

Research Article

The Arctic Council and “Law-Making”

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Abstract: The Arctic Council (AC) is a high-level international intergovernmental forum founded by the Ottawa Declaration of 1996. Its eight member states are Canada, the Kingdom of Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States. Six organizations representing Arctic Indigenous Peoples have “Permanent Participant” status. The AC is not an international organization based on a legally binding instrument, such as a treaty. It does not have the legal personality of an international organization under international law, which would enable it to develop legislation or conclude treaties with other subjects of international law. However, although the AC is not a legislative body it has been contributing to the development of international law as it relates to the Arctic. In particular, the Arctic Council was engaged in the development and negotiation of three legally binding agreements concluded by the eight Arctic states: the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (2011); the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (2013); and the Agreement on Enhancing International Arctic Scientific Cooperation (2017). By looking at the “law-making” activities of the AC and, specifically, the agreements concluded under its aegis, this article investigates how these agreements have shaped the nature and evolution of this forum. Then the article explores the potential for further legally binding agreements negotiated under the auspices of the Arctic Council.

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Introduction

The Arctic Council (AC) is an intergovernmental forum that—despite the growing influence of non-state actors and sub-regional entities in Arctic developments and cooperation—is very much based on the premise of sovereignty and state-to-state relations of the eight Arctic states that are the AC’s member states: Canada, the Kingdom of Denmark including Greenland and the Faroe Islands, Finland, Iceland, Norway, Russian Federation, Sweden, and the United States. Nonetheless, the council’s structure also includes six organizations representing Arctic Indigenous Peoples as its founding members (“Permanent Participants”). The AC attempts to respect the interests of the permanent participants and empower their participation in its endeavours. For example, the Álgu Fund was endorsed by the AC in 2017 to help Indigenous Peoples’ participation in the AC’s activities.¹ Permanent participants are consulted on a variety of issues,² but they do not have voting rights and decisions are made on a consensus basis by the eight Arctic states.³

The Arctic Council has evolved since its inception as a forum and it has arguably been gradually moving towards becoming a full-fledged international organization under international law.⁴ For example, its permanent secretariat was established in Tromsø in 2013. Furthermore, the “Host Country Agreement between the Government of the Kingdom of Norway and the Arctic Council Secretariat on the legal status of the Secretariat and the privileges and immunities of the Secretariat and its staff members” was signed in January 2013. It defines that the “Secretariat has legal personality and capacity to perform its functions in Norway.”⁵ Although the signing of such an agreement does not change the legal status of the AC itself, this is arguably another indicator of the AC’s possible evolution towards an international organization under international law.⁶ Another example of this trend is establishment, although on a trial basis, of a Project Support Instrument, a collective fund to finance the AC projects.

Despite ongoing evolution, by its legal nature the AC is a high-level international intergovernmental forum rooted in the Ottawa Declaration of 1996. It was enacted this way to ensure that its legal personality would not be separate from the legal personality of the eight Arctic member states.⁷ Thus, by its legal structure, the AC is not an international organization based on a legally binding instrument such as a treaty. It does not have the legal personality of an international organization under international law, which would enable it to develop legislation or conclude treaties with other subjects of international law.⁸

The Arctic Council has no legislative authority and cannot adopt regulations, nor enforce or implement them. However, according to Oran Young, the lack

of the AC's authority to make legally binding decisions does not serve as an impediment "to the council's performance of the role of the integrator" in the region,⁹ as the informal nature of the AC "lowers legal and political barriers to making institutional adjustments."¹⁰

Presently, the AC is able to provide leadership in the processes that lead or may lead to regulatory instruments. Without being a "legislative body," the AC has been a de facto contributor to the advancement of international law as it relates to the Arctic. More specifically, the AC has been engaged in the elaboration and negotiation of three legally binding agreements that have been completed by the eight Arctic states under the auspices of the AC—the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (2011); the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (2013); and the Agreement on Enhancing International Arctic Scientific Cooperation (2017).

There are various aspects and dimensions of the AC's law-making activities, but this article focuses specifically on examining the above mentioned agreements, and looks into how they have shaped the nature and evolution of the forum. Then the article explores whether there is room for further legally-binding agreements under the aegis of the AC. It is argued that despite the AC's mandate and legal personality, it played a key role in bringing these regional agreements to life and has made a valuable contribution to the development of international legal instruments and practices related to the Arctic.

Despite criticism pointed at the Arctic Council and all kinds of structural and organizational limitations,¹¹ the AC has been very successful in many initiatives. It is, indeed, a prominent actor in Arctic cooperation and policy-making. What role does it have to play, if any, in law-making with respect to the Arctic? The next section explores the general aspects of the AC's law-making initiatives.

"Law-Making" under the Auspices of the Arctic Council

The Arctic Council deals with international cooperation at several levels. As per its mandate, it works with a broad scope of issues primarily associated with sustainable development and environmental protection.¹² All those levels and issues are subjects of different regulatory frameworks of either international law or domestic legislation of the eight Arctic states, including laws of the Arctic Indigenous Peoples and, in some cases, legislative practices of non-Arctic states relating to specific Arctic matters.

Since its inception, the AC has been evolving and broadening the scope of its activities within its mandate in order to address matters of common responsibility and concern in the region. In its evolution, the AC has also engaged with

initiatives and activities that contribute to the buildup of international law. Why did it engage in such activities and in what form?

Over the years, the law-making activities of the Arctic Council have taken several dimensions. One such activity has been the development of “soft-law” instruments that are not legally binding but contribute to legal practices in the international sphere.¹³

From the outset, the AC has issued declarations at the ministerial meeting held at the end of each member state’s two-year chairmanship (except at the May 2019 meeting in Rovaniemi). These declarations have outlined the strategic vision and recommendations for further initiatives and actions, as well as established, where appropriate, additional working bodies for particular projects. Those political declarations have contributed to the expansion of soft-law practices in the Arctic. Being non-legally binding documents, they allow flexibility and are able to address the most topical questions in a timely fashion. In May 2019, for the first time in the history of the AC, a ministerial declaration was not issued and this was mainly for political reasons (the US position on climate change). Instead, the usual declaration was “replaced” with the Rovaniemi Joint Ministerial Statement 2019 and the Chair’s statement summarizing all items discussed at the meeting.¹⁴ This statement presents yet another form of the AC’s soft-law documents.

The Arctic Council has also been engaged in working out other regulatory documents that have contributed to the elaboration of legal frameworks. By producing scientific assessments and recommendations, and by monitoring through its working groups and other bodies, the AC has facilitated the development of non-legally binding but normative instruments such as the following:

- Programs of action, such as the Framework for Action on Enhanced Black Carbon and Methane Emissions (2015);
- Guidelines, such as the Arctic Offshore Oil and Gas Guidelines (2009);
- Strategic plans, such as the Arctic Marine Strategic Plan 2015–2025 (2015) and the Protection of the Arctic Marine Environment (PAME) Status of Implementation (2017);
- Action plans, such as the Arctic Invasive Alien Species Strategy and Action Plan (2017);
- Manuals; and
- Guides, such as the Arctic Regional Reception Facilities Plan – Outline and Planning Guide for the Arctic (2017), and the Planning Guidance for MOSPA – Marine Oil Spill Preparedness and Response in the Arctic – Exercises (2019).

