Diversity, at <<http://www.cbd.int/traditional/pow.shtml>>.

76 The present author has not been able to verify why the three co-chairs resigned. Yet, given that this happened approximately at the same time as when the CBD started its protected area work (via COP 7 Decision taken in 2004), there is likely to be a connection between the two events. Paragraph 18 states the following: 'Adopts the programme of work on protected areas annexed to the present decision with the objective of the establishment and maintenance by 2010 for terrestrial and by 2012 for marine areas of comprehensive, effectively managed, and ecologically representative national and regional systems of protected areas that collectively, inter alia through a global network [footnote omitted] to contribute to achieving the three objectives of the Convention and the 2010 target to significantly reduce the current rate of biodiversity loss'. COP 7 Decision VII/28, Kuala Lumpur, 9-20 February 2004, Protected areas (Articles 8 (a) to (e)).

77 See in general L. Reiersen *et al.*, 'Circumpolar Perspectives on Persistent Organic Pollutants: the Arctic Monitoring and Assessment Programme', in: D. Leonard Downie *et al.* (eds.), *Northern Lights Against POPs: Combating Toxic Threats in the Arctic*, 2003.

areas, since the Network was explicitly designed to do this on a regional level. In addition, CPAN includes the US, not a party to the CBD, which would provide an additional argument in favour of reviving the Network. The Arctic Council also seems to be an ideal framework in which to conduct work on protected areas, given that it provides the region's indigenous peoples with a unique position as permanent participants, who may take part in all of the Council's activities. The main obstacle seems to be that most of the Arctic states perceive protected area issues as highly domestic ones regulated primarily by the national legal systems of the respective states and do not see the Arctic Council as a forum for cooperating on protected areas across the Arctic. Therefore, CPAN was not even included in the work programme of CAFF for the period 2009-2011.

Yet, the possible way forward may be with MPAs. This was already envisaged by the final output of the CPAN programme, the CPAN Country Updates Report, which states, '[i]n light of this new international agenda for protected areas CPAN should focus its energies on the marine and coastal environment (...)'⁷⁸ This was even more forcefully argued in the 2008 CAFF board meeting:

'An overview was provided of the accomplishments of CPAN to date and a review of its various activities. Its last output was a Country Update Report in 2004. The challenge which faces CPAN now is how best to continue? CPAN has in the past run into difficulties as each CAFF country has its own protected areas policy and therefore may not need any outside suggestions on how these policies should be structured. Thus in order to proceed CPAN needs to focus more on generalities and the international context. CPAN needs a lead country to proceed and in order for a lead country to be able to step forward then CPAN also needs to have a clear strategy. It needs to be clear on what the value added is for international cooperation and what are the circumpolar issues which will benefit from CPAN. In response to this a number of ideas were suggested: Marine protected areas are recognised as the big gap in protected arctic areas, terrestrial protected areas are acknowledged to be well covered. So a possible action item could address the concept of marine protected/sensitive area e.g. how they are defined and what criteria are used. What marine areas are protected?'⁷⁹

In addition, the EU Commission's newly commenced Arctic policy identifies an important role for Arctic MPAs. It prompts the Commission to '[e]xplore the possibility of establishing new, multi-sector frameworks for integrated ecosystem management. This could include the establishment of a network of marine protected areas, navigational measures and rules for ensuring the sustainable exploitation of minerals'.⁸⁰ This is an important policy goal from the Commission that is increasingly engaging in Arctic policy-making.⁸¹ The same policy goal was endorsed by the Russian Federation in its recently published Arctic policy:⁸²

78 See p. 34 of the Report, at <<http://arcticportal.org/uploads/rQ/o5/rQo5wdkwrJc3aCyAUD4z4Q/Habitat-report-no.-11.pdf>>.

79 See the minutes of the board meeting (12-14 February 2008, Nuuk Greenland) p. 11, at <http://arcticportal.org/uploads/Tr/Tx/TrTx1wrrK4J_N6MGY3MAzw/CAFF-Board-Meeting-Nuuk-February-2008-Records-of-Decisions.pdf>.

80 Communication from the Commission to the European Parliament and the Council. The European Union and the Arctic Region, COM(2008) 763, Chapter 4, at <http://ec.europa.eu/maritimeaffairs/pdf/com08_763_en.pdf>.

81 On the other hand, it has to be remembered that without any Arctic coastline, the European Commission can only try to influence the maritime policies of those states that can create Arctic MPAs in areas within their sovereignty and jurisdiction.

82 'Basics of the State Policy of the Russian Federation in the Arctic for the Period till 2020 and for a Further Perspective' Promulgated: March 30, 2009, publication of the official governmental newspaper *Rossiyskaya Gazeta*, adopted by the President of the Russian Federation D. Medvedev, September 18, 2008 (on file with the author).

‘In the sphere of environmental security it is necessary: to ensure preservation of the biological diversity of the Arctic florae and faunae, including by expansion of a network of especially protected natural territories and water areas, taking into account national interests of the Russian Federation, necessity of preservation of the natural environment in the conditions of expansion of economic activities and global climate changes.’⁸³

One possible future is thus that work on protected areas at the circumpolar level could take place with regard to marine areas.⁸⁴ A number of factors make this scenario at least a possible one. First, MPAs are part of the strategy for PAME, but remain unimplemented; this strategic action can still be taken up, however, and it is best done under PAME, since CAFF has oriented its priorities in such a way that protected area work is difficult to continue there. PAME has also carried out very interesting marine ecosystem management work with its large marine ecosystems (LMEs) of the Arctic marine area and the Best Practices in Ecosystems Based Oceans Management (BePoMAR), which provide a basis to continue towards a network of MPAs under PAME. This may be the future of the protected area policy of the Arctic Council, if such a policy is to emerge at all.

⁸³ *Ibid.*, Chapter 8(c).

⁸⁴ It should be kept in mind that creating a circumpolar network of MPAs is easier said than done, given that MPAs are created under domestic law, and thus international co-operation thereon suffers from similar problems that were encountered in CPAN.