

# Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance

Timo Koivurova

Northern Institute for Environmental and Minority Law, Arctic Centre, University of Lapland, Rovaniemi, Finland (timo.koivurova@ulapland.fi)

Received November 2008

**ABSTRACT.** In a very short time, discussions on Arctic governance have moved from being a topic of scholarly attention and NGO advocacy onto the agendas of states and of the European Union (EU). Increasingly, the various alternatives propounded by a diverse set of actors over what Arctic governance should look like appear as pre-negotiation tactics, a type of testing period before a regime change. The article examines whether the still predominant inter governmental forum, the Arctic Council, is facing a threat of being supplanted by other forms of governance. It will study how resistant the Arctic Council, and its predecessor the 1991 Arctic environmental protection strategy, are to change in order to understand whether the council could renew itself to meet future challenges. It will also examine the various proposals for Arctic governance set out by states, the EU and the region's indigenous peoples. All this will permit conclusions to be drawn on where the Arctic Council stands amid all these proposals and whether, and in what way, it should change to support more sustainable governance in the Arctic.

## Contents

Introduction	146
From the AEPS to the Arctic Council	146
The change in how we perceive the Arctic as influencing the priorities of the working groups	148
Policy implications	150
Future of the Arctic Council	152
Acknowledgement	153
Notes	153
References	154

## Introduction

Inter-governmental cooperation between the eight Arctic states has continued for almost 20 years. The Arctic Council, preceded by the 1991 Arctic environmental protection strategy (AEPS), was established in 1996, and has been the prime forum for Arctic cooperation (Koivurova and VanderZwaag 2007). Yet, there are clear signs that with the melting sea ice and other climate change consequences in the region, together with new possibilities to exploit the region's vast natural resources, new states and political entities wish to become involved in Arctic governance thus indicating that the Arctic Council cannot perform the tasks to be expected of a forum charged to manage the region undergoing a vast transformation.

This article examines whether the Arctic Council is, indeed, facing a threat of being supplanted by other forms of governance, or whether it will stay as the predominant forum at which Arctic issues are studied and debated. This will be done in two stages. First, it is important to examine the past of the Arctic inter-governmental cooperation. Even though there are some studies on the topic, the present author considers that too little attention has been given to the period during which the AEPS was being integrated into the present Arctic Council in 1996.

In order to understand more clearly what changed, or what did not, it is important to examine the core area in the council, the policy and assessment work done in the working groups, many of which have continued from the beginning of the AEPS to the present day. Thereafter, it is possible to take up a few of the challenges to the Arctic Council, presented by various actors engaged in Arctic governance. There has been rapid evolution in this respect, given that until recently Arctic governance or treaty issues were the domain of mainly academic discussion. Only in the last few years have these issues entered the agendas of non-governmental organisations (NGOs) (Koivurova 2008: 22–23) and, finally, to the policy agendas of states and other authoritative policy entities. This is clearly something that has changed. Increasingly, suggestions for stronger Arctic governance are made by those who possess the power to change the way that Arctic governance is done, and not by academics and NGOs. The final part of the article evaluates whether the Arctic Council is a sticky form of cooperation, that is, a form of cooperation resistant to change even when many perceive that the factual challenges have outgrown what the council can achieve in its present form. If it is a sticky cooperation form, it is interesting to examine what type of challenges the various alternatives propounded by a diverse set of actors pose to the council as the predominant form of Arctic cooperation and study in what way the council could find a new focus for it to support the overall sustainability of Arctic governance.

## From the AEPS to the Arctic Council

It is good to keep in mind that before the negotiations for the AEPS commenced in 1989, inspired by the Mikhail Gorbachev's famous speech in Murmansk in 1987, the Arctic was not perceived as a place for inter-governmental cooperation. The reality in the region was dominated by strategic calculations between the two superpowers

and their allies. The geographical distance between the two superpowers was least in the Arctic and thus many perceived the region as the hot spot of the cold war (Möttölä 1988). If the Arctic was given any politico-legal meaning, it was, with the notable exception of the conclusion of the agreement on polar bears (Polar bear agreement 1973), via the individual Arctic countries advancing and developing their respective Arctic regions and policies. It is also important to bear in mind that climate change was just emerging as the main global environmental problem, a development that eventually lead to the adoption of the United Nations framework convention on climate change (UNFCCC) as one of instruments that were adopted at the 1992 Rio United Nations conference on environment and development (UNCED) (UNFCCC 1992). This is well shown in the AEPS, which perceived climate change as a problem to be dealt with at a global level, not in the Arctic (AEPS 1991: 30–31).

### **Transition from the AEPS to the Arctic Council.**

#### **What in the end changed?**

The AEPS was adopted by the eight Arctic states (the five Nordic states, the United States, Canada and the Soviet Union/the Russian Federation<sup>1</sup>) in 1991 in Rovaniemi, Finland, without any clear definition of what spatial scope would be used for defining the Arctic in the cooperation. The countries that were invited to take part in this cooperation were states that had areas of territorial sovereignty to the north of the Arctic circle.<sup>2</sup> Yet, the Arctic circle was not used as the definition of the southernmost boundary of the Arctic, since all the Arctic states and the working groups defined 'the Arctic' for their own purposes. The Arctic Council was established in 1996 and during the period from 1996 to 1998, the AEPS was merged into it.

According to Nowlan:

[i]t may be relatively easy to formalize an Arctic Council agreement, enshrine the mandates of the five Working Groups of the Council, and add innovative features designed to address the particular needs of the Arctic. The change from a strategy coordinated by Arctic states, the AEPS, to an organization that includes the Strategy and other work elements, the Arctic Council, happened in a relatively short time frame. As the pace of change accelerates in the Arctic, converting the Arctic Council agreement into a more comprehensive treaty may be warranted (Nowlan 2001: x)

Nowlan thus suggests that since it was possible to move from the AEPS to a more ambitious governance body, the Arctic Council, it may also be possible to move to a more ambitious treaty based body. This argument gives a good basis to examine how big a change took place when the AEPS was merged into the Arctic Council. There were some changes when the AEPS cooperation was transformed into the Arctic Council, but the question remains how significant these changes, in effect, were.

