

REFORMING THE ARCTIC COUNCIL AGAINST INCREASING CLIMATE CHANGE CHALLENGES IN THE NORTH

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ABSTRACT

The Arctic states established the Arctic Council aiming to promote environmental protection and sustainable development in the Arctic. However, climate change occurring in the region seriously affects both of these objectives. The Council has incorporated the climate change issue within its main agenda and produces substantial climate change science, and supplies valuable information to the policy-makers and general public in the region. However, the Council does not seem entirely successful in addressing climate change challenges in the region. As a soft-law body, the Council cannot create legally binding obligations under international law could be seen as a disadvantage with respect to its ability on one hand. While soft law character helps the Council in avoiding strict formalities articulated in international law, also allows the participation of non-state actors at policy-making level in resolving regional problems along with states, on the other hand. This paper suggests a few recommendations for the Arctic Council so that it may function better in the field of climate change.

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I. INTRODUCTION

The Arctic is the northern most part of the globe that holds special geographic features such as ice, snow, permafrost, northern lights, sunless days, midnight suns, and so on. The inhabitants of the region including various groups of indigenous

peoples have found their way of life in the traditional Arctic environment. However, increasing climate change has brought significant changes in the Arctic environment such as early summers, late winters and rapid melting of sea ice and permafrost are reported as common phenomena.¹ These ongoing physical and environmental changes have led to new opportunities in the region, while also posing significant pressures on both its governments and inhabitants.² Moreover, climate change in the region not only affects the Arctic residents, flora and fauna, but also impacts on the rest of the world.³

The Arctic Council (AC) is the only international governance system in the North where all self-described Arctic states have membership, created in 1996 via the Ottawa Declaration,⁴ which is in fact the general outgrowth of the Arctic Environmental Protection Strategy (AEPS) established in 1991 by the same group.⁵ The AC was formed as a soft-law form of governance, to promote environmental protection and sustainable development in the Arctic.⁶ However, climate change has posed immense threats to both objectives – protection of Arctic environment and maintaining sustainable development in the Arctic.⁷ Then the AC incorporated the issue of climate

¹ See generally CLIMATE CHANGE 2007: SYNTHESIS REPORT – AN ASSESSMENT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 30-31, 33, 46, 52, available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf. [hereinafter AR4 Synthesis Report]; See generally ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), ARCTIC CLIMATE ISSUES 2011: CHANGES IN ARCTIC SNOW, WATER, ICE AND PERMAFROST v, vi, vii, 3,5,10 (2011), available at <http://www.amap.no/documents/doc/arctic-climate-issues-2011-changes-in-arctic-snow-water-ice-and-permafrost/129>.

² See generally ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), *supra* note 1, at vii.

³ *Id.* at 80-82. SUSAN J. HASSOL, ACIA, IMPACTS OF A WARMING ARCTIC: ARCTIC CLIMATE IMPACT ASSESSMENT 10 (Carolyn Symon ed., 2004) [hereinafter ACIA Overview Report].

⁴ See Arctic Council, Declaration on the Establishment of the Arctic Council, (Sept. 19, 1996), 35 I.L.M. 1382, 1388 [hereinafter Ottawa Declaration].

⁵ See generally Arctic Environmental Protection Strategy: Declaration on the Protection of Arctic Environment, (Jan. 14, 1991), 30 I.L.M. 1624 [hereinafter AEPS] (explaining Arctic environmental protection strategy).

⁶ See Ottawa Declaration, *supra* note 4, art. 1(a).

⁷ *Id.* intro. at 1387-88.

change within its agenda after two years of its inception and presently the issue dominates the core activities – most of the current and forthcoming projects of the AC connect to climate change.⁸ Since then, it has been providing policy-makers and the general public with valuable information and produces science in the field of climate change.

The AC has become successful (to some extent) primarily by creating awareness among local residents about the main causes and negative consequences of climate change in the region, although it does not seem to have successfully addressed all the challenges caused by climate change in the Arctic.

