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# **Global Conventions and Regional Cooperation: The Multifaceted Dynamics of Arctic Governance**

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## Abstract

The Arctic is a globally embedded space. This is as true for the impact of global climate change on the Arctic and the consequences of Arctic climate change for the rest of the world as it is for governance for and in the Arctic. This chapter analyzes the dynamics that structure and result from the coexistence of global and regional governance mechanisms in four issue areas: the governance of marine and maritime spaces, Indigenous Peoples, climate governance, and environmental protection and conservation. It assesses how global conventions impacted regional governance and, in turn, how regional cooperation influenced governance on the global level. In order to do this, we distinguish four ways in which the nexus between global governance and regional cooperation can be established: as harmonious, cooperative, conflictive, and indifferent. For each way, an outside-in (from the global to the regional level) and an inside-out (from the regional to the global level) perspective can be considered. This yields a typology of eight different kinds of links between regional cooperation and global conventions. Much of the previous research has focused on harmonious and cooperative links. By contrast, we intend to show that as global interest in the Arctic grows, along with the need for regulatory governance in the region, the nexus might increasingly become conflictive. In order to retain control over the region and its governance, Arctic states' cooperation seeks to limit both their own global commitments and the influence of exogenous actors or institutions.

Key words: Arctic, Global Governance, Regional Governance, Cooperation, Arctic Council, Global Conventions

## **Introduction: Analyzing Institutional Dynamics in the “globally embedded” Arctic**

The Arctic “is a ‘globally embedded space’, interlinked politically, economically, environmentally and socially with global structures and processes” (Keil & Knecht, 2017, p. 4). As such, there are “global impacts within” and “worldwide implications of the Arctic” (Finger & Heininen, 2019, p. 2). At least since the seventeenth century, multifaceted dynamics in the Arctic result from the interplay of global and regional level (cf. Sale, 2009). The incremental expansion of regional cooperation and governance institutions that started after the Cold War with the Arctic Environmental Protection Strategy (AEPS, 1991), and in 1996 saw

the founding of the Arctic Council (AC), the “pre-eminent regional forum” (Arctic Council 2013), is no exception to this observation. Rather, the significance of the global-regional interplay for Arctic governance only seems to have grown since the end of the first decade of the 2000s. In a short period of time, a series of events put the Arctic into the global spotlight: the planting of the Russian flag on the seafloor at the geographic North Pole in 2007, the US Geological Service’s publication in 2008 of estimates of abundant undiscovered oil and gas reserves in the region’s subsoil and seabed, and record low ice-covers that made visible the dramatic consequences of climate change in the region in the same years. These events created global attention as well as interest and initiatives from non-Arctic actors. Providing powerful imaginaries of geopolitical grandstanding, of an Arctic gold rush, and of the opening of a new ocean, the above-mentioned events certainly worked as drivers of change in Arctic governance. However, these events do not determine how the respective institutional dynamics unfold. We want to explore these dynamics by focusing on how the nexus between regional cooperation and global conventions developed; that is, on the institutional interplay that makes the Arctic a “globally embedded space” in governance terms.

Such interplay has been the object of research for quite some time already (e.g., Oberthür & Stokke, 2011), and has been analyzed both regarding issue-specific governance complexes *in* the Arctic or *the* Arctic governance complex with the Arctic Council at the center (e.g., Stokke & Hønneland, 2007; Young, 1996). However, we contend that, so far, this literature has mainly looked for functionally effective interplay in which regional cooperation adds value to global governance. In such a view, regional cooperation is, for instance, found to implement global conventions or complement them with regional governance output. New institutions are shown to select or adapt to functional niches or fill gaps in the governance complexes. While this kind of interplay can certainly be observed in the Arctic, it is not the only one. More recently, international governance research has focused on less benign forms of interplay, as captured, for instance, in the notion of conflictive fragmentation (Biermann et al, 2009) or regional challenges to global governance (e.g., Kahler, 2017). Distinguishing different types of links between the regional and the global level, this chapter assesses the extent to which regional cooperation in the Arctic established a nexus to global conventions in either harmonious, cooperative, conflictive or indifferent ways. Thus, we hope to reveal both the impacts of global governance on regional cooperation as well as the global implications of Arctic governance, and to capture dynamics of governance in the globally embedded Arctic.

The following section briefly presents our analytical framework. This framework is then applied to four issue areas with global conventions at the center (the governance of marine and

maritime spaces, indigenous peoples' affairs, climate governance, environmental protection and conservation), and as a fifth area to the legally binding agreements concluded on the regional level.<sup>1</sup> For each of these areas, we seek to determine the governance dynamic as it unfolded from the early days of the AEPS to the years in which the Arctic entered the global spotlight. While there is variation between the five areas under focus, we found that the links between regional and global governance have generally been explicitly acknowledged in the beginning of regional cooperation, but did not emerge as a harmonious nexus, and became even less cooperative and more conflictive the more the Arctic was drawn into the maelstrom of globalization. Based on this assessment, in the conclusion we argue that, overall, and against prevalent praise of the achievements of Arctic regional cooperation, our findings cast some doubts on the current capacity of Arctic governance to effectively engage in the solving of regional or global problems.