The four initial working groups of the AEPS cooperation, conservation of Arctic flora and fauna (CAFF), the protection of the Arctic marine environment (PAME), emergency prevention, preparedness and response (EPPR) and the Arctic monitoring and assessment programme (AMAP), were integrated as part of the Arctic Council. A new working group was established when the Arctic Council was adopted, the sustainable development working group (SDWG) and in general the mandate of the council was defined in a broad manner to include all common issues facing the Arctic (Ottawa declaration 1996: paragraph 13). Hence, at first sight, there seemed to be a clear departure from the AEPS, which had as its focus environmental protection. Yet, the AEPS also worked on sustainable development issues via its task force on sustainable development and utilisation (TFSDU), which had in its agenda more high level and controversial sustainable development issues that the SDWG eventually came to deal with (Keskitalo 2002: 113–158). Overall, therefore, there was no real change in the mandate of the AEPS and the council, given that both in practice dealt with environmental protection and sustainable development issues.

Institutional forms have also not changed much during the transition. The AEPS had senior Arctic affairs officials (SAAO) to coordinate the work within the council, SAAOs being normally high level civil servants from the respective foreign offices. SAAOs also prepared the ministerial meetings of the AEPS, which took place in Nuuk 1993, Inuvik 1996 and the final one in Alta, Norway, in 1997. Very much the same structure has been retained in the council, although its organisational structure and procedures have been clarified with the rules of procedure (Arctic Council 1998). Yet, it is still the senior Arctic officials (SAO), with only a slightly changed name, that coordinate the work in the council. SAOs prepare the ministerial meetings in the same way as SAAOs did in the AEPS, and ministerial meetings take place after the end of the period in which a country provides the chair. These have been in Iqaluit (Canada 1996–1998), Barrow (USA 1998–2000), Inari (Finland 2000–2002), Reykjavik (Iceland 2002–2004) and Salekhard (Russia 2004–2006). The secretariat services for the Arctic Council have been provided by the chair state, although a change has now been introduced since the three next Scandinavian chairs (Norway, Denmark and Sweden) have agreed to establish the secretariat in Tromsø, Norway, until 2012 and have also decided that ministerial meetings are to be organised during the spring rather than in the autumn (Arctic Council 2006); hence, the ministerial meeting ending the Norwegian chair period will be organised in April 2009. However, matters will probably return to the system adopted prior to the period with Scandinavian occupancy of the chair when Canada assumes this duty in 2012.

The only clear change that took place when moving from the AEPS to the Arctic Council was an improvement in the status of membership accorded to the indigenous peoples, and more specifically, to their international

organisations that represent either one people living in many Arctic states or many indigenous peoples living in one state (Ottawa declaration 1996: paragraph 2). In the AEPS, the organisations of indigenous peoples were observers together with non-governmental and inter-governmental organisations and non Arctic states. This was changed with the Ottawa declaration by giving Arctic indigenous peoples organisations a unique status in an inter-governmental forum: they are now permanent participants, which the members proper need to fully consult before consensus decision making (Ottawa declaration 1996: paragraph 2).

There is no clear change in the way the members of the Arctic Council have committed themselves to the cooperation; it has been low in Arctic cooperation from the beginning to the present day (covering both the AEPS and the Arctic Council phases). This is manifested in how the funding is organised, what kind of legal instruments are used in the cooperation and how controversial and high level questions can be discussed and decided in the council. Funding has, from the beginning, been *ad hoc* in the sense that no permanent contributions are required from the eight Arctic states or other participants. There were and have been discussions of a project support instrument, but this is merely a plan for pooling resources from various actors to help realise some of the projects adopted as Arctic Council projects, especially those designed to function in Russia (Arctic Council 2008a: paragraph 12.2.). There has been no serious discussion to date over changing the funding system from the present *ad hoc* system to a stable permanent funding mechanism.

Another factor signalling the low level of commitment to Arctic cooperation is the way in which the AEPS and the Arctic Council were established. The Rovaniemi declaration, by which the AEPS cooperation was commenced, was signed by representatives of the eight Arctic states. In a similar vein, the Arctic Council was established via the signed Ottawa declaration. Both forms of cooperation were thus created not by an international treaty, but through a signed declaration, thus effectively keeping the cooperation as a type of soft law arrangement. According to Evan Bloom, the US Department of State representative in the meetings of the Arctic Council, these types of cooperative forms were an objective for the US, given the enhanced flexibility they provide (Bloom 1999: 721).

Finally, the cooperation has not taken up controversial and high level issues of international cooperation. This was obvious in the AEPS cooperation, which focused on coordinating each country's action in the field of environmental protection, but the Arctic Council declaration at least laid the basis for taking action in all common issues facing the Arctic (Ottawa declaration). The Arctic Council declaration was also promising in describing the Arctic Council as a high level inter-governmental forum, which could have signalled a body that would also tackle more controversial issues other than military security.<sup>3</sup> This has not taken place. The Arctic Council has remained a body that produces, via its working groups,

technical recommendations and guidelines and influential scientific assessments. It has not become a regulatory body, although the recent scientific assessments have been accompanied by policy recommendations, which represents the closest that the council has come to the realm of governance. Yet, no serious effort has been taken to go beyond the existing paradigm of producing non binding technical guidance or fairly abstract policy recommendations. And, without any legal status, the council seems likely to continue with a similar sort of body, its primary focus being to sponsor scientific assessments and to function as a platform for environmental protection and sustainable development discussions between the established Arctic actors.

Overall, it can be concluded that even though there was indeed a rapid shift from the AEPS to the Arctic Council cooperation, the fundamentals of the cooperation have remained very much the same. The Arctic Council has become broader in its organisational structure, but the basics of the cooperation have not been changed. Yet, since the main work in the Arctic Council has been done in the working groups, especially via those that have functioned from the beginning of the AEPS cooperation, it is pertinent to study whether here we can detect a new set of priorities for the Arctic co-operation.