The U.S. Secretary of State John Kerry has recently conveyed a message about the future priority of the Arctic Council, stating that the USA would continue the efforts of Canada when its chair period starts after two years.⁹ According to Mr. Kerry, climate change would be the number one agenda item since President Barack Obama at least twice emphasized the significance of the issue of climate change – once in his inaugural address and once in his State of the Union message.¹⁰ The top two CO₂ emitters, USA and China,¹¹ are connected to the AC: the former is going to be the next chair and the latter has been accredited as an observer state, which may raise a scholarly question of how the AC should address its duties to handle the issue of climate change from the viewpoint of the Arctic.

During the year 2013 it is appropriate to evaluate the AC's climate change activity when massive transformations are on the way within the governance system, including setting up a permanent secretariat.¹² More importantly, all the Arctic states

⁸ Timo Koivurova & Md. Waliul Hasanat, *The Climate Change Policy of the Arctic Council*, in CLIMATE GOVERNANCE IN THE ARCTIC 63, 72 (Timo Koivurova, Karina Keskitalo & Nigel Bankes eds., 2009).

⁹ *Kiruna Ministerial Meeting*, ARCTIC COUNCIL (May 15, 2013), <http://www.arctic-council.org/index.php/en/events/meetings-overview/kiruna-ministerial-2013>.

¹⁰ *Id.*

¹¹ For emission rates please see *World CO₂ Emission by Country*, TRIPMONDO.COM, <https://www.tripmondo.com/magazine/facts-and-statistics/world-co2-emission-by-country/> (last visited Dec. 2, 2013).

¹² The other major developments include introducing regularly budgeting system instead of voluntarily funding, appearing in more responsible way by creating formal international treaties which create legally binding obligations,

have gained experience being the chair of the AC with the completion of the first round.¹³ Canada's withdrawal from the Kyoto Protocol while present chair of the AC warrants scholarly interest – as to how Canada will lead the AC tackling climate change challenges faced by the governments and peoples in the North. Any suitable suggestions prepared for the AC may offer the newly created permanent secretariat, the chair, and the member states ways to efficiently address climate change challenges occurring in the region.

The article comprises six separate parts: following the introduction, part two describes the AC briefly in general and may provide general readers with an understanding of its functioning system and involved entities who may not know much about the AC. Part three focuses on the climate change related activities of the AC; Part four examines AC's shortcomings, taking into consideration its handling of climate change in the North. Part five searches for possible means to strengthen the AC's capability to counter climate change challenges. The final part draws the conclusion based on the analysis of other parts and prepares a few recommendations in this regard.

II. THE ARCTIC COUNCIL

The Arctic states and indigenous peoples established the AC as a “high-level intergovernmental forum” for the North.¹⁴ During the course of time, the AC has developed through distinct organisational and operational structures, which generate an idea that the AC is very close to an international organisation

formulating clear rules for involved non-Arctic states and organisations within the AC activity etc. *See infra* part v(c).

¹³ Kiruna Declaration, Arctic Council, May 15, 2013, *available at* <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting> [hereinafter Kiruna Declaration].

¹⁴ *History*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/arctic-council/history> (last visited Nov. 7, 2013).

although neither the AEPS nor AC is an international organisation from the viewpoint of public international law.¹⁵

A. Organizational Framework

The organizational framework denotes the basic structure of the AC, which is responsible for carrying out its interior functions and policymaking. The organizational framework comprises three different types of entities:

- Member;
- Permanent Participant; and
- Observer¹⁶

Member

The eight Arctic¹⁷ states are members of the Arctic Council. According to the Ottawa Declaration, “[m]embers of the Arctic Council are: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden, and the United States of America (the Arctic States).”¹⁸ Thus, seemingly there is no chance to accredit any other member in its present situation since there is

¹⁵ Since neither the AEPS nor the AC has been created through the conclusion of formal international treaties. Timo Koivurova, *Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance*, 46 POLAR REC. 146, 148, 153 (2010); David L. VanderZwaag, et. al, *The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering While the Arctic Marine Environment Totters*, 30 DENV. J. INT’L L. & POL’Y 131, 154 (2002).