Takei offers some other examples of such documents.¹⁵ These instruments are intended to help with harmonizing domestic legislation in the Arctic states, but

they do not always achieve that due to lack of their application in practice. These soft-law activities of the AC influence national processes, but there is a question of their implementation.¹⁶

Another important aspect of the AC's work in this field is linked to global influence and bringing the Arctic voice to international regulatory negotiations and processes (e.g., the scientific assessments of the AC's working groups). Thus, the Arctic Council has been influential in several legal developments that led to the negotiation of global treaties.

The AC played a key role in generating scientific knowledge on the Arctic that has been vital for policy-making and has influenced negotiations of environmental treaties.¹⁷ The council has contributed to the negotiations of the Stockholm Convention on Persistent Organic Pollutants (2001) and its subsequent implementation.¹⁸ The AC's work—especially through its Arctic Monitoring and Assessment Program (AMAP)—contributed to the processes leading to the negotiations of the United Nations Environment Program's (UNEP) Minamata Convention on Mercury (2013). The Arctic Monitoring and Assessment Program has served as a science broker on the road towards the adoption of this convention.¹⁹ These are notable examples of the Arctic Council's international influence through relevant AMAP assessments. In addition, the AC has cooperated on the implementation of these treaties.²⁰

The Arctic Council also helped to bring Arctic biodiversity to the attention of the United Nations Convention on Biological Diversity (1992), which, with its release in 2013 of the Arctic Biodiversity Assessment, has started to recognize Arctic biodiversity as an emerging issue.²¹

Moreover, by sponsoring climate science research and producing Arctic climate change relevant assessments and reports,²² the AC has been able to influence international policy-making in this area and serve as a vehicle for cooperation.²³ In 2015 the AC was engaged in the Conference of the Parties (COP21) to the UN Framework Convention on Climate Change, which led to the Paris Agreement on climate change—the implementation of which the AC also supported although the United States withdrew from the agreement in 2017.²⁴

Interestingly, starting with the Tromsø Declaration of 2009, the AC has placed special emphasis on active cooperation with the International Maritime Organization (IMO) “on development of relevant measures to reduce the environmental impacts of shipping in Arctic waters”—the future “International Code for Ships Operating in Polar Waters” or Polar Code.²⁵ The IMO's Secretary-General was invited to the meetings of the Senior Arctic Officials of the Arctic Council with regards to this cooperation in 2014 and 2016.²⁶ The decision to

negotiate the mandatory IMO Polar Code (2017), was substantially shaped by the AC's Arctic Marine Shipping Assessment.²⁷

More recently, the AC has reaffirmed the UN's sustainable development goals and the need for their realization by 2030.²⁸

In 2018 the five Arctic Ocean coastal states (Canada, Norway, Russia, the United States, and Denmark in respect of the Faroe Islands and Greenland)—the Arctic 5—plus Iceland, China, the European Union, Japan, and South Korea, signed an Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.²⁹ Although the AC chose not to be involved in the negotiations of this legally binding regional fisheries agreement, it has been supportive of this pivotal development. More cooperation is expected to take place between the AC and the so-called Arctic 5+5 on the implementation of this instrument, which adopts a precautionary approach to fisheries management and conservation in the central part of the Arctic Ocean.³⁰

There are different views on the role of the AC in international law-making. For example, Molenaar has suggested the concept of an Arctic Council System (ACS), which in his view helps to explain how the AC gets involved in regulatory activities without having direct competence to do that. The Arctic Council System includes

the Council's constitutive instrument (i.e., the Ottawa Declaration); other Ministerial Declarations; other instruments adopted by the Arctic Council—for instance, its Arctic Offshore Oil and Gas Guidelines—and the Council's institutional structure. The second component consists of instruments negotiated under the council's auspices—but not adopted by it—and their institutional dimension.³¹

Accordingly, this “two-tiered approach of negotiating (non-) legally binding international instruments” under the aegis of the council supports the ACS and strengthens the council as such.³² This approach is palatable with the Arctic states.

Another authority has looked at how the AC, although not an international organization in the traditional sense of international law, has served as a vehicle for the development of international law in a number of ways. For example, it has done so through examining the adequacy of existing international agreements, and serving as a forum for treaty negotiations via its task forces.³³

Importantly, the Arctic Council has been an instrumental player in several initiatives and forums related to the Arctic. Such initiatives were endorsed by the AC in its efforts to address the gaps of knowledge or to enhance different types of cooperation beyond the AC's framework. But both directly and indirectly, these initiatives often serve as an additional vehicle to support the implementation of the agreements negotiated under the auspices of the AC, its guidelines, and even global legal instruments.

Notable examples of such forums include the following:

- The Arctic Economic Council (AEC) was launched in 2014 under the Canadian Chairmanship as a result of the AC's Task Force to Facilitate the Circumpolar Business Forum. The AEC is an independent organization that facilitates business-to-business contacts and fills in the gap due to the lack of business voice and perspective in the work of the AC (<https://arcticeconomiccouncil.org>). Further cooperation between the AC and the AEC is facilitated through a 2019 Memorandum of Understanding between these entities.³⁴
- In 2015 the Arctic Coast Guard Forum (ACGF) came into being as an independent informal organization whose chairmanship rotates every two years in concert with rotation of the AC chairmanship. A part of its mandate is to collaborate with the AC through information sharing.³⁵ Activities of the ACGF support the implementation of the 2011 Search and Rescue Agreement and the 2013 Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic.³⁶
- Also in 2015, the Arctic Offshore Regulators Forum (AORF) was initiated by the AC to exchange information and share best practices related to development of petroleum resources in the Arctic. One of the AORF's objectives is to further the recommendations of the AC's Task Force on Arctic Marine Oil Pollution Prevention "to enhance the capacity of Arctic offshore petroleum safety regulators to prevent marine oil pollution through regular exchanges of knowledge and experience."³⁷ The forum can cooperate with the AC as appropriate.³⁸ Composition of its management committee and chairmanship are also linked to the change in the AC chairmanship (Art. 2(a) and Art. V(1)(c)).³⁹
- In 2017, after entry into force of the IMO's mandatory Polar Code, the Arctic Shipping Best Practices Information Forum was endorsed by the AC.⁴⁰ The forum's terms of reference were approved by the AC's Protection of Arctic Marine Environment (PAME) Working Group. The newly created forum, which also includes an online portal, aims to raise awareness of the Polar Code provisions and to promote its implementation (www.pame.is).

All these forums, although established as independent bodies, have various degrees of integration with the AC's work and, arguably, form the part of Molenaar's Arctic Council System⁴¹ that includes "regulatory" activities under the auspices of the AC.

Evidently, the most vital dimension of the AC's involvement in law-making deals with the negotiation of legally binding agreements under the aegis of the AC. How did these agreements come into being?

The Arctic Council and Regional Legally Binding Agreements

Growing scholarship on the structure of the Arctic Council, and the legal and political nature of the negotiated agreements and their implementation, points to the increasing role of the AC in international law-making.⁴² This scholarship has already highlighted historical and contemporary initiatives of the AC and its working groups. It has touched upon examination of existing international law conventions and agreements relating to the Arctic with respect to issues of environmental protection, sustainable development, Law of the Sea, and the IMO's Polar Code.⁴³

Before the creation in 2009 of the first task force, which led to the first legally binding agreement on Arctic Search and Rescue (SAR) in 2011, the AC had already been involved in activities that influenced international law-making. But why did the AC move to the negotiation of such agreements under its auspices?