#### **The change in how we perceive the Arctic as influencing the priorities of the working groups**

The preceding analysis shows the limits and possibilities of the Arctic Council. Yet, there seems to be a clear shift in the way the working groups function largely due to the vast change in how the Arctic is understood and perceived as a region. Even though it is possible to discern a perceptual change underlying the endeavours in the working groups, it is useful to keep in mind that identification of such perceptual changes simplifies the reality in order to grasp something of the essence of change.

#### **The metaphor of 'frozen desert' underlying the work of the AEPS**

The negotiations that led to the adoption of the AEPS constructed the Arctic as one integrated region for international policy purposes. The AEPS was very much built on the idea of protecting vulnerable Arctic ecosystems from human induced pollution, both from within the region and, perhaps more importantly, from outside it. It is an intensely conservationist document, albeit taking into account the cultural values of a region's indigenous peoples in protecting these ecosystems. This is apparent from the first two objectives of the AEPS:

To protect the Arctic ecosystem including humans.

To provide for the protection, enhancement and restoration of environmental quality and the sustainable utilization of natural resources, including their use by local populations and indigenous peoples in the Arctic (AEPS 1991: 2.1. (i, ii)).

The AEPS was also an ambitious instrument of international environmental protection, given the final promise of its objectives which was to do no less than '[to] identify, reduce, and, as a final goal, eliminate pollution' (AEPS 1991: 2 (1v)). The AEPS was still built on the traditional image of the Arctic as a 'frozen desert', which is well captured in the opening passage of the AEPS:

The Arctic is highly sensitive to pollution and much of its human population and culture is directly dependent on the health of the region's ecosystems. Limited sunlight, ice cover that inhibits energy penetration, low mean and extreme temperatures, low species diversity and biological productivity and long-lived organisms with high lipid levels all contribute to the sensitivity of the Arctic ecosystem and cause it to be easily damaged. This vulnerability of the Arctic to pollution requires that action be taken now, or degradation may become irreversible (AEPS 1991: 1. Introduction)

Here the image is one of ecosystems that are inherently vulnerable because of the cold and hostile environment, requiring stronger measures of environmental protection. From the beginning, the AMAP working group was tasked to study the function of these vulnerable remote ecosystems whose function had not been studied sufficiently, as well as pollution problems that threatened these ecosystems. There is no sign here of a region that was undergoing a broad and intense transformation.

#### **The metaphor of the 'Arctic in change' introduced by the Arctic climate impact assessment (ACIA)**

It was not the founding of the Arctic Council that changed the image of the 'frozen desert' to the one of 'Arctic in change' but the process to produce the Arctic climate impact assessment (ACIA). It is important to remind ourselves that during the 1990s, climate change efforts were focused on mitigating, or even stopping, climate change from taking place. The policy discourse and the general media did not yet seriously think of adaptation to climate change consequences but how to prevent this phenomenon from occurring (in much the same way as the international community was able to take affirmative action to reduce chlorofluorocarbons (CFCs)) and, in the long run, to control and erase the problem of ozone depletion. This priority in the climate regime was about to change dramatically and, arguably, one of the main reasons for this perceptual change was the ACIA conducted under the auspices of the Arctic Council. ACIA, as any scientific assessment, is not only an objective undertaking but involves choices that need to be made throughout the process, thus making it an act of producing knowledge, as shown by Nilsson in her study of the ACIA process (Nilsson 2007: 204)<sup>4</sup>.

As has been shown by her, the planning process for ACIA was multi-faceted and involved other organisations than those of the Arctic Council (Nilsson 2007: 98–110). The work carried out in the international Arctic science committee, a non-governmental science body, was instrumental in ensuring that ACIA took place. Another

important factor was the willingness of the US as chair of the Arctic Council (1998–2000) to push for such an assessment and to fund it. These were the times of the Clinton administration when the US was one of the key players in negotiating the Kyoto protocol to the UNFCCC, which partly explains the important role the US was willing to play in producing ACIA. After a couple of seminars on the topic during the US chair period, it was decided to launch ACIA with CAFF, AMAP, IASC and indigenous representative sitting as members in the steering committee.

The ACIA was the first regional climate change assessment and it focused on the consequences of climate change for the region and its indigenous peoples. Even though the 2001 inter-governmental panel on climate change (IPCC) synthesis report also mentions the Arctic in passing (IPCC 2001), it was the ACIA that established the Arctic as the early warning place of global climate change, a region where climate change had already caused very concrete problems for ecosystems and human communities, and a region that was likely to warm twice as fast as the rest of the world.

The ACIA dramatically changed the way we perceive the Arctic as a region. Instead of the 'frozen desert' image that had influenced the work of the AEPS, it became almost the opposite, a region undergoing a vast and long transformation process. Some of the key findings of the ACIA synthesis, numbered as in the original report, point to such a dramatic transformation process:

- i) The Arctic climate is now warming rapidly and much larger changes are projected.
- 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.
- x) Multiple influences interact to cause increased impacts to people and ecosystems. (ACIA 2004)

It is also good to keep in mind that the ACIA started to influence the perceptions of the Arctic among the Arctic Council actors even before the synthesis report was released in 2004. As early as the 2002 Inari ministerial meeting, it was noted with concern 'the ongoing significant warming of most of the Arctic, and recognize that the impacts of global climate change with increased possibilities of extreme weather events will have large consequences in the Arctic, and that the Arctic can act as an early warning of global climate changes' (Inari declaration: paragraph 8). This development culminated in the release of the synthesis report before the 2004 Reykjavik ministerial meeting, which in turn lead to

policy recommendations in the Reykjavik declaration and the acknowledgement of the ‘the need to further organize the work of the Arctic Council and its subsidiary bodies based on the findings of the ACIA and direct the SAOs to report on the progress made at the 2006 Ministerial Meeting’ (Reykjavik declaration 2004).

The ACIA changed the priorities for most of the working groups, directing them to conduct scientific assessments as to the consequences of climate change in the region. These ‘second generation’ assessments examine in more detail some of the consequences to the Arctic environment and the growing interests of the business community in making use of the Arctic.