¹⁶ Md. Waliul Hasanat, *Towards Model Arctic-Wide Environmental Cooperation Combating Climate Change*, 20 Y.B. INT’L ENVTL L. 127, 127-28 (2009).

¹⁷ SWEDEN MINISTRY FOR FOREIGN AFFAIRS, SWEDEN’S STRATEGY FOR THE ARCTIC REGION 11 (2011), available at <http://www.government.se/content/1/c6/16/78/59/3baa039d.pdf>. There is no single definition of the Arctic. However, the political definition nowadays is mostly accepted - “the Arctic includes all areas north of the Arctic Circle and the associated eight Arctic states.” *Id.* However, the terms “Arctic”, “Circumpolar North” and “North” are used in this article parallel for the same geographic area – the Northern most part of the globe.

¹⁸ Ottawa Declaration, *supra* note 4, art. 2.

no Arctic state outside its membership. This may pose a different situation for Denmark with respect to its membership at the AC in the future when Greenland gets independence as a fully sovereign state.

Ministers for Foreign Affairs from each member state meet biennially¹⁹ at what is known as the Ministerial Meeting. This meeting is the highest policy-making body for the AC. The AC has also introduced a meeting of deputy ministers between the Ministerial Meeting to lessen the gap of communication at a political level since 2010.²⁰ Both ministers and deputy ministers guide the Senior Arctic Officials (SAO), recruited from each Arctic state, to implement their political commitments.²¹

Permanent Participant

Permanent Participant (PP) refers to special type of membership within the AC that does not have a voting right but is entitled to take part in the decision making process, which is a comparatively new concept in international cooperation. They are entitled to raise a point of order during any discussion on an issue which will be decided immediately by the chairperson.²² Consultations with them are required to fix the time and location of Ministerial Meetings²³ and ascertain the size of delegations.²⁴ They are entitled to propose supplementary agenda items²⁵ or cooperative activities in AC meetings.²⁶

¹⁹ *Arctic Council Rules of Procedure*, ¶ 15, ARCTIC COUNCIL (Sept. 17-18, 1998), <http://www.arctic-council.org/index.php/en/document-archive/category/4-founding-documents#> (download *Arctic Council Rules of Procedure*) [hereinafter *Rules of Procedure*].

²⁰ *FAQ, Ministerial Meetings*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/resources/other-resources/faq> (last visited Sept. 26, 2013).

²¹ MD WALIUL HASANAT, *SOFT-LAW COOPERATION IN INTERNATIONAL LAW: THE ARCTIC COUNCIL'S EFFORTS TO ADDRESS CLIMATE CHANGE* 192 (2012).

²² *Rules of Procedure*, *supra* note 19, ¶ 12

²³ *Id.* ¶ 15.

²⁴ *Id.* ¶ 13.

²⁵ *Id.* ¶ 19.

²⁶ *Id.* ¶ 26.

During the course of time, the PPs have developed much influence through their position. Their inclusion as PPs is a way of recognizing the special importance of Northern indigenous peoples.²⁷ The idea behind accrediting PPs is to ensure their active involvement and full consultation concerning AC activities.²⁸

The establishing instrument of the AC specifies the criteria for PPs – single group of indigenous people resident in more than one arctic states; more than one indigenous people resident in single Arctic state.²⁹

The AC has granted PP status to six indigenous communities in the Arctic:

- The Inuit Circumpolar Council
- The Saami Council
- The Russian Association of Indigenous Peoples of the North
- The Aleut International Association
- The Arctic Athabaskan Council and
- The Gwich'in Council International.³⁰

Observers

The AC has granted observer status to a number of non-Arctic states, global and regional inter parliamentary organizations, along with non-governmental organizations who may actively take part in its activities.³¹ Their main functions include observing the activities of the AC, although they are

²⁷ *Terms of Reference for a Sustainable Development Programme* para. 2, ARCTIC COUNCIL (Sept. 17-18, 1997), <http://www.arctic-council.org/index.php/en/document-archive/category/4-founding-documents#> (download *Terms of Reference for a Sustainable Development Programme*) [hereinafter *Terms of Reference*].