### **The nexus between regional and global governance: An analytical framework**

In order to capture the regional-global nexus of Arctic governance we build on and slightly amend for our purposes an analytical framework proposed by Arie Kacowicz (2018). This framework looks at the nexus as established by or emerging from rhetoric, decisions, and behavior of respective states or their governments on the regional level in view of global governance. States in a region can act on and react to global governance in four different ways: indifferently, conflictively, cooperatively, or harmoniously. Kathrin Keil and Sebastian Knecht (2017, p. 12) argued that one can take either an inside-out or an outside-in perspective on the Arctic as a globally embedded space. We take this distinction as characterizing perspectives that regional states can assume. In the outside-in perspective, states or governments react to the global governance framework, which they accept as given and not amenable to change from the regional level. States that take the inside-out perspective, by contrast, aim to act on the regional level for global governance. Combining these two perspectives and Kacowicz's four ways of establishing the regional-global nexus, we get a taxonomy of eight different types of linkages that can be applied to the relationship between regional cooperation and global conventions (Table 1).

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<sup>1</sup> For a similar overview endeavor in which we build, see also Stokke (2009).

Table 1 The nexus between regional cooperation and global conventions

	Value-Added		Value Subtracted	Value Neutral
	Harmonious	Cooperative	Conflictive	Indifferent
<b>Outside (-&gt; In)</b>	Regional implementation of global conventions	Seeking regional niches in global governance	Defensive regionalization	Global conventions do not affect regional cooperation
<b>Inside (-&gt; Out)</b>	Regions as legal innovators and entrepreneurs in global governance	Filling global regulatory gaps regionally	Challenging global norms on the regional level	Regional cooperation does not affect global conventions
Own compilation, categories cf. Kacowicz (2018), and Keil and Knecht (2017)				

In a harmonious link, the regional cooperation is regarded as “a building bloc, and as a desirable and necessary part of any GG [global governance] architecture” (Kacowicz 2018, p. 70). This first type is representing one of the most common views of a desirable regional-global nexus. Considering regions as “important elements of the architecture of world politics”, Hurrell, for instance, saw the UN system’s central role as setting the standards, “with regional bodies entering the story principally in terms of more detailed specification of rights and implementation” (2007, p. 142). Insofar as the regions become active towards global governance in a harmonious relationship, our second type, they might act as innovators and entrepreneurs to facilitate the setting of standards on the global level. Such a role for regions has, for instance, been advocated in the context of ocean governance in which regional institutions were envisioned to take initiatives for environmental governance of the high seas, which would then feed into the process of devising new global standards (e.g., Mahon & Fanning, 2019; Rochette et al, 2014).

When we speak of a cooperative link between regional cooperation and global conventions, regions are seen less as an integral part of global governance, but co-existing in a way that still provides some added value. Taking an outside-in perspective, regional cooperation seeks to find what Olav Stokke has called its own governance niche within the framework established by the global convention (2007b, p. 17). States taking the inside-out perspective seek to contribute to a global framework regionally by complementing it, for instance in matters that can be dealt with better on the regional level or where gaps in the global framework exist, because agreement on a global convention is (still) out of reach. For instance, the 2010 move of state parties to the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic to establish marine protected areas in areas beyond national jurisdiction was interpreted in this way (e.g., Molenaar & Oude Elferink, 2009; Rochette et al, 2014, p. 111).

In our fifth type, regional cooperation does not any more add value to global conventions; rather, the former seeks to resist or alleviate compliance pressure from the latter. It is defensive in the sense of cooperating in order to deal with negative regional externalities from global governance. Kacowicz mentions examples of regional cooperation in South America to better cope with the impact of what is perceived to be a hegemonic global order (2018, p. 68). Our sixth type refers to challenges to global norms from the regional level in the sense that regional cooperation aims to revise global standards. For instance, Randall Henning has identified respective tendencies in global financial governance (2017).

In our final two types, the regional cooperation and global conventions are (made) independent from each other. In both the outside-in and the inside-out perspective, this means that norms and obligations emerging on either level are not regarded as relevant for the cooperation on the other. Note that when states decide that one or the other level should be the sole arena for certain issue-specific rules, this can either be because they accept that the respective level is the best functionally regarding scale or scope, or because one or the other level simply better matches with their particular interests.

### **The regional-global nexus in Arctic governance**

The aim of this section is now to apply the framework developed above in an overview-like fashion to see what kind of nexus emerges between global conventions and regional cooperation in the case of the Arctic. We start by looking at two constitutional issues: the assignment of respective marine and maritime spaces (including shipping and marine pollution governance) according to United Nations Convention on the Law of the Sea (UNCLOS), and the question of Indigenous Peoples rights regarding participation in Arctic governance. Next, we focus on two core functional issue areas of regional cooperation in the AC: climate governance as concerned with the core challenge the region is facing, and pollution and conservation of the Arctic environment as the original focus of regional cooperation when it emerged in the early 1990s. The picture that develops from the application of our analytical framework is that the nexus between regional and global governance is adding much less value than would be expected or is usually assumed. We bolster this impression by further looking at the binding regional agreements the Arctic states concluded.