Arguably, this development was partially provoked by external events that have affected the state of Arctic affairs. In May 2008 at the ministerial meeting in Ilulissat, Greenland, foreign affairs ministers of the five Arctic Ocean coastal states signed a landmark declaration. The Ilulissat Declaration emphasized that, in their view, the existing international law of the sea (United Nations Convention on the Law of the Sea, UNCLOS) and other international legal frameworks were sufficient to deal with the state of Arctic affairs, and that no other legally-binding Arctic treaty or constitution was needed.⁴⁴ This political declaration provoked mixed reactions from the other Arctic states and especially Iceland, which was not invited to the club of the so-called Arctic 5.⁴⁵ But later, the Arctic Council also endorsed the Ilulissat Declaration and particularly the point rejecting any Arctic treaty proposals.⁴⁶

However, this declaration also signalled that specific issues could be resolved on the basis of current international law or separate legally binding instruments that could be negotiated if needed such as, for example, subsequent agreements concluded under the aegis of the AC.

In light of the rapidly changing geopolitical reality and environmental changes (e.g., more international and Arctic attention was directed to the growing problems of climate change and new threats and challenges), the Arctic Council had to reconsider its capacity as a regional leader. Measures had to be taken to strengthen the AC's role both within and outside the Arctic Rim. One avenue for doing that, coinciding with further reform of the AC, was the work of its

task forces, which were formed to conduct specific research and report with recommendations for further actions. The format of the work of each task force was predetermined by the real need to address certain issues.

After 2009, by creating special task forces that de facto shaped the content and structure of agreements, the AC became engaged in development and negotiations of regional legally binding agreements by the eight Arctic states. The Tromsø Declaration (2009) endorsed the launch of the task force and subsequent negotiation of “an international instrument on cooperation on search and rescue operations in the Arctic.”⁴⁷ Importantly, the impetus to negotiate this agreement is rooted in the AC’s Arctic Marine Shipping Assessment 2009 Report,⁴⁸ which recommended the development of the Arctic Search and Rescue (SAR) instrument among the eight Arctic states and “if appropriate, with other interested parties in recognition of the remoteness and limited resources in the region.”⁴⁹

This SAR task force was co-chaired by the United States and the Russian Federation. It completed its work with the draft agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (SAR Agreement) in 2010. The SAR Agreement was approved and signed at the AC ministerial meeting in Nuuk, Greenland in May 2011, and came into force in January 2013. The Government of Canada became the agreement’s depository.⁵⁰

The Task Force on Arctic Marine Oil Pollution Preparedness and Response was also launched at the Nuuk ministerial meeting in 2011, with the mandate to develop an international instrument dealing with these matters. This was subsequently converted into the development of a legally binding instrument. This task force was co-chaired by the United States, the Russian Federation, and Norway. The Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic was signed at the ministerial meeting in Kiruna, Sweden in May 2013. It entered into force in March 2016. The Government of Norway is designated as its depository.⁵¹

With conclusion of this agreement, the work of the AC’s Emergency Prevention, Preparedness, and Response Working Group (EPPR) was not finished, and in 2013 a new task force to develop an Arctic Council plan or other arrangement on oil pollution prevention was established.⁵² By the time of its reporting at the ministerial meeting in Iqaluit, Canada, in 2015, the “Framework Plan for Cooperation on Prevention of Oil Pollution from Petroleum and Maritime Activities in the Marine Areas in the Arctic” was welcomed, together with several relevant reports (e.g., the “Guide to Oil Spill Response in Snow and Ice Conditions in the Arctic”; the “Arctic Offshore Oil and Gas Guidelines: Systems Safety Management”; and the Safety Culture report).⁵³

The implementation of this framework plan has been monitored by the EPPR.⁵⁴ But these developments did not lead to negotiations of a new agreement

on prevention of marine oil spills. After preliminary exploration of the issue of oil spill prevention, the AC decided to refrain from any legally binding arrangements in this area: “As it was much more difficult to find a common ground to agree on limitations of oil production policies and technical standards of industrial producers and transport carriers of oil.”⁵⁵ In other words, the AC decided not to “dwell” on regulatory complexities and other limitations posed by the subject of oil spill prevention, and the idea of any legally binding agreement on that subject was dismissed.

At the same time, the Kiruna Declaration of 2013 heralded the launch of a task force “to work towards an arrangement on improved scientific research cooperation among the eight Arctic States.”⁵⁶ While Canada was Chair of the AC this work was extended and the task force was further mandated to “work towards a legally-binding agreement on scientific cooperation.”⁵⁷ The task force was co-chaired by the Russian Federation and the United States with Sweden as a co-chair at the beginning.⁵⁸ The Agreement on Enhancing International Arctic Scientific Cooperation was signed in Fairbanks, United States, in May 2017, and came into force in May 2018. The Government of Denmark is the depository for this agreement (Arctic Science Agreement).

The preparatory work, meeting documents, and all other relevant documents that led to the development of those agreements are available on the Arctic Council’s website (<https://arctic-council.org>). As mentioned, there is a growing number of commentators explaining those developments and agreements from different legal, political, and international standpoints. Therefore, this article is focused on investigating how these agreements have shaped the nature and evolution of the AC.

Agreements and the Arctic Council’s “Law-Making”

All three agreements referred to above—the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (2011); the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (2013); and the Agreement on Enhancing International Arctic Scientific Cooperation (2017)—indicate a direct and important role of the AC in the process of international law-making. This section looks at the role of the agreements in shaping the nature of the AC, and highlights some of their common features and distinctions.

In terms of content, the Search and Rescue (SAR) Agreement is based on pre-existing international law instruments such as the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (i.e., Art. 98), and particularly the 1979 International Convention on Maritime Search and Rescue, the 1944

Convention on International Civil Aviation, and the International Aeronautical and Maritime Search and Rescue Manual (the Preamble). In that sense, the Arctic states have reaffirmed their obligations to the global treaties with reference to the Arctic. The agreement is also respectful of existing bilateral and multilateral agreements and relevant memorandums, although the SAR Agreement takes precedence over them.⁵⁹

Similar to the Search and Rescue Agreement, the “Agreement on Cooperation on Marine Oil Pollution, Preparedness, and Response in the Arctic” (ACMOPPPRA or Agreement on Arctic Marine Oil Pollution) takes into account the relevant provisions of existing international treaties, such as the 1982 UNCLOS; the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation; and the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Preamble).⁶⁰ Specifically, the Agreement on Arctic Marine Oil Pollution emphasizes that it does not alter “the rights and obligations of any Party under other relevant international agreements or customary international law as reflected” in UNCLOS (Art. 16).

In that sense, the marine oil pollution agreement reaffirmed commitments of the Arctic states to global treaties with a special focus on the Arctic. Notably, prior to this, the AC produced several assessments and reports that tackled Arctic oil and gas exploration, risk management, safety, and environmental concerns, but these documents “did not have any practical consequences in policy implementation terms,” which led to the initiative to do something concrete.⁶¹

Compared to the 2011 search and rescue and the 2013 marine oil pollution agreements, the Arctic Science Agreement did not have a broad base of international law instruments dealing with science, which it could refer to. The agreement aims to enhance scientific cooperation in the Arctic (Art. 2) by reaffirming it through legally binding measures. Furthermore, the agreement takes into full account the provisions of UNCLOS in “Part XIII on marine scientific research as they relate to promoting and facilitating the development and conduct of marine scientific research for peaceful purposes” (the Preamble). The agreement pays special credit to existing scientific cooperation and the organizations dealing with global, polar, and specific Arctic issues.