²⁸ Ottawa Declaration, *supra* note 4, art. 2.

²⁹ *Id.*

³⁰ *Permanent Participants*, ARCTIC COUNCIL <http://www.arctic-council.org/index.php/en/about-us/permanent-participants> (last visited Nov. 7, 2013).

³¹ Ottawa Declaration, *supra* note 4, art. 3.

encouraged to contribute to these activities at the level of working groups.³²

Presently 12 states have observer status within the AC: France, Germany, Poland, Spain, the Netherlands, the United Kingdom, China, India, Italy, Japan, Republic of Korea and Singapore.³³ Nine³⁴ intergovernmental organizations and eleven³⁵ non-governmental organizations have observer status within the AC.³⁶ The EU presently acts as an *ad hoc* observer until further decision is made on a pending application of EU Commission, requesting for the observer status to the AC.³⁷ There is a growing number of states showing interest in AC activities, which encouraged SAOs to adopt an observer manual³⁸ that articulates the role of observers among other things.³⁹

³² Arctic Council [AC], Arctic Council Observer Manual for Subsidiary Bodies, ¶ 6, available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting> (last visited Sept. 12, 2013).

³³ *Observers*, ARCTIC COUNCIL <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers> (last visited Nov. 7, 2013).

³⁴ International Federation of Red Cross & Red Crescent Societies, International Union for the Conservation of Nature, Nordic Council of Ministers, Nordic Environment Finance Corporation, North Atlantic Marine Mammal Commission, Standing Committee of the Parliamentarians of the Arctic Region, United Nations Economic Commission for Europe, United Nations Development Program and United Nations Environment Program. Arctic Council, *Observers*, (April 27, 2011), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>.

³⁵ Advisory Committee on Protection of the Seas, Arctic Circumpolar Gateway, Association of World Reindeer Herders, Circumpolar Conservation Union, International Arctic Science Committee, International Arctic Social Sciences Association, International Union for Circumpolar Health, International Work Group for Indigenous Affairs, Northern Forum, University of the Arctic and World Wide Fund for Nature-Global Arctic Program. Arctic Council, *Observers*, (April 27, 2011), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>.

³⁶ *Observers*, *supra* note 33.

³⁷ See Webcast of Kiruna Ministerial Meeting, *supra* note 9.

³⁸ See Arctic Council Observer Manual For Subsidiary Bodies, *supra* note 32.

³⁹ Kiruna Declaration, *supra* note 13, at 6 (the part: Strengthening the Arctic Council).

B. Operational Framework

Operational framework means, for the purposes of this article, the structure through which the AC performs various activities. The operational framework mainly includes:

- Senior Arctic Officials
- Working Groups, and
- The Secretariat⁴⁰

Senior Arctic Officials

Each Arctic state designates a senior level government servant responsible to arctic affairs for their government.⁴¹ However, SAO meetings include a senior official from each of the Arctic states and PPs' representatives.⁴² The SAO coordinates, monitors, and guides the subordinate bodies (e.g., working groups and task forces) formed under the AC,⁴³ and receives reports from them.⁴⁴ The SAO reports to the AC regularly on the basis of those subordinate bodies' reports, reviews proposals concerning cooperative activities submitted by the member states or PP, and prepares recommendations on those proposals for the AC Ministerial Meetings.⁴⁵ The Arctic Ministers instruct the SAO to provide means for addressing individual issues connected with the AC.⁴⁶ The SAO requires convening at least two meetings a year,⁴⁷ but the frequency of the meetings mainly depends on the willingness of the chair states.

Working Groups

⁴⁰ Hasanat, *supra* note 16, at 130.

⁴¹ Rules of Procedure, *supra* note 19, pt. II ¶ 21.

⁴² *Id.*

⁴³ *See id.* pt. IV.

⁴⁴ *Id.* pt. II ¶ 23.

⁴⁵ *Id.* pt. II ¶ 24.

⁴⁶ Hasanat, *supra* note 16, at 130.

⁴⁷ Rules of Procedure, *supra* note 19, pt. II ¶ 25.