*Marine and maritime space delimitation, shipping, and marine pollution*

The Arctic is an ocean surrounded by three continents. Thus, one would expect UNCLOS to play a major and explicit role in the region's governance. As the so-called constitution for the oceans, UNCLOS not only is the central legal reference for the delimitation of marine and maritime spaces and the accompanying rights of coastal states and other users of the sea; it also is a governing framework for shipping, and emphasizes the significance of and explicitly endorses regional activities to protect the marine environment. Yet, when attention on the Arctic grew, some even opined that "there are currently no overarching political or legal structures that can provide for the orderly development of the region or mediate political disagreements over Arctic resources or sea-lanes", because "UNCLOS cannot be seamlessly applied to the Arctic" (Borgerson, 2008, pp. 71–72). It seems many agreed at the time, and thus called for a respective complementary legal document for the region.

Such a perception might be understandable given that, until that time, UNCLOS had not played any significant role in the regional cooperation, despite being mentioned as constitutive framework in the AEPS. There might be two reasons for that. First, when regional cooperation started in the early 1990s, UNCLOS was not even in force, even though it had been signed in 1982. When it entered into force at the end of 1994, only Iceland had ratified the convention. In the three years after the entry into force, ratifications from Finland, Norway, Sweden, and Russia followed. Canada and Denmark ratified in 2003 and 2004, respectively. Until today, the US senate has held its almost forty-year-old position of not acceding to UNCLOS.<sup>2</sup> Second, however, just as the region was emerging from the Cold War, it proved that marine environmental protection was still too "politically sensitive" (Young, 1998, p. 137), as it unavoidably touched on highly politicized or even securitized matters such as marine and maritime jurisdiction, resource and fishing rights, or nuclear submarine conduct. With the respective working group on the protection of the Arctic marine environment (PAME) being "relatively quiescent" during these early years of cooperation (Young, 1998, p. 137), regional cooperation and global ocean governance remained in a state of politically endorsed indifference to each other.

Even more surprising is that this indifference continued into the first decade of the new millennium. The AEPS had noted that the A8 "agree to apply the principles concerning the protection and preservation of the Marine Environment as reflected in [UNCLOS]" (AEPS, 1991, p. 33), and thus suggested a harmonious nexus of implementation. A legally binding regional seas arrangement, as envisioned in the respective United Nations Environment Program (UNEP) policy initiative and legally underpinned by UNCLOS's part XII, section 2,

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<sup>2</sup> Despite administrations from at least Bill Clinton via George Bush to Barack Obama calling for ratification.



seemed to be a natural course of action. Its advantages had been emphasized by PAME's very first report (PAME, 1996). Yet, despite significantly expanding their marine environmental activities from the end of the 1990s, the AC members did not take up negotiations for a legally binding regional seas arrangement until 2015, when the US chairmanship brought it into the discussion. This led nowhere, however. The respective task force could not agree on anything significantly beyond the current institutional structure of the AC (cf. Humrich, 2018, pp. 226–230).

However, regional governance offered an opportunity to establish a cooperative nexus with UNCLOS by complementing the global rules for shipping – as laid down in the International Maritime Organization's (IMO) conventions. In combination with the 2004-published Arctic Climate Impact Assessment (ACIA), PAME was tasked to work on an Arctic Marine Shipping Assessment (AMSA), which was presented to the AC in 2009. It recommended the negotiation of updated and mandatory guidelines for Arctic shipping. While these developments certainly contributed to getting negotiations going on the mandatory Polar Code at the IMO, it was not Arctic regional cooperation that left its mark on the result. The negotiations of the Polar Code have not witnessed coalition of interests amongst Arctic states. For instance, comparing the approaches of Russia and Canada in the negotiations Dorottya Bognar-Lahr shows different emphases stemming from the two states' political and economic realities and capacities (Bognar-Lahr, 2020). Their one common position was to support the special rights they have under Article 234 of UNCLOS and ensuring that the Polar Code buttresses the international legal basis for these.<sup>3</sup>

Ironically, at the time when observers perceived the alleged lack of an overarching legal framework for Arctic governance, UNCLOS's significance for driving the dynamics in the region governance was probably greatest. When, according to Scott Borgerson (2008: p. 64) the “Arctic powers” were “racing to carve up the region”, that was neither a race nor due to alleged resource riches or new shipping highways. Of the five Arctic Ocean rim states (A5),<sup>4</sup> the four UNCLOS parties were simply submitting proposals for the limits of their continental shelves or preparing to submit these to the respective UN commission within the legally prescribed timeframe (10 years after ratification). This initially proceeded without regional cooperation. However, so concerned were non-Arctic states about the future of the region or so interested in its potential, and so persistent were the calls for an international Arctic treaty, that the A5 felt compelled to meet and initiate some sort of defensive regional cooperation. The

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<sup>3</sup> Article 234 is the so-called ice-paragraph, which allows a coastal state to set stricter rules for shipping in its Exclusive Economic Zone in ice-infested waters.