All three agreements have a legal structure similar to a treaty and similar procedural provisions (e.g., settlement of disputes and amendments procedures).⁶² Similar to the Search and Rescue (SAR) and Arctic Marine Oil Pollution agreements, parties to the Arctic Science Agreement are the eight Arctic states (the Preamble). However, recognizing that scientific cooperation may include non-Arctic actors, cooperation with non-parties with regard to Arctic science is elaborated in Article 17. Similarly, the SAR agreement has a clause on

cooperation with non-parties in which other than Arctic states can be invited “to contribute to the conduct of search and rescue operations, consistent with existing international agreements” (Art. 18).

The topic of non-Arctic state participation in the development of the Arctic Science Agreement received a lot of discussion; especially due to the fact that the agreement does not have an accession clause.⁶³ Nevertheless, despite their lack of decision-making power, non-Arctic states and other relevant organizations, such as the International Arctic Science Committee (IASC), were involved in the discussions of the Task Force for Enhancing Scientific Cooperation in the Arctic. Furthermore, the benefits of the Arctic Science Agreement to non-Arctic states can be extended to activities held by non-Arctic states and their scientists, or by bilateral science and technology cooperation agreements concluded by non-Arctic states with the Arctic states.⁶⁴

Similarly, the question of participation of non-Arctic states in the negotiations of the SAR Agreement and the Agreement on Arctic Marine Oil Pollution was rather difficult. The Arctic states did not regard negotiations on those agreements as meetings of the AC—thus, Nuuk observer rules, which were incorporated into the AC’s rules of procedure, did not apply.⁶⁵ This suggests that there was no obligation to invite observers to the negotiation table. Compared to the 2011 and 2013 agreements, all categories of observers and several non-Arctic states took an active part in the negotiations of the 2017 Arctic Science Agreement. This “broader” participation can partially be explained by greater inclusiveness and transparency within the AC itself⁶⁶ and recognition of the fact that Arctic science can be conducted outside the region by non-Arctic actors.⁶⁷

Similar questions were raised with regard to Permanent Participants’ involvement in the negotiations of all three agreements. PPs are not parties to those agreements as traditionally, under the international law of treaties, they cannot be parties to treaties.⁶⁸ The PPs were invited to take part in all rounds of the SAR Task Force talks but were not able to attend.⁶⁹ Some have suggested that they did not participate in the negotiations of the SAR agreement because of “the lack of expertise and resources.”⁷⁰ The PPs were invited and took an active part in the negotiations of the marine oil pollution agreement.⁷¹ They also took an active part in the negotiations of the Arctic science agreement.

In terms of structure, the SAR Agreement’s annex forms its integral part (Art. 13) but it can be amended according to the special rules (Art. 15). The Agreement on Arctic Marine Oil Pollution contains several appendices that are not legally binding and that can be modified at meetings of the parties (Art. 20, except special rules for appendices in Art. 5). Notably, Appendix IV, Operational Guidelines of the agreement, was designed for practitioners as a “living document” and are intended to help with the implementation of the agreement.⁷² Annex 1 of

the Arctic Science Agreement, which deals with “Identified Geographic Areas,” forms an integral part of the agreement and is legally binding; Annex 2, which deals with authorities and contact points, is not and can be modified. Additional non-binding annexes can be developed by the parties in the future (Art. 14, with ref. to Arts. 1, 13, and 12). Similar to the marine oil pollution agreement, the Arctic Science Agreement combined both approaches: mandatory and non-legally binding appendices.

One specific feature of the Arctic Science Agreement, compared to the two previous agreements, is that its Article 9 includes provisions on traditional and local knowledge in the conduct of Arctic scientific activities. The idea is that Indigenous knowledge should be appropriately respected and, under this agreement, its holders are invited to communicate with participants of scientific activities and take part in those activities.

Interestingly, the Inuit Circumpolar Council—a major non-governmental organization representing the Inuit of the Russian Federation (Chukotka); Denmark (Greenland); the United States (Alaska); and Canada (Inuvialuit, Nunatsiavut, Nunavik, and Nunavut)—has called for “an Inuit review of the consultation process of the Arctic Council Arctic Science Cooperation Agreement.”⁷³ They want to ensure that this legal instrument adheres to the human rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.⁷⁴ Indeed, the question of protecting Indigenous Peoples’ rights in the conduct of scientific research, intellectual property rights, cultural rights, and knowledge holders’ involvement in any sort of research activities, is of the utmost sensitivity to Arctic Indigenous Peoples. Thus, the implementation of the Arctic Science Agreement requires full consideration of those rights.

All three agreements have political and practical significance. The SAR agreement was the first-ever pan-regional legally binding agreement concluded by all eight Arctic states. (The 1973 Agreement on the Conservation of Polar Bears and their Habitat was concluded by five Arctic nations that had polar bear populations.)⁷⁵ In that sense, conclusion of the SAR agreement was of historical value. It has shown the ability of all Arctic states to combine their efforts in dealing with the most pressing challenges, such as the need for better search and rescue capacity in the region in light of new realities posed by environmental issues such as climate change; increased human activities (tourism, shipping); and growing exploration of resources in the area. The SAR also indicated the high level of trust and collaboration within the AC, which was able to serve as a platform for its development. Furthermore, the Arctic SAR Agreement was a clear indicator of the willingness of the Arctic states to develop a legally binding instrument for topical areas of concern in the Arctic rather than one common Arctic treaty. This

confirmed the ongoing trend to address the most pressing Arctic matters with an issue-based approach, and to develop relevant legally binding measures.⁷⁶

Some argue that the SAR Agreement is “primarily a political document” and can serve as a platform for the exercise of “defence diplomacy” by the AC member states.⁷⁷ The agreement provides a political framework to cooperate in what was already possible legally (e.g., an opportunity for collaboration between the militaries and coast guards of the Arctic states and a recognition of the fact that Arctic states share similar threats posed by the particularities of the region).⁷⁸

According to the co-chair of the AC’s task force on SAR, Dr. Anton Vasiliev, “the main political value of the Agreement comes from the fact that it is the first ever legally binding document elaborated under the aegis of the Arctic Council.”⁷⁹ And “it is the manifestation of the new level of trust and cooperation in the Arctic”⁸⁰ as it improves coordination and collaboration efforts among defence and civilian authorities engaged in search and rescue. The agreement laid down “the ground-breaking precedent of a legally-binding decision taken by the Arctic Council,”⁸¹ as previously all “products” of the AC were limited to non-mandatory recommendations, declarations, and so on. It has also become an intellectual and political foundation for further agreements of this kind.⁸²

The practical and political value of the Agreement on Arctic Marine Oil Pollution is in providing a safety net for further development of offshore oil production and maritime transportation in the Arctic⁸³ and development of effective responsive measures, and bi-national and multinational contingency plans, training, and exercises.⁸⁴

Both agreements of 2011 and 2013 have signified a new chapter for legal developments in the Arctic. They have shown that the AC has evolved from its advisory mandate into a more influential body that is able to react to the most pressing issues in the region both in political and practical terms. While “remaining a ‘soft-law’ body, the council has ‘moved’ to the use of ‘hard-law’ instruments on issues of relevance to both the circumpolar region and to the international community more generally.”⁸⁵ Although rooted in global treaties, to which the Arctic states were already parties, these agreements have enabled Arctic-specific implementation measures and thus advanced the Arctic governance framework through responsible approaches (i.e., legally binding agreements “that clearly added value to the region”).⁸⁶ Both agreements signified progress in the institution building process of the AC, served as a bridge between science and policy, and improved the position of the AC in the regional governance framework.⁸⁷