The 2004 Arctic marine strategic plan by PAME established the Arctic marine shipping assessment (AMSA) as a major priority. This inclusive and high profile assessment aims to map out the current shipping volumes in various parts of the Arctic marine regions, and to make projections for 2020 and 2050, given the opening sea ice and economic globalisation. AMSA will release its findings and policy recommendations at the April 2009 ministerial meeting that ends the Norwegian chair period.<sup>5</sup> Another major AMAP assessment concluded in 2007 evaluated the volume and consequences of increasing oil and gas activities in light of climate change and economic globalisation (AMAP 2008). The Arctic biodiversity assessment aims to evaluate the changes in Arctic biodiversity caused by increasing economic activities, climate change and ultra-violet radiation.<sup>6</sup>

### Policy implications

With all these scientific assessments pointing to a region undergoing a rapid and intense transformation, the discussion on governance was bound to appear sooner or later. Perhaps paradoxically, the assessments the council has, and is, sponsoring are further consolidating the view of the ‘Arctic in change’, which has in turn energised the redrawing of Arctic policies by Arctic actors and agencies in the face of possible regime change.

There is a discernible trend for states and political entities like the EU to strengthen their Arctic policies. This also manifests itself in the everyday reality of the Arctic Council. There are new powerful states wanting to become observers to the council. China was already accepted as an *ad hoc* observer, and is very likely to be approved as a permanent observer at the April 2009 ministerial meeting. South Korea sent a sizable delegation to the recent Kautokeino SAO meeting and the country has stated that it will apply for observer status.<sup>7</sup> Recently, the EU commission has also stated that it will seek permanent observer status in contrast to its earlier policy of applying for *ad hoc* observer status to the Arctic Council meetings. This announcement was also taken up in the first ever Arctic communication by the EU commission (EU Commission 2008: 4). Another manifestation of this trend of strengthening Arctic policies is that non Arctic state observers to the council (of whom

7 out of 8 are member states of the EU) have started to demand a stronger status in the work of the Arctic Council. According to the media, some of these non Arctic states have even suggested filing for membership status.<sup>8</sup>

It could be argued that this energised activity of various political entities towards the Arctic has launched a type of pre negotiation period, in which the Arctic actors are defining the new parameters for Arctic governance, such as: what is the Arctic for international policy purposes, who are the legitimate actors in Arctic governance and what is their status in any future governance arrangement? The following section takes up five such ‘framings’, although others should also be kept in mind, such as the recent move by the US Congress to propose negotiations over an Arctic fisheries convention (United States 2007)<sup>9</sup>. Interesting is that the alternatives are no longer just propounded by scholars and NGOs, such as WWF Arctic, which has for long argued for an Arctic treaty (Saksina 2009; Koivurova 2008: 22–24), but increasingly by states, the EU and permanent participants, further underlining that we have entered a serious discussion over Arctic governance.

These new strategies by the Arctic actors that could be perceived as moving to pre negotiation tactics were primarily provoked by the five Arctic Ocean coastal states meeting in Greenland in May 2008, which forms the first framing example taken up here. Coastal states perceived that the Arctic Ocean (defining the relevant Arctic) is at a threshold of significant changes by climate change and melting sea ice (Ilulissat declaration 2008). They also presented themselves as protecting the environment and indigenous and other local inhabitants in the Arctic Ocean, in the following way.

Climate change and the melting of ice have a potential impact on vulnerable ecosystems, the livelihoods of local inhabitants and indigenous communities . . . By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges . . . The Arctic Ocean is a unique ecosystem, which the five coastal states have a stewardship role in protecting. Experience has shown how shipping disasters and subsequent pollution of the marine environment may cause irreversible disturbance of the ecological balance and major harm to the livelihoods of local inhabitants and indigenous communities (Ilulissat declaration 2008).

The Arctic Ocean coastal states perceived that there is ‘no need to develop a new comprehensive international legal regime to govern the Arctic Ocean’ because:

[n]otably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims. This

framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions (Ilulissat declaration 2008).

Even though Denmark insisted in the 2007 Narvik SAO meeting prior to this Greenland meeting that the coastal state cooperation would not compete with the council, the meeting caused friction among the Arctic Council members (Arctic Council 2007). Iceland has been the most concerned of the three states (the others are Finland and Sweden) left out of this meeting. It expressed its concern in the Narvik SAO meeting<sup>10</sup> and also in the August 2008 conference of the Arctic parliamentarians (Parliamentarians of the Arctic Region 2008: 36).<sup>11</sup> This is, of course, no surprise. The Ilulissat declaration seems to outline an agenda for cooperation between the littoral states of the Arctic Ocean over high level ocean policy issues, potentially challenging the Arctic Council, with its eight members, broad focus and soft work on environmental protection and sustainable development.

The Greenland meeting also provoked a reaction from one of the strongest of Arctic Council permanent participants, the Inuit Circumpolar Council (ICC) and national Inuit leaders, who in their '[s]tatement issued by Inuit Leaders at the Inuit Leaders' Summit on Arctic Sovereignty' (Inuit leaders 2008) outlined their concerns over the five coastal state meeting.

Concern was expressed among us leaders gathered in Kuujuaq that governments were entering into Arctic sovereignty discussions without the meaningful involvement of Inuit, such as the May, 2008 meeting of five Arctic ministers in Ilulissat, Greenland. The Kuujuaq summit noted that while the Ilulissat Declaration asserts that it is the coastal nation states that have sovereignty and jurisdiction over the Arctic Ocean, it completely ignores the rights Inuit have gained through international law, land claims and self-government processes. Further, while the ministers strongly supported the use of international mechanisms and international law to resolve sovereignty disputes, it makes no reference to those international instruments that promote and protect the rights of indigenous peoples.

But the ICC and the Inuit leaders were also critical of the present Arctic governance.

We recognized the value of the work of the Arctic Council and asked ICC, through its permanent participant status on the Council . . . We further noted the meaningful and direct role that indigenous peoples have at the Arctic Council, while at the same time expressing concern that the Council leaves many issues considered sensitive by member states off the table, including security, sovereignty, national legislation relating to marine mammal protection, and commercial fishing.

They also identified their own justification for being strongly involved in Arctic governance.