<sup>4</sup> Norway, Denmark/Greenland, Canada, US, Russia.

resulting 2008 Ilulissat Declaration was “explicitly designed to challenge the notion that the Arctic should be internationalized” (Dodds, 2013, p. 49).<sup>5</sup> On first view it endorses UNCLOS as part of an existing “extensive international legal framework” (A5, 2008). On second view, however, this only relates to those parts that concern the rights of the coastal states. Not only does the declaration marginalize the AC, and thus the remaining three Arctic states, it also leaves out matters of the High Seas and the Area, in which also other nations would have rights.<sup>6</sup> Instead, it claims a special “stewardship role” for the A5 and seems to reserve the right to involve other parties in the management of the Arctic Ocean as they see fit (cf. Humrich, 2018: pp. 231–232). The emerging governance of fisheries in the Central Arctic Ocean could serve as an example of subsequent institutional dynamics. With the Oslo Declaration of 2015, the A5 set the agenda and a political precedent first, even though they cannot claim any exclusive jurisdiction (Kuersten, 2016: p. 437).<sup>7</sup> Only then did the A5 invite other interested parties to join the club and to negotiate a more comprehensive and legally binding agreement, which was signed in 2018.

### *Indigenous Peoples’ Rights and Participation*

If the AC has been praised for one thing in particular (e.g., Heininen et al., 2018), it has been its inclusion of indigenous peoples’ organizations (IPOs) as permanent participants with full consultative rights in all deliberations of the AC, supported by an indigenous peoples’ secretariat administratively, and since 2017 by a fund that also supports the participation economically. However, the truly innovative character of IPO inclusion might make one forget that a substantive link between global conventions and regional cooperation also exists here, and state practice establishes a certain regional-global nexus. Moreover, the character of this nexus was a matter of long negotiations and deep disagreements, of which the respective documents reveal only a small part (cf. English, 2013).

The AEPS emphasized the important role of indigenous peoples and their special vulnerability to pollution and relevance for conservation, and the states committed to facilitate the participation of IPOs in their efforts under the strategy. What is notably absent in the AEPS is the 1989 International Labor Organization’s (ILO) convention 169, the Indigenous and Tribal Peoples Convention, which at the time was arguably the most important legally binding instrument dealing with indigenous peoples’ rights and participation at the global level. When

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<sup>5</sup> For a respective history of the Ilulissat Declaration, see Rahbek-Clemmensen and Thomasen (2018).

<sup>6</sup> As asserted, for instance, by China in its Arctic policy white paper (2018).

<sup>7</sup> See also Zou (2016, p. 460).

the AEPS was negotiated, all Arctic states were members of the ILO, but only Norway had ratified the global Convention 169, in 1996 followed by Denmark.<sup>8</sup> In the negotiations for the set-up of the Arctic Council, the indigenous peoples' participation emerged as a major point of contention. In the Ottawa Declaration (AC, 1996), the permanent participant status remained reserved for certain IPOs only (representing either one people in several countries or several people in one country) and limited in number to seven (at any time less than the member states). Moreover, after lengthy discussions over the "s" in peoples, a footnote stated that "the use of the term 'peoples' in this Declaration shall not be construed as having any implications as regard the rights which may attach to the term under international law" (AC, 1996, p. 2). This footnote epitomizes what must be regarded as a nexus of indifference between the regional cooperation at that time and the existing global standards.

The major global convention (ILO 169) did not have an acknowledged influence on regional cooperation, nor did the unique institutional innovation of the AC – the permanent participant status – seem to have significant impact on the AC's actions regarding the global level of indigenous peoples' governance. In 2007 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), even though not legally binding, arguably replaced ILO 169 as the most important global governance instrument. Over two decades in the making, the core of UNDRIP is the principle of the right of indigenous peoples to self-determination and governance over their natural resources. Arctic IPOs, notably the Inuit Circumpolar Council (ICC), have been active and instrumental in the drafting process for the Declaration, yet there is no record of the Arctic Council being involved or a regional effort being made. While most AEPS and AC declarations usually acknowledged new and relevant global governance instruments, the UNDRIP is, again, notably absent in the years after its adoption. Moreover, in the voting on UNDRIP, the US and Canada voted against and Russia abstained. Russia upheld its abstention and the US endorsed UNDRIP fully in 2010. Canada endorsed it with certain reservations in the same year. Only at the end of 2020 was a bill brought before the parliament by the Canadian government, which would fully implement UNDRIP in Canadian legislation. In this context, the discussion on the Nordic Sami Convention is also noteworthy. Proposed in 2005, after being negotiated since 2011, and signed by the three involved governments of Norway, Sweden and Finland January 2017, it is still under legislative review in the respective countries, also considering changes proposed by the participating Sami institutions. The proposed convention was criticized by indigenous peoples' representatives in Norway for going below some of the standards already in force since Norway's ratification of ILO convention

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<sup>8</sup> Until the time of writing this chapter the other Arctic states have not ratified ILO 169.