The Arctic Science Agreement is also of political and practical value. In the words of the US co-chair of the Scientific Cooperation Task Force, Evan T. Bloom, the conclusion of this agreement signifies another step in the direction of

the AC's "involvement in the establishment of legal norms and activities of the regulatory character."⁸⁸

Some commentators have explored how the Arctic Science Agreement may improve the legal environment for Arctic scientific research beyond existing international law instruments and they have looked at the structure of this agreement from an international law perspective.⁸⁹ Shibata concludes that the agreement "sets a new model for Arctic international law-making within the Arctic Council" since for the first time the AC was dealing with a treaty-making exercise that had to include interests of non-Arctic states and their scientists involved in the conduct of Arctic scientific research.⁹⁰ Furthermore, compared to the other two agreements where a strictly limited geographical scope was prescribed, this agreement addresses a matter of universal significance—"the development of scientific knowledge about the Arctic" (Art. 2).⁹¹

Compared to the previous two agreements, the Arctic Science Agreement is arguably the least concrete. It is a sort of "declaration of intent" in which the Arctic states agree to enhance cooperation in the area of scientific activities, but they can do so only if relevant resources are available.⁹² At the same time, being a legally binding document in a broad sense, this agreement does not offer any new norms for decision making concerning scientific cooperation. In a sense, it is just a commitment of the Arctic states to expand collaboration in this field. This document symbolizes the good will of Arctic states and particularly the consensus between the United States and the Russian Federation on this subject.

Despite its mandatory nature, this agreement is of a "soft" character as it does not create any new norms and is based on the existing scientific cooperation. Thus, of the three agreements concluded under the auspices of the AC, the science agreement is the most vulnerable to changing geopolitical contexts. The implementation of this agreement will depend on the willingness of all parties and non-parties to "increase effectiveness and efficiency in the development of scientific knowledge about the Arctic."⁹³ Nevertheless, the agreement's political value can be seen in the fact that it propels science diplomacy in the Arctic.⁹⁴

The implementation and dispute settlement of the 2011 and 2013 agreements are arranged mainly through the meetings of the parties, which are held either on a regular basis (SAR Agreement, Art. 10) or in the case of the Arctic Marine Oil Pollution agreement, by decision of the parties—notably, "Parties may elect to convene such meetings in conjunction with meetings of the Arctic Council,"⁹⁵ plus the parties communicate with their competent national authorities regarding operational issues related to the implementation of the agreement.⁹⁶

In practice, implementation of both agreements has been realized mostly via table-top exercises. The first table-top exercise on the SAR Agreement was among search and rescue agencies of the AC members and was organized by Canada and

held in Whitehorse, Yukon in 2011.⁹⁷ The Emergency Prevention Preparedness and Response Working Group (EPPR) of the AC-led exercises for the marine oil pollution agreement took place in 2014, 2016, and 2018.⁹⁸ The planning of the 2018 exercise “was shared between the country with Arctic Council chairmanship and the MER EG”⁹⁹ (MER EG is the Marine Environmental Response Experts Group created by the EPPR in 2016 to promote the implementation of the EPPR’s activities related to the marine oil pollution agreement).

In the case of the Arctic Science Agreement, there are certain constraints to its implementation since “each Party shall bear its own costs deriving from its implementation of this Agreement” and “Implementation of this Agreement shall be subject to the availability of relevant resources” (Art. 11). The parties were convened by Denmark (the depository) in May 2019—one year after the agreement’s entry into force; and from then on, as decided by the parties, they may have such meetings in conjunction with the meetings of the AC, and invite Permanent Participants and “Arctic Council Observers to observe and provide information” (Art. 12). At such meetings, the parties consider the implementation of this agreement and improve its effectiveness and implementation by taking into account all obstacles and successes (Art. 12(2)). Thus, the fact that meetings of the parties for the implementation of both the Arctic marine oil pollution and Arctic Science agreements can be synchronized with the meetings of the AC, points again to the institutional link with AC.

It can be concluded that the Arctic Council played the key role in bringing regional agreements to life and to their subsequent implementation. It did so in a number of ways, such as:

- serving as an initiator of these documents;
- providing a platform for their negotiations by creating special task forces, inviting proper experts, exercising control and monitoring, and reporting on progress to the ministers of the Arctic states;
- and being a driving force in the de facto drafting of these agreements, which were adopted by the Arctic member states based on the work conducted by the AC’s structures; the AC served as a legislator without de jure (by right) having this capacity.

Future “Law-Making”?

Given the broad scope of the AC’s involvement in the processes that led to regulatory instruments, it is logical to consider whether there is room for further legally binding instruments under the auspices of the AC? This section outlines some ideas and leaves room for further research that is beyond the scope of this article.

The Finnish Chairmanship of the AC 2017–2019 did not instigate projects that led to the negotiation of such instruments.¹⁰⁰ The Icelandic Chairmanship program of 2019–2021 has also not indicated an intent for new agreements of that kind.¹⁰¹ But this may change in light of shifting Arctic realities and spectacular changes at all levels in the North.

Is There a Necessity for New Agreements?

Politically, new agreements may emerge as a result of the will of Arctic states to show their important positions in the region vis-à-vis the growing number of other global actors and interests. Thus, political will and practical necessity for a new agreement may initiate such developments in areas where a legally binding agreement can be the best and most effective solution for a problem. Arguably, in light of current geopolitical realities, this kind of initiative shall imply a US–Russian mutual understanding or agreement before any negotiations could take place; a lot will depend on the interest and political will of these and other Arctic states to consider new agreements relating to the Arctic.

Which Topics Might Have Practical Interest?

Growing shipping and usage of both the Northern Sea Route and the Northwest Passage may invite further discussions on ecological safety and environmental protection. In May 2019 the International Maritime Organization was granted observer status in the Arctic Council.¹⁰² This suggests further collaboration between the AC and the IMO but does not mean that the AC would deal with the regulation of shipping. Any further initiatives of the AC in this area will depend on the political will of its member states.

One more area is further cooperation on the elimination of oil spills—such as the work that was initiated by the AC in 2013 but which has not yet led to any legally binding measures. And another area is business safety—for example, arrangements with the Russian Federation on the use of icebreaker fees.

Should the AC be involved with or serve as a guarantor for the continental shelf arrangement—a formal Canada–Russia–Denmark agreement on the delineation of the shelf in the overlapping claims zone in the Central Arctic Ocean—with other Arctic states respecting the deal? For example, in the future, if needed, those three countries could initiate the AC’s body to deal with transborder use of the Central Arctic Ocean floor and underground resources.

Potential Topics for New Agreements

Depending on the priorities of the Arctic Council Chair, there could be room for the initiation of negotiations on new agreements in the future. There are several areas where the AC could take leadership over time, and move towards engagement in or development of some mandatory regulatory frameworks. One possible area for a legally binding instrument is an agreement that would deal with marine litter and plastic. The AC's PAME working group has already been working on the project and a regional action plan to deal with marine litter pollution including microplastics. According to some surveys, billions of plastic items are floating in the Arctic waters.¹⁰³ Offshore resource exploration and exploitation are also a source of plastic pollution that have impacts on human health and ecosystems.