We took note of various declarations and statements made by governments and industry regarding overlapping claims and assertions of Arctic sovereignty without full regard to Inuit concerns and rights. We further asserted that any claim of sovereignty that nation states may make is derived through the use and occupancy by Inuit of lands and seas in the Arctic . . . Various aspects of what sovereignty means for Inuit were discussed. There was agreement among us that the foundation of Inuit sovereignty begins at home, and that only through Inuit well-being and the development of healthy and sustainable communities can meaningful sovereignty be achieved. To achieve these goals, we called upon Arctic governments to be active partners in creating such a foundation.

Thereafter, they clarify their position in the event that a new governance arrangement is to be negotiated.

We called upon Arctic governments to include Inuit as equal partners in any future talks regarding Arctic sovereignty. We insisted that in these talks, Inuit be included in a manner that equals or surpasses the participatory role Inuit play at the Arctic Council through ICC's permanent participant status.

The Inuit can thus be interpreted as favouring a stronger governance arrangement than the present Arctic Council, since they target serious criticism towards the council's inability to tackle sensitive issues. Even though they naturally make their own case, why Inuit should be included in any future talks of Arctic governance, they also refer to indigenous peoples' rights in general and the Arctic Council's permanent participant status in particular. One possible view that emerges from their statement is that any future governance arrangement (possibly enshrined in a treaty) should be one in which the present permanent participants of the council would be equal partners with the eight Arctic Council member states. This, of course, is easier said than done, given that the international law of treaties does not entitle them to be parties to a treaty. On the other hand, the recent 2005 draft Nordic Saami convention provides a model under which the indigenous Saami could be accommodated as equal partners to states, even though not being formal parties to the treaty (Koivurova 2006, 2008).

Also of interest was the third 'framing' studied here, a recent resolution passed by the European Parliament on 9 October 2008 (European Parliament 2008), in which the parliament first took note of the Greenland meeting (paragraph I) and then established its Arctic agency in the following words:

N. whereas three of the EU's Member States, and a further two of the EU's closely-related neighbours participating in the internal market through the EEA Agreement, are Arctic nations, meaning that the EU and its associated states comprise more than half the numeric membership of the Arctic Council . . .

For the European Parliament, the ultimate governance solution should be one that involves a broader group of countries and the region's indigenous peoples.

Suggests that the Commission should be prepared to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty, as supplemented by the Madrid Protocol signed in 1991, but respecting the fundamental difference represented by the populated nature of the Arctic and the consequent rights and needs of the peoples and nations of the Arctic region; believes, however, that as a minimum starting-point such a treaty could at least cover the unpopulated and unclaimed area at the centre of the Arctic Ocean (European Parliament 2008: paragraph 15)<sup>12</sup>

Given that the EU has no Arctic coastline, but potentially significant navigational and fisheries interests in the region, the alternative of establishing more inclusive governance arrangement for the Arctic would suit the interests of the EU better than a law of the sea approach taken up by the five Arctic coastal states or even the Arctic Council, which is built on the difference between Arctic and non Arctic states. This strategic choice by the parliament of having an inclusive governance arrangement for the Arctic is well reflected in the resolution: it suggests the Antarctic Treaty system (ATS) as a model for the Arctic, a system, which is a very inclusive governance arrangement, given that it is in principle open to all states which conduct scientific research in Antarctica. As a minimum requirement, the parliament outlines an idea of a treaty covering the unpopulated and unclaimed area at the centre of the Arctic ocean. Even though worded in a legally incorrect manner<sup>13</sup>, this suggestion also takes up an inclusive approach to Arctic governance since all states possess rights and interests in the high seas and deep seabed of the Arctic ocean under the law of the sea. The executive director of the European environmental agency has suggested the negotiation of a polar ocean protocol to the law of the sea convention (Mcglade 2007),<sup>14</sup> which, if chosen (an unlikely scenario), would transfer the platform for negotiations to the UN general assembly.

Even the EU commission and the US government have recently engaged in discussing governance alternatives. Both foresee a role for a more effective Arctic Council, and, at this stage, do not advocate a negotiation process for an overarching treaty regime to govern the Arctic. Yet, both policies envisage stronger governance alternatives. The EU commission starts with diagnosing the problem: '[t]he main problems relating to Arctic governance include the fragmentation of the legal framework, the lack of effective instruments, the absence of an overall policy-setting process and gaps in participation, implementation and geographic scope' (EU Commission 2008: 4). One remedy for tackling such problems is, according to 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.

The US policy considers that the Arctic Council 'should remain a high-level forum devoted to issues within its current mandate' (United States 2009) but promotes also ways to enhance governance in the changing Arctic.

Consider, as appropriate, new or enhanced international arrangements for the Arctic to address issues likely to arise from expected increases in human activity in that region, including shipping, local development and subsistence, exploitation of living marine resources, development of energy and other resources, and tourism (United States 2009: C. 5b)

While the administrations of these influential political entities do not support any rapid and overarching reform, both policies advocate new governance strengthenings in various sectors of policy.

These various framings by the Arctic ocean coastal states, the Inuit, the European Parliament and the administrations of EU and the US on how the future governance of the Arctic should look like can be seen as challenging the present structure of the Arctic Council. These framings press us to question whether the council is able to change or whether it will be gradually supplanted by some new governance arrangement or arrangements.

### **Future of the Arctic Council**

As noted above, it would be a mistake to think that the Arctic Council could easily be turned into a treaty based body having regulatory powers. The Arctic wide inter-governmental cooperation, even though changed from the AEPS to the Arctic Council in fairly short time frame, has been very much the same kind of inter-governmental forum from 1991 onwards to the present day. Since this is the case, it can also be presumed that it is fairly resistant to change, the present institutional forms having been in existence already for quite some time. This is not to say that no evolution has occurred in Arctic cooperation. As was argued above, within the limits of the Arctic Council structure, the working groups have started to function on the basis of a new perception of the 'Arctic in change', which has already mainstreamed climate change into most work done in the council.