169. While the Norwegian government rightly points to a clause in the proposed convention preventing the undermining of further going commitments by the convention, this is not the case for Finland and Sweden, which did not ratify the ILO document. Investigating why the two latter states did not commit to ILO169 while Norway did, Semb pointed to the competing interests of forestry and mining industries with reindeer husbandry in Sapmi (2012). At least for these latter, the draft Nordic Sami Convention might, in our terms, be regarded as constituting a conflictive nexus directed against more demanding global standards (defensive).<sup>9</sup>

### *Climate Change*

As climate change brings more challenges to the Arctic and is one of the most daunting issues of our present time, the question of whether the existing regional cooperation in the Arctic is adequate to confront it is of paramount importance. In 2018, when several scholars nominated the AC for the Nobel Peace prize, they clearly seemed to think it was adequate. One of the mentioned reasons in support of the nomination was the forum's contribution to climate governance. The AC was credited as being "a leader in climate science and advocacy" and "the first organization to take climate-specific action at the regional level" (Heininen, 2018).

Two particular achievements stand out. First, the already mentioned ACIA was commonly regarded as a landmark document that made a global contribution and managed to put the Arctic into the spotlight, not only nationally, particularly in the US, but also to include the Arctic in the Intergovernmental Panel on Climate Change's knowledge production on the global level. Alf Håkon Hoel convincingly described this achievement as the result of a process on the regional level to find a respective governance niche in global climate governance (2007). However, this process was not necessarily inevitable. Contrary to some beliefs, neither the AEPS nor the Arctic Council were primarily set up to deal with climate change in the region. Rather, the AEPS explicitly stated that this topic was thought of being dealt with already in other fora – that is, the global level – upon which the United Nations Framework Convention on Climate Change (UNFCCC) was negotiated at the time (AEPS, 1991, p. 12). This desired state of indifference to existing global climate governance efforts gave way to initial efforts to establish a cooperative nexus during the 1993 AEPS Ministerial Meeting in Nuuk, which took place in the wake and under the impression of the 1992 United Nations Conference on Environment and Development (UNCED) and concomitant signing of the UNFCCC. "Noting the existing global cooperation", the Arctic Monitoring and Assessment Working Group

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<sup>9</sup> For how ILO 169 mattered in initial deliberations on the Nordic Saami Convention see Åhrén (2007).

(AMAP) was tasked “to identif[y] gaps [...] with a view to ensuring that specific issues related to the Arctic region are placed on the agenda of the appropriate international bodies” (AEPS, 1993). However, in the run up to and negotiations for the AC, climate change did not matter much (e.g., English, 2013, pp. 228–251). Specific activities were not considered before 1998 when preparatory steps were taken to assess consequences of climate change in the Arctic, and then led to the launch of the ACIA process in 2000.

The second achievement is the AC’s work on short-lived climate forcers (SLCFs), particularly black carbon and methane. At its 2009 Ministerial Meeting, the Arctic states decided to establish a Task Force on SLCFs, which produced two reports in 2011 and 2013. These led to a new task force mandated at the 2013 Ministerial Meeting “to develop arrangements on actions to achieve enhanced black carbon and methane emission reductions in the Arctic” (AC, 2013, p. 4). This task force, in turn, produced a Framework for Action by 2015, which among other things set an aspirational goal for emission reductions. By adopting this aspirational goal, “the Arctic states seek to fill the gap in the legal and governance landscape on black carbon” (Yamineva & Kulovesi, 2018, p. 214).

Looking through various AC declarations confirms the nexus between Arctic regional and global climate governance as mostly cooperative in both variants. The respective formulations and actions envisioned suggest the niche-seeking and gap-filling approach, while refraining from establishing a more harmonious link. Declarations mostly encourage the Arctic states to take effective measures to meet their global obligations individually, as well as remind states to do their bit to reach “adequate agreed outcome[s]” on the global level (AC, 2009, p. 2). However, a direct role for the regional level in norm-setting within the global regime or in its implementation is not spelled out. As Sebastian Duyck (2012) found, the legal documents of global climate governance did not pay special attention to the Arctic either. Even in the 2015 negotiations for the Paris agreement, the Arctic states did not develop a particular regional contribution nor did they individually bring a specific Arctic aspect to the global norm-setting process: they “have seldom referred to the region in their negotiating positions and, when they did, these references related primarily to the need for further scientific research on regional climate processes” (Duyck, 2015, 416). Moreover, the Arctic states did not manage to influence global norm-setting by repeatedly failing to form a respective coalition and leaving their imprint on the negotiations (Selin, 2017). Given the acknowledged urgency of climate change – in the Arctic Council’s own words, “one of the greatest challenges facing the Arctic” (AC, 2009, p. 1) – and having bolstered this evaluation with its own scientific assessments, this is certainly not much to speak of. It was mostly the US that prevented more here. During the administrations

of the two George Bushes and Donald Trump, advances in regional climate policy were blocked, but also with Bill Clinton and Barak Obama, progress was small and slow and mostly limited to furthering scientific assessments.