From the outset, the AC has been involved in issues dealing with marine litter (e.g., the Regional Program of Action for the Protection of the Arctic Marine Environment from Land-Based Activities, 1998; the Arctic Marine Strategic Plan was adopted in 2004; and the 1998 program was revised in 2009).

Concerned by the growing accumulation of marine litter in the Arctic and impacts on Arctic communities and the environment, in 2017 the AC decided “to assess the scope of the problem and contribute to its prevention and reduction, and also to continue efforts to address the growing concerns relating to the increasing levels of microplastics in the Arctic and potential effects on ecosystems and human health.”¹⁰⁴

Existing legal instruments provide a fragmented approach that does not address marine litter and microplastics.¹⁰⁵ Today, there is no single legally binding agreement or governing body to deal with plastic or microplastics.

Global instruments exist to protect biodiversity, manage hazardous chemicals and waste, and prevent pollution of the marine environment from ocean sources and, to a lesser degree, land based sources of pollution. Some applicable measures are weakly distributed amongst these global instruments, but the reduction of marine plastic litter and microplastics is not a primary objective of any.¹⁰⁶

To tackle this gap, an Arctic agreement on this issue could be considered and the AC would be the right venue to initiate this type of work.

Furthermore, there are ongoing discussions on the need for regulation of the Marine Protected Areas (MPAs) in the High Arctic—namely, areas beyond national jurisdiction (ABNJ), i.e., beyond the Exclusive Economic Zones of any state. In 2015 the AC initiated a Framework for a Pan-Arctic Network of Marine Protected Areas¹⁰⁷ but this applies only to the sovereign borders of the

Arctic nations. Although existing international law (e.g., UNCLOS and the UN's Convention on Biological Diversity) allow for the creation of the High Arctic marine protected area, some commentators suggest a regional agreement on MPAs in the ABNJ would be the most efficient legal instrument in dealing with this matter, and the Arctic Council could play a leading role in this.¹⁰⁸ Accordingly, “though no regional sea management organization exists within the Arctic, the Arctic Council might serve as a venue for the creation of similar regional organizations to facilitate MPA creation within an ABNJ.”¹⁰⁹ But this instrument would be mandatory for all Arctic states and other parties that decide to accede to this treaty, plus a regional legal instrument of that kind could be “more politically expedient compared to a UNCBD [United Nations Convention on Biological Diversity] additional protocol or an UNCLOS [Law of the Sea] implementing agreement.”¹¹⁰

One more topical area for a potential legally-binding regional agreement, is the prevention and elimination of natural forest fires across the Circumpolar North. This subject seems to be an area of growing concern in the Arctic, especially among some Indigenous groups (i.e., Saami reindeer herders).

Conclusion

The negotiations, under the auspices of the Arctic Council, of the legally binding agreements point to the AC's ability to respond to current and emerging challenges. This practice also shows that all Arctic states are able to consolidate their efforts on the AC's platform in addressing the most pressing issues. Decisions of the Arctic Council are subject to consensus of all eight Arctic states.¹¹¹ Thus, any of the eight members could block unacceptable proposals (e.g., the United States blocked the AC's declaration at the ministerial meeting in Rovaniemi because of the US position on climate change).¹¹²

During negotiations of those documents, all disagreements were clarified in the course of preparations. At the end, all three agreements were endorsed by the AC, which by virtue of its task forces performed “a regulatory task” without being a legislative body or having a mandate to adopt legally binding instruments. Agreements were signed by the eight Arctic states but they can rightly be considered as the AC's product. Although not being an international organization in the traditional sense of international law, the AC has been involved in “law-making” activities as if it is such an organization. Arguably, the practice of these agreements has changed the nature of the AC and sped up its evolution towards becoming a fully-fledged international organization under international law.

The AC has been successful so far in producing non-legally binding instruments that have direct implications for development and implementation of “hard law” instruments. Using the AC as a platform for negotiations of

legally binding instruments is subject to several pre-conditions. For example, the experience with a possible legal instrument to deal with prevention of marine oil spills has revealed not only the complexity of issues at stake but also a question of capacity within the AC to tackle such matters. Prevention of contamination at sea and prevention of oil spills are hard to codify, thus those issues were partially moved to the Polar Code and the AC's work has shifted towards creation of non-legally binding guidelines. It is no accident, for example, that the AC chose not to become a platform in dealing with negotiations on unregulated commercial fisheries in the Central Arctic Ocean but is interested in further cooperation with relevant regional organizations.

To sum up, the Arctic Council is not a law-making body, but it has already contributed to the development of international law as it applies to the Arctic. Any further law-making activities of the AC, such as the negotiation of new legally binding instruments under its auspices, are quite possible but will depend on the will of member states to compromise their national interests.

It remains to be seen whether Arctic governance will be strengthened if AC formally opens its "law-making" process to relevant non-Arctic actors.¹¹³ A lot will depend on the particular subject matter of any further agreements.

Finally, the Arctic Council may continue its contribution to law-making by serving as a platform and initiator for negotiations; influencing global and regional legal instruments by means of involvement in their negotiation and implementation; and by bringing the Arctic voice to those endeavours through scientific assessments and reports. Also, the AC's practice of producing "soft-law" documents will continue to influence the development of regulatory frameworks.

Notes

1. Declaration of the Foreign Ministers of the Arctic States at the 10th Ministerial meeting of the Arctic Council, held in Fairbanks, Alaska, 10–11 May 2017, point 39, online: <<http://hdl.handle.net/11374/1910>> [Fairbanks Declaration].
2. Declaration on the Establishment of the Arctic Council, Ottawa, 19 September 1996, Art 2, online: <<http://hdl.handle.net/11374/85>> [Ottawa Declaration].
3. *Ibid*, Art 7. About the role of the Permanent Participants in the AC see, for example, Dalee Sambo Dorough, "The Rights, Interest and Role of the Arctic Council Permanent Participants" in Robert C. Beckman et al, eds, *Governance of Arctic Shipping: Balancing Rights and Interest of Arctic States and User States* (Leiden-Boston: Brill Nijhoff, 2017) at 68.
4. Anton Vasiliev, "The Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic: A New Chapter in Polar Law" in Natalia Loukacheva, ed, *Polar Law Textbook II* (2013) 535 TemaNord NCM 53, online: <<https://doi.org/10.6027/TN2013-535>>.