The Arctic Council has also been adamant in rejecting any treaty proposals. The current Arctic Council chair, Norway, has defended the no treaty approach against anyone proposing it and has even sent its foreign minister to the European Parliament to defend that view (Støre 2008). The SAO meetings have not overtly criticised the Greenland coastal state meeting, although Iceland has expressed concern over why not all Arctic Council members were invited. There is currently no sign from within the Arctic Council that it would be willing to rethink its own fundamental opinions on governance. Norway has in its period as chair studied the effectiveness and efficiency of the Arctic Council, but there has not been any serious engagement to examine whether the Arctic

Council should be thinking of reforming its structures. Instead, the study has focused on how better to involve the observers in the work of the Arctic Council and thinking about whether the tasking of the working groups could be done in a better way (Arctic Council 2008a). Overall, it does seem that there is not much willingness in the council to make any but simply cosmetic changes to its structure or working methods.

On the other hand, it is also the case that the Arctic Council sponsored ACIA and the related assessments have been catalysts for all the actors to perceive the Arctic as a region in change, an area which contains multiple commercially interesting opportunities. As we know from the sociology of science, knowledge production is no innocent objective endeavour but also a part of the struggle over whose reality becomes dominant. The ACIA process changed the image of the Arctic upon which the pragmatic strategies and everyday realities of the council are built and produced a somewhat paradoxical situation. While ACIA and the connected assessments of the council have produced a reality that cries for real governance over economic activities waiting to enter the region, the council as it presently stands is ill equipped to engage in any sort of governance.

The days are over during which the council could be celebrated as the symbol of the emergence of the Arctic as an international political region (Young 2000: 15).<sup>15</sup> As shown above, there is a new dynamic in the region; various states and entities like the EU are redrawing their Arctic policies and framing new governance possibilities. This discourse has finally reached the halls of power, having been a topic of scholarly concern for many years, then being taken on by NGOs and finally entering the policy making agendas of states. The challenges now facing the Arctic Council may mean that it is gradually being supplanted by sectoral governance regimes evolving in a piecemeal manner, or even by an Arctic framework convention. It would be high time, thus, for serious discussions in the Arctic Council as to its future. In making such an assessment, the council should focus on what are its relative strengths in finding a new niche for its future work.

The Arctic Council has been successful in at least three things. It has been able to promote scientific assessments and undertakings that have been important not only for discovering Arctic pollution problems but also for influencing international environmental policy making processes (Reiersen and others 2003). The council ministerial meetings have also offered a platform for discussing the future of the Arctic with a broad and diverse group of participants. Thirdly, the fact that the council has accorded a unique role for the region's original occupants has certainly served its legitimacy and also contributed to a new way of perceiving how indigenous peoples should be involved in international policy making (Koivurova and Heinämäki 2006). If the council could engage in an honest and open discussion of its future role in Arctic governance, this would mean that whatever

type of regime or governance arrangements emerge to govern the changing Arctic, the council would be able to support the overall development in the Arctic by focusing on its strengths. For instance, Oran Young has recently argued that the Arctic Council could play a useful role as a scientific (assessment, monitoring and evaluation) body, providing dynamic information on the region in change to the more specific functional governance bodies that make the actual governance decisions (Young 2009).

The possibility for the Arctic Council to engage in serious strategic discussion over its place in Arctic governance does not, however, seem likely. As studied above, the Arctic inter-governmental cooperation has been resistant to change, at least up till now. There are some changes that have been made to the overall makeup of the Arctic inter-governmental cooperation over the years, but these are firmly built on the fundamental governance premises of the Council (soft law nature, *ad hoc* funding etc.). All the discussions over possible reformation in the council seem to end up in dealing with cosmetic changes within the accepted structure rather than revisiting the governance fundamentals in a critical manner.

The Arctic Council stands very much at a crossroad. The assessments the council has sponsored seem increasingly to challenge the very fundamentals of the cooperation. The new image of the 'Arctic in change' has produced a reality in which the region is seen as an early warning system of global climate change, undergoing a rapid transformation, with plentiful economic opportunities for all states of the world. This has invoked a kind of pre negotiation stage, in which the Arctic actors define the governance structures of their liking on the basis of various justifications, a phase which often precedes the creation of new power structures. And given the stakes of the melting Arctic, it is easy to predict that this contest of arguments by various Arctic actors, loaded with perceived factual realities, legal arguments and moral justifications, will not provide an easy path to a new governance arrangement. This suggests that we might have to live with the Arctic Council for some time as the predominant forum for Arctic cooperation. We may only hope that the council would start seriously thinking of its strengths and weaknesses, and would be able to transform its functions in the light of the governance challenges ahead.

### Acknowledgement

This paper builds on the author's contributions to the project Arctic Transform (Transatlantic policy options for supporting adaptation in the marine Arctic) funded by the European Commission (Directorate General, External relations). See <http://www.arctic-transform.eu/>