### *Environmental Protection and Conservation*

At the time the AEPS was negotiated, Arctic states deemed pollution and “accidental discharges and uncontrolled releases of pollutants” into the vulnerable Arctic environment the major problem to tackle on the regional level (AEPS, 1991: 12). Thus, over half of the document is devoted to outlining six respective pollution problems, reviewing existing international governance instruments (including global conventions), dealing with these, and then outlining actions to be taken. These actions are often framed as resulting from a gap-analysis or niche-seeking, but also as implementation and joint actions in relevant international fora to strengthen the global side of Arctic governance (AEPS, 1991). Arguably one of the most important founding documents of Arctic regional cooperation displays a vision of a cooperative or even harmonious nexus with global conventions regarding pollution. Ever since then, the explicitly expressed awareness of and link to existing conventions has been a feature of the regional environmental cooperation and also shows in subsequent reports and assessments. However, the question is to what degree this rhetoric is also reflected in actions.

In general, it can be stated that the AEPS or AC does not seem to have influenced the ratification patterns of identified relevant global conventions significantly. However, shifting away from an overly legalistic reading, the analysis needs to look into the policy processes and examine the ways in which Arctic states have collectively shaped global conventions of special importance for the Arctic or implemented these on the regional level. In the field of pollution and conservation, this can only be done in an exemplary way. To determine the actual merits of regional cooperation, it makes sense to look at cases of global conventions, which are usually considered successes of regional cooperation. First among these would certainly be the 2001 Stockholm Convention on Persistent Organic Pollutants (POPs), which aims to reduce emissions of these substances at the global level (cf. Selin 2017). POPs are carried into the Arctic from different parts of the world via long-range atmospheric transport as well as by ocean currents and rivers, and were mentioned the first of the pollution problems in the AEPS. The AEPS already envisioned joint action on the international level, particularly through AMAP. The role of Arctic science and work done under the AEPS and AC in addressing POPs has been highlighted as a significant contribution to the global norm-setting process (e.g.,

Koivurova et al., 2015; Selin, 2017). However, Stokke suggested that the impacts of AC activities on the adoption or contents of the Århus Protocol, upon which the Stockholm convention is built, “should not be over-estimated.” The credit should go to “research and monitoring activities by certain Arctic states – especially Canada and Sweden – rather than AMAP or other Arctic Council activities” (2007a, p. 406). Stokke also highlighted the active role played by the ICC. Moreover, it remains unclear whether the engagement of some AC member states to influence global levels of governance, in coordination with UNEP, was a consensus-based strategy from the AC or more a result of the AMAP secretariat’s rather independent, proactive role (Platjouw et al., 2018). In any case, a study of the negotiation process for the convention does not show any evidence of specific Arctic collaboration (Karlaganis et al., 2001). Rather, the particular role of individual states stands out; for instance Norway, which has acted as a green ambassador in the negotiation process (Rottem, 2017). That the convention might be less of a collective achievement than often assumed is also supported by the fact that the convention has not been ratified by the US yet, and that it does not apply to Greenland. Denmark lifted the reservation for the Faroes in 2012, but not for Greenland.

A second prominent case often presented as a positive example of global norm-setting in which Arctic states participated collectively, which suggests a harmonious nexus between regional cooperation and global conventions, is the 2013 Minamata Convention on mercury. While mercury is of global concern, its levels in the Arctic can be five to 50 times higher than those usually measured in Europe and North America (Platjouw et al., 2018). While mercury does not figure as prominently in the AEPS as POPs, it rose on the agenda through later work of AMAP. The respective insights were then also instrumental in paving the way for the convention: “To a large extent the pathway towards the Minamata Convention has been shaped through important science-policy interfaces, where the Arctic Council and its working group AMAP have been heavily involved” (Platjouw et al. 2018, 229). However, on closer look there are again some doubts about the degree to which this is a collective achievement of Arctic regional cooperation. On one hand, there is the lack of an initial Arctic regional coalition. When Norwegian government officials proposed a legally binding approach to the regulation of mercury in 2003, they did not go through the Arctic Council, but actually preferred to avoid the risk of a slow-down by those Arctic countries favoring a voluntary instead of legally binding approach to deal with the problem (Canada, US, and Russia). Instead, Norwegian government officials chose to go directly to UNEP and thus not to rely on the regional level. On the other hand, one could also again question the extent to which AMAP’s crucial role in the process is

an achievement of regional cooperation. It seemed to have been more the executive staff and researchers associated with AMAP directly who left a mark on the global process than the group of governments representing the AC on the basis of AMAP's findings. Moreover, lacking a funding mechanism at that time, it was not Arctic regional cooperation that raised the money for many of the related AMAP activities, but the Nordic Council of Ministers.<sup>10</sup>

Looking at two cases of 'inside-out' environmental governance, we found a potentially harmonious nexus between global conventions and regional cooperation. What about the outside-in perspective? As mentioned above, the AEPS and later AC reports listed relevant global conventions. As already indicated in the case of the UNFCCC, however, regional relevance did not necessarily translate into regional implementation. We have again selected two cases to show that what might appear as a harmonious nexus first turns out to be much less ambitious or probably even conflictive at second view.