5. The Host Country Agreement between the Government of the Kingdom of Norway and the Arctic Council Secretariat on the Legal Status of the Secretariat and the Privileges and Immunities of the Secretariat and its Staff Members (Tromsø, 21 January 2013), Art 2, online: <<http://hdl.handle.net/11374/1655>>.
6. Yoshinobu Takei, “Role of the Arctic Council from an International Law Perspective: Past, Present and Future” (2015) VI *The Yearbook of Polar Law* 349.
7. Evan T. Bloom, “Establishment of the Arctic Council” (1999) 93 *American Journal of International Law* 712, online: <<https://doi.org/10.2307/2555272>>.
8. For features of international organizations in international law and their applicability to the AC see, for example, Takei, *supra* note 6 at 353–354.
9. Oran R Young, “The Shifting Landscape of Arctic Politics: Implications for International Cooperation” (2016) 6(2) *The Polar Journal* 209 at 221, online: <<https://doi.org/10.1080/2154896X.2016.1253823>>.
10. *Ibid.*
11. See, for example, Heather Exner-Pirot, Maria Ackrén, Natalia Loukacheva, Heather Nicol, Annika E Nilsson & Jennifer Spence, “Form and Function: The Future of the Arctic Council” (Alaska, US: The Arctic Institute, 5 February 2019), online: <<https://www.thearcticinstitute.org/form-function-future-arctic-council/>>; L David Balton & Fran Ulmer, “A Strategic Plan for the Arctic Council: Recommendations for Moving Forward” (2019) *The Arctic Institute and the Polar Institute, Paper*, June.
12. Ottawa Declaration, *supra* note 2, Art 1.
13. On a definition of soft law see, for example, <https://www.ecchr.eu/en/glossary/hard-law-soft-law/>.
14. See Rovaniemi Joint Ministerial Statement 2019 on the Occasion of the Eleventh Ministerial Meeting of the Arctic Council, 7 May 2019; and Statement by the Chair, Minister for Foreign Affairs of Finland Timo Soini on the Occasion of the Eleventh Ministerial Meeting of the Arctic Council’ (Rovaniemi, Finland, 6–7 May 2019).
15. Takei, *supra* note 6 at 368.
16. See, for example, Nathaniel Valk, “Arctic Council Soft Law: An Effectiveness Analysis” (University of Ottawa, July 23, 2012) at 1; Ida Folkestad Soltvedt, “Soft Law, Solid Implementation? The Influence of Precision, Monitoring and Stakeholder Involvement on Norwegian Implementation of Arctic Council Recommendations” (2017) 8 *Arctic Review on Law and Politics* 73, online: <<https://doi.org/10.23865/arctic.v8.639>>.
17. Olav Schram Stokke, Geir Hønneland & Peter Johan Schei, “Pollution and Conservation” in Olav Schram Stokke & Geir Hønneland, eds, *International Cooperation and Arctic Governance. Regime Effectiveness and Northern Region Building*. 1st ed. (London: Routledge, 2006), online: <<https://doi.org/10.4324/9780203962336>>; Paula Kankaanpää, “The Arctic Council: From Knowledge Production to Influencing Arctic Policy Making” (2012) 4 *The*

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18. See Arctic Monitoring and Assessment Program—AMAP, Assessment 2002: Persistent Organic Pollutants in the Arctic (Arctic Council, 2004), online: <<http://www.oaarchive.arctic-council.org>>; AMAP, Trends in Stockholm Convention Persistent Organic Pollutants (POPs) in Arctic Air, Human Media and Biota (Arctic Council, 2014), online: <<https://www.oaarchive.arctic-council.org>>.
 19. AMAP, *ibid.*; Maria Platjouw Froukje, Eirik Hovland Steindal & Trude Borch, “From Arctic Science to International Law: The Road towards the Minamata Convention and the Role of the Arctic Council” (2018) 9 *Arctic Review on Law and Politics* 226, online: <<https://doi.org/10.23865/arctic.v9.1234>>.
 20. Fairbanks Declaration, *supra* note 1, point 16 at 7.
 21. Christian Prip, “The Arctic Council and Biodiversity: Need for a Stronger Management Framework?” (2016) 2 *Nordisk Miljörettslig Tidskrift* 37.
 22. For example, the 2005 Arctic Climate Impact Assessment (ACIA); AMSA, Arctic Marine Shipping Assessment 2009 Report (Arctic Council, PAME, April 2009); the Snow, Water, Ice and Permafrost in the Arctic (SWIPA) Assessment in 2017; the Adaptation Actions for a Changing Arctic (AACA). See Adaptation Actions for a Changing Arctic: Perspectives from the Barents Area (Oslo, Norway: Arctic Monitoring and Assessment Programme, Arctic Council, 2017), online: <<https://www.amap.no/documents/download/2981/inline>>.
 23. Timo Koivurova, “Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance” (2010) 46(2) *Polar Record* 146, online: <<https://doi.org/10.1017/S0032247409008365>>.
 24. Fairbanks Declaration, *supra* note 1 at 3; White House, Statement by President Trump on the Paris Climate Accord, 1 June 2017, online: <www.whitehouse.gov/briefings>.
 25. Tromsø Declaration on the Occasion of the Sixth Ministerial Meetings of the Arctic Council (Tromsø, Norway, 29 April 2009) at 11, online: <<http://hdl.handle.net/11374/91>>.
 26. Kitack Lim, Secretary-General, IMO, “Polar Code Developments” (Juneau, Alaska: Arctic Council – Senior Arctic Officials Meeting, 8–9 March 2016).
 27. The International Code for Ships Operating in Polar Waters (Polar Code) (entered into force 1 January 2017). See Erik J Molenaar, “Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea” (2012) 27 *International Journal of Maritime and Coastal Law* 553 at 571; Erik J Molenaar, “The Arctic, the Arctic Council, and the Law of the Sea” in Robert C Beckman et al, eds, *Governance of Arctic Shipping. Balancing Rights and Interests of Arctic States and User States* (Brill Nijhoff Publishers, 2017) 24 at 54; AMSA, Arctic Marine Shipping Assessment, *supra* note 22.
 28. Fairbanks Declaration, *supra* note 1 at 3.

29. Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Ilulissat, 3 October 2018).
30. Fisheries Agreement, *supra* note 29, Art 6.
31. Molenaar, “Current and Prospective Roles,” *supra* note 27 at 572; Molenaar, “The Arctic,” *supra* note 27 at 55.
32. Molenaar, “Current and Prospective Roles,” *supra* note 27; Molenaar, “The Arctic,” *supra* note 27.
33. Takei, *supra* note 6 at 356–362.
34. See Natalia Loukacheva, “The Arctic Economic Council – the Origins” (2015) VII The Yearbook of Polar Law 225, online: <https://doi.org/10.1163/2211-6427_010>; MOU. Memorandum of Understanding between the Arctic Council and the Arctic Economic Council (Rovaniemi, Finland, 6 May 2019).
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36. Fairbanks Declaration, *supra* note 1, at points 2 and 5.
37. Arctic Offshore Regulators Forum, 2015, Terms of Reference, online: <<http://www.oaarchive.arctic-council.org>>, Art 1(c).
38. *Ibid.*, Art 2(a).
39. *Ibid.*
40. Fairbanks Declaration, *supra* note 1, at point 3. Arctic Shipping Best Practices Information Forum, 2017, online: <<http://www.pame.is>>
41. Molenaar, “Current and Prospective Roles,” *supra* note 27 at 572; Molenaar, “The Arctic,” *supra* note 27 at 59.
42. For example, Kao Shih-Ming, Nathaniel S. Pearre, and Jeremy Firestone, “Adoption of the Arctic Search and Rescue Agreement: A Shift of the Arctic Regime Toward a Hard Law Basis?” (2012) 36 Marine Policy 832, online: <<https://doi.org/10.1016/j.marpol.2011.12.001>>; Molenaar, “Current and Prospective Roles,” *supra* note 27; Molenaar, “The Arctic,” *supra* note 27; Heather Exner-Pirot, “Defence Diplomacy in the Arctic: the Search and Rescue Agreement as a Confidence Builder” (2012) 18(2) Canadian Foreign Policy Journal 195, online: <<https://doi.org/10.1080/11926422.2012.709053>>; Vasiliev, *supra* note 4; Anton Vasiliev, “Agreement on Cooperation on Arctic Marine Oil Pollution Preparedness and Response” in Natalia Loukacheva, ed, *Polar Law and Resources* (2015) 533 TemaNord NCM 145; Corine Wood-Donnelly, “The Arctic Search and Rescue Agreement: Text, Framing and Logics” (2013) V The Yearbook of Polar Law 299, online: <<https://doi.org/10.1163/22116427-91000127>>; Michael Byers, *International Law and the Arctic* (Cambridge: Cambridge University Press, 2013) at 277–279; Kristian Cedervall Lautu, “A Drop in the Ocean: Marine Oil Pollution Preparedness and Response in the Arctic” (2014) 5(2) Arctic Review on Law and Politics 227; Svein Vigeland Rottem, “The Arctic Council and the Search and Rescue Agreement: The Case of Norway” (2014) 50 Polar Record 284, online: <<https://doi.org/10.1017/S0032247413000363>>; Svein Vigeland Rottem, “A Note on the Arctic Council Agreements” (2015) 46 Ocean Development and International Law 50; Takei, *supra*