### Notes

1. The Soviet Union was still the signatory to the AEPS that was signed on 14 June 1991.



2. Iceland also has areas of territorial sovereignty to the north of the Arctic circle in the northern part of Grimsey and the small island of Kolbeinsey (Jacobsen and Stone 2006). Its territorial sea extends well to the north of the circle. For an analysis of the various definitions, see Koivurova 2002: 25–28.
3. The first footnote of the declaration provides that: '[t]he Arctic Council should not deal with matters related to military security'.
4. She argues in her conclusions that '[i]n the scientific assessment, the regional perspective was partly lost in the global-local dichotomy. However, in the overview document, the pan-Arctic region is given a much stronger emphasis and also given a symbolic role as the 'a canary in the mine' warning system for what could be in store globally. As this framing is not as prominent in the scientific report, the immediate drivers appear to be the team that was responsible for the production of the overview and their wish to be policy relevant within the context of the global climate negotiations' (Nilsson 2007: 204)
5. See AMSA website at <http://arcticportal.org/pame/amsa>
6. See at <http://arcticportal.org/en/caff/aba>. This report is expected by 2010.
7. See the final draft agenda for the Kautokeino SAO meeting (Arctic Council 2008b: 1.6).
8. See URL: <<http://www.barentsobserver.com/non-arctic-countries-want-membership-in-arctic-council.4516094-16174.html>>.
9. The US Congress provides 'directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean'. Passed by the US Senate on 4 October 2007. The US House of Representatives voted in favour of Senate Joint resolution 17 in May 2008 and the President of the US signed it on 4 June 2008.
10. The following appeared in the discussion in the Narvik SAO meeting (18.1.). 'Iceland expressed concerns that separate meetings of the five Arctic states, Denmark, Norway, US, Russia and Canada, on Arctic issues without the participation of the members of the Arctic Council, Sweden, Finland and Iceland, could create a new process that competes with the objectives of the Arctic Council. If issues of broad concern to all of the Arctic Council member states, including the effect of climate change, shipping in the Arctic, etc. are to be discussed, Iceland requested that Denmark invite the other Arctic Council states to participate in the ministerial meeting. Permanent participants also requested to participate in the meeting. Denmark responded that the capacity of the venue may be an issue' (Arctic Council 2007).
11. The conference statement in its paragraph 39 '[n]otes the information from the Danish delegation concerning the Ilulissat declaration, and the concerns of the Icelandic delegation regarding full participation of all states of the Arctic Council' (Parliamentarians of the Arctic Region 2008).
12. The commission did not follow this suggestion by the European Parliament, but provided that '[t]he full implementation of already existing obligations, rather than proposing new legal instruments should be advocated. This however should not preclude work on further developing some of the frameworks, adapting them to new conditions or Arctic specificities (EU Commission 2008: 4).
13. The EU Parliament speaks of the 'unclaimed area at the centre of the Arctic Ocean', by which it can refer to types of areas beyond national jurisdiction, the deep sea bed (the area) and the high seas. First, if the parliament refers to the deep sea bed, this cannot said to be an unclaimed area since the coastal states do not claim their continental shelf for it is a natural prolongation of the land mass into the sea. Hence, the deep sea bed is a result of what remains after the coastal states have drawn the outer limits of their continental shelves. Second, high seas cannot be subjected to sovereignty claims under the law of the sea. It would thus have been legally correct to speak, for instance, of 'areas beyond national jurisdiction at the centre of the Arctic Ocean'. It is also a little curious why the parliament speaks of this area as 'unpopulated', given that it is referring to the core of an ice covered ocean.
14. She argues that: '[r]ather it would be more realistic to propose a *protocol under the LOSC for the Polar Ocean*. This would allow concerns about new shipping routes, new fishing grounds and gas and oil exploration to be properly addressed. (It is only for historical reasons that existing regional treaties under LOSC deals (*sic*) only with fisheries. According to the convention, any relevant issue can be taken up)'. (emphasis in the original).
15. Young (2000) argues '[w]here, then, does the comparative advantage of the Arctic Council lie? It may come as a surprise to some to realize that the council's most important role is probably generative in nature. Through its very existence, the council has become a symbol of the emergence of the Arctic as a distinct region in international society.'

## References

- ACIA (Arctic climate impact assessment) 2004. Impacts of a warming Arctic. Arctic climate impact assessment overview report. Cambridge: Cambridge University Press. URL: <http://amap.no/acia/>
- Arctic Council. 1998. The Arctic Council rules of procedure as adopted by the Arctic Council at the first Arctic Council ministerial meeting, 17–18 September 1998. Iqaluit: Arctic Council. URL: <http://arctic-council.org/filearchive/official%20rules%20and%20procedures.pdf>
- Arctic Council. 2006. Common objectives and priorities for the Norwegian, Danish and Swedish chairmanships of the Arctic Council (2006–2012). URL: [http://arctic-council.org/article/2007/11/common\\_priorities](http://arctic-council.org/article/2007/11/common_priorities)
- Arctic Council. 2007. Final report of the Narvik SAO meeting, 28–29 November 2007. URL: <http://arctic-council.org/filearchive/Narvik%20-FINAL%20Report-%2023Apr08.doc>
- Arctic Council. 2008a. Final report of the Svolvaer SAO meeting, 23–24 April 2008. URL: <http://arctic-council.org/filearchive/Sao%20Svolvaer%20Final%20Report.pdf>
- Arctic Council. 2008b. Final draft agenda of the Kautokeino SAO meeting 19–20 November 2008. URL:

- [http://arctic-council.org/filearchive/ac-sao-nov08-final\\_agenda\\_v1.pdf](http://arctic-council.org/filearchive/ac-sao-nov08-final_agenda_v1.pdf)
- AEPS (Arctic environmental protection strategy). 1991. Arctic environmental protection strategy. *International Legal Materials* 30: 1624. URL: [http://arctic-council.org/filearchive/artic\\_environment.pdf](http://arctic-council.org/filearchive/artic_environment.pdf)
- AMAP (Arctic monitoring and assessment programme). 2008. Oil and gas assessment overview final report, 1 May 2008. URL: <http://www.amap.no/oga/>
- Bloom, E. 1999. The establishment of the Arctic Council. *American Journal of International Law* 93: 712–722.
- EU Commission. 2008. Communication from the commission to the European parliament and the council. The European Union and the Arctic region. 20 November 2008. Brussels: European commission (COM(2008) 763). URL: [http://ec.europa.eu/maritimeaffairs/pdf/com08\\_763\\_en.pdf](http://ec.europa.eu/maritimeaffairs/pdf/com08_763_en.pdf)
- European Parliament. 2008. Resolution of 9 October 2008 on Arctic governance. Brussels: European Parliament URL: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0474+0+DOC+XML+V0//EN>
- Ilulissat declaration. 2008. Ilulissat: Arctic Council (Arctic Ocean conference, Ilulissat, Greenland 27–29 May 2008). URL: <http://arctic-council.org/filearchive/Ilulissat-declaration.pdf>
- Inari declaration. 2002. On the occasion of the third ministerial meeting of the Arctic Council 2002. Inari: Arctic Council. URL: <http://arctic-council.org/filearchive/The%20signed%20Inari%20Declaration.pdf>
- IPCC (Inter-governmental panel on climate change). 2001. Climate change 2001: synthesis report: summary for policy-makers (IPCC plenary XVIII, Wembley, UK, 24–29 September 2001). URL: <http://www.ipcc.ch/pdf/climate-changes-2001/synthesis-spm/synthesis-spm-en.pdf>
- Inuit leaders. 2008. Inuit declaration on sovereignty in the Arctic (Issued by Inuit leaders at the Inuit leaders' summit on Arctic sovereignty, 6–7 November 2008). URL: <http://www.sikunews.com/art.html?artid=5711&catid=2>
- Jacobsen, T., and I.R. Stone,. 2006. Kolbeinsey: Iceland's Arctic island. *Polar Record* 42(221): 167–169.
- Keskitalo, E.C.H. 2002. Constructing 'the Arctic'. *Acta Universitatis Lapponiensis* 47. (Revised version published as Keskitalo, E.C.H. 2004. *Negotiating the Arctic. The construction of an international region*. New York and London: Routledge).
- Koivurova, T., and L. Heinämäki,. The participation of indigenous peoples in international norm-making in the Arctic. *Polar Record* 42(221): 101–109.
- Koivurova, T. 2002. *Environmental impact assessment in the Arctic: a study of international legal norms*. Aldershot: Ashgate Publishing Ltd.
- Koivurova, T. 2006. The draft for a Nordic Saami convention. In: *European Yearbook of Minority Issues* 2006. Leiden, Boston: Martinus Nijhoff Publishers 6: 103–136.
- Koivurova, T., and D. VanderZwaag,. 2007. The Arctic Council at 10 years: retrospect and prospects. *University of British Columbia Law Review* 40(1): 121–194.
- Koivurova, T. 2008. Alternatives for an Arctic treaty – evaluation and a new proposal. *European Community and International Environmental Law* (special International Polar Year issue) 17(1): 14–26.
- Koivurova, T. 2008. The draft Nordic Saami convention: nations working together. *International Community Law Review* 10: 279–293.
- Mcglade, J. 2007. The Arctic environment: why Europe should care. Speech at Arctic frontiers conference Tromsø, 23 January 2007. URL: <http://www.eea.europa.eu/pressroom/speeches/23-01-2007>
- Möttölä, K. (editor). 1988. *The Arctic challenge: Nordic and Canadian approaches to security and cooperation in an emerging international region*. Boulder, CO: Westview.
- Nilsson, A.E. 2007. A changing Arctic climate: science and policy in the Arctic Climate Impact Assessment. Linköping: Linköping University, Department of Water and Environmental Studies (Linköping Studies in Arts and Science 386).
- Nowlan, L. 2001. Arctic legal regime for environmental protection. Gland, Cambridge: International Union for the Conservation of Nature (IUCN Environmental Policy and Law Paper No. 44). URL: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-044.pdf>
- Ottawa declaration. 1996. On the establishment of the Arctic Council. 1996. *International Legal Materials* 35: 1385–1390. URL: <http://arctic-council.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20Arctic%20Council-1..pdf>
- Parliamentarians of the Arctic Region. 2008. Report of the eighth conference of parliamentarians of the Arctic Region, Fairbanks, USA, 12–14 August 2008. URL: [http://www.arcticparl.org/\\_res/site/file/files%20from%208th%20conference/Conference\\_Report\\_Fairbanks\\_final.pdf](http://www.arcticparl.org/_res/site/file/files%20from%208th%20conference/Conference_Report_Fairbanks_final.pdf)
- Polar bear agreement 1973. The 1973 agreement on the conservation of polar bears. *International Legal Materials* 13: 1974.
- Reiersen, L-O., S. Wilson,, and V. Kimstack,. 2003. Circumpolar perspectives on persistent organic pollutants: the Arctic monitoring and assessment programme. In: Downie, D.L., and T. Fenge, (editors). *Northern lights against POPs: combating toxic threats in the Arctic*. Montreal and Kingston: McGill-Queen's University Press.
- Reykjavik declaration. 2004. On the occasion of the fourth ministerial meeting of the Arctic Council 2004. Reykjavik: Arctic Council. URL: <http://arctic-council.org/filearchive/The%20signed%20Reykjavik%20Declaration.pdf>
- Saksina, T. 2009. New governance for the Arctic: is a new framework convention the solution? Presentation at the Arctic frontiers conference. 20 January 2009. URL: <http://leo.infotek.no/uit4/Viewer/Viewers/Viewer320BR.aspx?mode=Default&peid=8e2512d0-622a-4eb0-b909-4db4ff154ce3&pid=ccd55641-675a-44fa-9501-750164248a90&playerType=WM7#>
- Støre, J.G. 2008. Arctic Governance in a global world: is it time for an Arctic Charter? URL: <http://www.eu-norway.org/NR/rdonlyres/BEDA6CB4-7ADF-40A8-AB0A-EF-53CC1077D2/93513/arcticgovernanceJGS070508.pdf>
- UNFCCC (United Nations framework convention on climate change). 1992. United Nations framework convention on climate change. The text is reproduced in 31 *International Legal Materials* 849 (1992).

- URL: <http://unfccc.int/resource/docs/convkp/conveng.pdf>
- United States. 2007. 110th Congress, 1st session. Senate Joint resolution 17. URL: [http://www.fakr.noaa.gov/npfmc/current\\_issues/Arctic/SJRes17%20as%20of%20Oct%202007.htm](http://www.fakr.noaa.gov/npfmc/current_issues/Arctic/SJRes17%20as%20of%20Oct%202007.htm)
- United States. 2009. US Arctic region policy 2009. National security presidential directive – 66, Homeland security presidential directive HSPD – 25. 9 January 2009. Arctic region policy. URL: <http://www.fas.org/irp/offdocs/nspd/nspd-66.htm>
- Young, O. 2000. The structure of Arctic cooperation: solving problems/seizing opportunities. URL: [http://www.arcticparl.org/\\_res/site/File/images/conf4\\_sac.pdf](http://www.arcticparl.org/_res/site/File/images/conf4_sac.pdf)
- Young, O. 2009. Arctic ocean governance: status and prospects. Presentation at the Arctic Frontiers conference, Tromsø, 21 January 2009. Presentation can be viewed via webcam. URL: <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>