Our first example is the 1991 Espoo Convention, which made it mandatory for its parties to take necessary legal, administrative, or other measures to ensure proper environmental impact assessments (EIA) in transboundary cases. The convention had already been identified as clearly relevant for the Arctic in the Nuuk Declaration (AEPS, 1993, §9) and explicitly endorsed again at the following Ministerial Meeting, where the Arctic states called for it to be ratified and implemented. Two years later, the regional cooperation under the AEPS had brought about the "Guidelines for Environmental Impact Assessment in the Arctic". These were received "with appreciation" and states agreed "that these Guidelines be applied" (AEPS, 1997, §3). Real added value was seen in specifying standards for its implementation under Arctic conditions. Yet, as Timo Koivurova and David VanderZwaag pointed out 10 years later, the Guidelines "did not appear to have influenced any environmental impact assessment processes in the Arctic" (2006, 158). Here, as in other cases, there simply was no collective regional follow-up, as states were left alone to implement the outcomes of their cooperation individually. Until today, the Espoo convention has been poorly ratified among the Arctic states. Despite having signed it, Iceland, Russia, and the US are still not parties.

As with the Espoo Convention, the "early ratification" of the UN's Convention on Biological Diversity 1992 (CBD) was endorsed by the Arctic states in the Nuuk Declaration – stating in the same paragraph "the need for effective application of existing legal instruments" (AEPS, 1993, §10).<sup>11</sup> For instance, the Nuuk meeting tasked the newly constituted working group on the Conservation of Arctic Flora and Fauna (CAFF) with developing a Circumpolar Protected

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<sup>10</sup> There are also doubts about the effectiveness of the convention for meeting the problem (VanderZwaag, 2015).

<sup>11</sup> The US is still not a party to the CBD.



Area Network Plan (CPAN), which was adopted in 1996. However, while some efforts were made to understand and synchronize representation of protective status according to the International Union for the Conservation of Nature's (IUCN) standardized criteria, little in the plan was really a collective regional effort to substantiate globally set ambitions. Instead, the states retained full control over the respective policies and did not commit to significant collective goals. Thus, while the plan involved some reporting and stock-taking, as well as knowledge production over the years, not much else happened. After 2005, the status of the respective sub-working group even became 'dormant' (cf. Koivurova, 2009), despite the 2002 World Summit on Sustainable Development (WSSD) explicitly calling for the establishment of representative protected area networks by 2012, and other regional cooperation arrangements ramping up their respective activities (for example, OSPAR from 2003). In the Arctic, new activities only emerged in 2013 when the processes started to develop a Framework for a Marine Protected Area Network, adopted in 2015. That was rather late to meet the so-called 2010 Aichi targets of the CBD, to which the Arctic states had globally committed. In these, a role for regions was envisioned, especially in the creation of protected area networks, and states were called on to put a respective percentage of land and marine areas under protection by 2020. However, the Framework explicitly leaves the implementation to each state individually. In the context of the long break in activities and the obvious disconnection with the global norm-setting processes in the CBD, it appears that rather than implementing CBD goals, the new activities come as defensive action against two other processes: the progress in the pre-negotiation phase for an international legally binding instrument for the protection of biodiversity beyond national jurisdiction, and the OSPAR activities for marine protected areas in the convention's area 1: the Arctic North-East Atlantic (cf. Rochette et al., 2014).

In the former, the question of the relation between global and regional arrangements was on the table early, with emerging agreement that existing regional arrangements should not be affected by the new global norms. To protect potential interests against intervention from the global level, it made sense – as in the fisheries case – to establish a regional precedent. In the OSPAR case, its Arctic members, Iceland and Norway, dodged the attempt to include marine spaces in area 1 in OSPAR's network strategy by invoking the AC's role as pre-eminent and thus competent forum for the region. The framework then undergirded that claim.

### *Arctic legal instruments*

In the case of pollution, regional governance activities of the Arctic states have exerted some modest influence on the negotiation of legally binding global conventions. Within the Arctic, however, we so far have dealt with soft-law instruments only. This corresponded to the regional cooperation's underlying political and functional rationale since its inception, as well as to the later-expressed conviction of the A5 that there was no need for a comprehensive legally binding instrument regulating Arctic affairs (cf. A5, 2008). Yet, as a follow-up to AMSA, the Arctic states negotiated two legally binding issue-specific agreements. The first agreement signed under the auspices of the Arctic Council was the 2011 Agreement on cooperation on aeronautical and maritime search and rescue in the Arctic (SAR). Only two years later, the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (MOSPA) was signed. In 2017 the Arctic states added the Agreement on Enhancing International Arctic Scientific Cooperation. Thus, the question is whether these added value to the global governance of the Arctic.