- note 6; Are Kristoffer Sydnes, Maria Sydnes, and Yngve Antonsen. “International Cooperation on Search and Rescue in the Arctic” (2017) 8 *Arctic Review on Law and Politics* 109, online: <<https://doi.org/10.23865/arctic.v8.705>>; Akiho Shibata, and Maiko Raita, “An Agreement on Enhancing International Arctic Scientific Cooperation: Only for the Eight Arctic States and Their Scientists?” (2016) VIII *The Yearbook of Polar Law* 129, online: <https://doi.org/10.1163/22116427_00801_0009>; Akiho Shibata, “The Arctic Science Cooperation Agreement: A Perspective from Non-Arctic Actors” in Akiho Shibata et al, eds, *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors* (Routledge, 2019) 206; Evan T. Bloom, “Two Key Developments in Polar Law and Diplomacy: A New Arctic Science Agreement and Establishment of the World’s Largest Marine Protected Area in Antarctica’s Ross Sea” (2018) 10 *The Yearbook of Polar Law* 11; Alla Pozdnakova, Henrik Ringbom, and Erik Røsæg, EPPR, “Legal Issues Related to the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (MOSPA)” (Summary Report, Emergency Prevention Preparedness and Response, Arctic Council Secretariat, 2019).
43. Timo Koivurova, “Polar Regimes Tackling Climate Change” in Natalia Loukacheva, ed, *Polar Law Textbook – II* (Copenhagen: Nordic Council of Ministers, 2013) 535 *TemaNord* 67; Natalia Loukacheva, “The Arctic Council and Polar Code,” Paper presented at the University of the Arctic International Symposium, 12–16 September 2016, on file with the author; Takei, *supra* note 6 at 356–359, and so on.
 44. The Ilulissat Declaration, Adopted at the Arctic Ocean Conference, Ilulissat, Greenland, 28 May 2008.
 45. Ron Rahbek-Clemmensen, and Gry Thomasen, “Learning from the Ilulissat Initiative. State Power, Institutional Legitimacy, and Governance in the Arctic Ocean 2007–2018” (University of Copenhagen, Centre for Military Studies, February, 2018) 16–17.
 46. Koivurova, *supra* note 28 at 153; Koivurova et al, *supra* note 17.
 47. Tromsø Declaration, *supra* note 25 at 12.
 48. AMSA, *supra* note 22.
 49. *Ibid*, Recommendation E at 6.
 50. SAR. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (Nuuk, Greenland, 12 May 2011), Art 20.
 51. The Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (Kiruna, Sweden, 15 May 2013), Art 23, online: <<https://oaarchive.arctic-council.org/handle/11374/529>>.
 52. Kiruna Declaration. On the occasion of the Eighth Ministerial Meeting of the Arctic Council (Kiruna, Sweden, 15 May 2013) at 5.
 53. Iqaluit Declaration. On the occasion of the Ninth Ministerial Meeting of the Arctic Council (Iqaluit, Canada, 24 April 2015) at 9–10.

54. Status of Implementation: Framework Plan for Cooperation on Prevention of Oil Pollution from Petroleum and Maritime Activities in the Marine Areas of the Arctic (Arctic Council, EPPR, May, 2017, May 2019).
55. An interview with the co-chair of the AC Task Forces on 2011 and 2013 Agreements, 15 February 2019.
56. Kiruna Declaration, *supra* note 52 at 7.
57. Iqaluit Declaration, *supra* note 53, point 44, 11.
58. Co-chair of the Task Force, Evan T. Bloom, “The Arctic Council Produces a New Arctic Science Cooperation Agreement. Commentary” (2016) Arctic Yearbook 222 at 223, online: <<https://arcticyearbook.com/images/yearbook/2016/Commentaries/8.Bloom.pdf>>.
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60. See also Daria Shapovalova-Krout, “International Governance of Oil Spills from Upstream Petroleum Activities in the Arctic: Response over Prevention?” (2019) The International Journal of Marine and Coastal Law, online: <<https://doi.org/10.1163/15718085-23342029>>.
61. Vasiliev, 2015, *supra* note 42 at 145.
62. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (Nuuk, 12 May 2011), Art 17 and Art 18; Agreement on Enhancing International Arctic Scientific Cooperation (Fairbanks, 11 May 2017), Art 15 and 18; Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, *supra* note 51, Art 18 and Art 19.
63. e.g., Shibata and Raita, “An Agreement,” *supra* note 42; Shibata, “The Arctic Science Cooperation Agreement,” *supra* note 42.
64. Shibata, “The Arctic Science Cooperation Agreement,” *supra* note 42 at 208, 217, and 221.
65. Molenaar, “Current and Prospective Roles,” *supra* note 27 at 576–577.
66. e.g., see Molenaar, “The Arctic,” *supra* note 27 at 53.
67. Shibata, “The Arctic Science Cooperation Agreement,” *supra* note 42 at 216.
68. Koivurova, *supra* note 23 at 151.
69. Vasiliev, 2015, *supra* note 42 at 56.
70. Molenaar “Current and Prospective Roles,” *supra* note 27 at 577; Wood-Donnelly, *supra* note 42 at 309–310.
71. An interview with the co-chair of the AC Task Force, 2019.
72. Vasiliev, 2015, *supra* note 42 at 151–152.
73. ICC. Utqiagvik Declaration on the occasion of the 13th General Assembly of the Inuit Circumpolar Council from 16–19 July 2018 (Utqiagvik, Alaska, USA), point 30.
74. *Ibid.*
75. Agreement on the Conservation of Polar Bears and their Habitat (Oslo, Norway, 15 November 1973), the Preamble.

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78. Exner-Pirot, *supra* note 42 at 198–203; Wood-Donnelly, *supra* note 42 at 304–306.
79. Vasiliev, *supra* note 4 at 63–64.
80. Vasiliev, *supra* note 4.
81. *Ibid* at 64.
82. *Ibid* at 65.
83. *Ibid* at 152.
84. Kiruna Declaration, *supra* note 52 at 5.
85. Loukacheva, *supra* note 76 at 29.
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88. Bloom, *supra* note 58 at 223.
89. e.g., Shibata and Raita, “An Agreement,” *supra* note 42 at 129–162; Shibata, “The Arctic Science Cooperation Agreement,” *supra* note 42.
90. Shibata, “The Arctic Science Cooperation Agreement,” *supra* note 42 at 16.
91. *Ibid*.
92. Art 11(2).
93. Art 2.
94. Paul Arthur Berkman, et al, “The Arctic Science Agreement Propels Science Diplomacy” (2017) 358(6363) Science 596 at 597–598, online: <<https://doi.org/10.1126/science.aag0890>>.
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97. AC 2011.
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