All three agreements have a substantive link to global conventions. The SAR agreement covers commitments the Arctic States already have under the IMO SAR Convention and the Convention on International Civil Aviation (the Chicago Convention) (Kao et al, 2012). The 1990 International Convention on Oil Pollution Preparedness, Response, and Co-operation to which MOSPA is related in substance seems to be the only convention of major significance for the Arctic that is signed by all Arctic states. However, it lacks a specific Arctic focus and, arguably, measures attuned to the special circumstances of the vulnerable Arctic environment. While the Science agreement is not limited to the Arctic Ocean, in this area it clearly relates to the respective provisions for marine scientific research in UNCLOS' part XIII (Shibata, 2019). For both the SAR and MOSPA it has been argued that the obligations of the respective agreements do not add anything to existing commitments of the Arctic states from either the mentioned global conventions or other bilateral and multilateral agreements (for example, with respective neighboring states).<sup>12</sup> Svein Rottem stated that the texts “do not indicate a desire [...] to press ahead regarding binding international agreements” (2015, p. 56). This impression is further confirmed when considering that the A8 also deliberated on an agreement about the prevention (and not only preparedness and response) of oil spills in the Arctic. As Cécile Pelaudeix (2018) showed, differences in regulation among Norway, Denmark/Greenland, and Canada were tightly related to the respective energy policies. Thus, agreement would have required “advances to be made across the very delicate sphere of industrial standards and corporate secrets” (Vasiliev, 2015, p. 147). Because variance in national regulation was too

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<sup>12</sup> For MOSPA see Byers and Stoller (2013); for SAR see Kao et al. (2012), and Rottem (2015).

broad to be harmonized, cooperation on the topic of oil spill prevention remained on the soft law level. If the agreements do not add anything, what do they do instead?

We feel that these agreements are best understood as establishing a conflictive nexus and thus defensive link between the global conventions and regional governance. By agreeing on the SAR and MOSPA, the competence to discuss related matters was moved to the regional level at a time where they became more relevant. That they do not go beyond existing obligations suggests that they might have a symbolic function primarily. They signal who is in charge (Rottem, 2015). The same seems to apply to the Science agreement, for which Akiho Shibata has pointed out that, against the backdrop of UNCLOS provisions, it raises the question of the “balance between universalism and regionalism” (Shibata, 2019, p. 214). While Shibata concluded that there is no necessary legal conflict in the provisions of the agreement with UNCLOS, he also pointed out that the agreement signals a shift to a regional “paradigm” for scientific activities. By limiting the opportunities for other polar research nations from actively participating in the agreement (such as meeting of the parties), here as in the other two cases, Arctic states assumed at least political prerogatives on the regional level against the rights and interests of non-Arctic states.

### **Conclusion: How to make sense of the regional-global nexus in the Arctic**

Our brief analysis of the links between regional cooperation and global conventions in the Arctic has revealed that, in most of the issue areas under scrutiny here, the nexus rather falls short of adding value for Arctic governance or the governance of the Arctic, and where it does not, the contribution is modest at best.

Regarding UNCLOS, we argued that regional cooperation initially featured indifference due to political sensitivities. Even when cooperation intensified, the Arctic states failed to establish a more cooperative nexus. Rather, the A5 have taken defensive action to limit other states’ claims in the Arctic Ocean. Regarding indigenous peoples’ rights and participation, the Arctic Council is certainly special in terms of how it has institutionally involved IPOs. However, that has not translated into a harmonious or cooperative role of the AC in the global governance of indigenous affairs. Even on the problem that transforms the entire region and arguably is the most serious environmental threat today – climate change – regional cooperation has, again after starting with stated indifference of regional cooperation as to global governance in the AEPS, established a limited cooperative nexus to global governance at best. A harmonious nexus regarding inside-out activities can be observed in the often-quoted cases of the Stockholm

and the Minamata Conventions. However, even these cases need to be qualified to the effect that the contribution of regional cooperation to global governance is modest at best. While some conventions were tackled on the regional level, the Arctic cooperation did not significantly influence ratification patterns and where the regional contribution to implementation produced regional recommendations (such as for EIA in the Arctic), there was little implementation review or follow-up. Therefore, it is difficult to see that the Arctic Council has added more than just minor attempts to make the regional level relevant for the implementation of global conventions. Finally, the merits of the regional agreements reached under the auspices of the Arctic Council make the most sense when understood as a signal to non-Arctic actors that the Arctic states are and want to remain in control of governance in the region.

Regional cooperation and the AC's institutional set-up, output, and outcomes do not show significant signs of shared sovereignty or of delegation of authority or effective embedding in a global governance architecture for the region. In a sense, Arctic governance remains strictly "Westphalian" (cf. Pelaudeix, 2014). Regional cooperation is determined by differing and narrowly interpreted national interests, with respective pivotal states setting the lowest common denominator for agreement, and by governments seeking to preserve their prerogatives. Moreover, it becomes more regional and less global the more it came into the global spotlight and non-Arctic states developed interest in the region. It seems that Arctic states can agree to keep commitment low and non-Arctic actors out (cf. Humrich 2017). This casts some doubts on the capacity of Arctic regional cooperation to successfully manage the problems of global impacts *within* and world-wide implications *of* the Arctic. Therefore, making global conventions count for regional cooperation will require the engagement of civil society. It needs to pressure the governments nationally, regionally, and globally to live up to the magnitude of the challenges brought about in the region by globalization, climate change, and pollution. The fact that the Arctic is in the global spotlight might help in that, at least.

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