The AC forms Working Groups (WG), Task Forces (TF), and other subsidiary bodies to prepare programs and carry out different activities under the guidance of the SAO.⁴⁸ The idea of forming WGs is to create expert groups within the AC in specific areas and allocate distinct types of work to each of them. The WGs are comprised of representatives drawn mainly from the national ministries, including other government bodies of member states and from the PPs.⁴⁹ The AC Ministerial Meetings fix the mandate and composition of the WGs.⁵⁰ Each WG selects its chairperson and vice-chairperson, fixing their tenure subject to consultation with the SAO.⁵¹ The secretariats of the WGs are supported voluntarily by individual member states.⁵² The date, venue and agenda of the meetings of WGs are set by the consensus of the participating Arctic states.⁵³ Each WG may establish its own operating guidelines on the basis of SAOs instruction.⁵⁴ Currently the AC operates its activities through six WGs: The Arctic Monitoring and Assessment Program (AMAP), Protection of Arctic Marine Environment (PAME), Emergency Prevention, Preparedness and Response (EPPR), Conservation of Arctic Flora and Fauna (CAFF), The Sustainable Development Working Group (SDWG), and The Arctic Contaminants Action Program (ACAP).⁵⁵ All of the WGs contribute to the activity of the AC, although the efforts of AMAP and SDWG are much higher compared to other WGs. However, the AC has not yet determined the working boundaries of the WGs, which has

⁴⁸ *Id.* pt. IV ¶ 28.

⁴⁹ HASANAT, *supra* note 21, at 193.

⁵⁰ REVISED ARCTIC COUNCIL R. P. 28, available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting>.

⁵¹ *Id.* pt. IV ¶ 29.

⁵² The AMAP secretariat is located in Oslo, Norway. The PAME secretariat is located together with the CAFF secretariat in Akureyri, Iceland. The EPPR and ACAP secretariats are situated in Moscow, Russia, and the SDWG secretariat is located in Ottawa, Canada.

⁵³ *Rules of Procedure*, *supra* note 19, pt. IV ¶ 30.

⁵⁴ *Id.* pt. IV ¶ 31.

⁵⁵ Arctic Council, *Working Groups*, (April 11, 2013), <http://www.arctic-council.org/index.php/en/about-us/working-groups>.

created ambiguity for many projects seeking implementation through the appropriate WG.⁵⁶

In addition to the above mentioned WGs, the AC has set several Task Forces (TF)/Action Plans from time to time, such as the Task Force for Institutional Issues (TFII),⁵⁷ and Task Force on Search and Rescue.⁵⁸ The TFs work on specific issues or for a limited amount of time. A TF is comprised of expert groups from WGs and representatives from member states.⁵⁹ A TF may come to an end when it has produced the desired result; alternatively, a TF/AP may be shifted to WG when the AC finds its work to be important – the Arctic Council's Action Plan to Eliminate Pollution in the Arctic (ACAP) was endorsed at the 2000 Barrow Ministerial Meeting,⁶⁰ aiming to focus mainly on pollution prevention and remediation, which was transformed into a WG in 2006 renamed as the Arctic Contaminants Action Program (ACAP).

The Secretariat

The AC waited a long time to create the Arctic Council Secretariat (ACS). – earlier the responsibility of providing secretarial support was imposed on the chair state, which is presently performed following rules as set out in the Terms of Reference for the secretariat.⁶¹ In 2006, the AC got a semi-permanent secretariat when three Nordic states (Norway, Denmark and Sweden) agreed to share a common secretariat located in Tromsø (Norway) during their chairmanships (2006 to

⁵⁶ HASANAT, *supra* note 21, at 193.

⁵⁷ Arctic Council, *Task Force for Institutional Issues*, (Dec. 29, 2011), <http://www.arctic-council.org/index.php/en/password-for-tfii>.

⁵⁸ Arctic Council, *Task Force on Search and Rescue*, (Dec. 29, 2011), <http://www.arctic-council.org/index.php/en/about-us/working-groups/task-forces/282-task-force-on-search-and-rescue>.

⁵⁹ Arctic Council, *Task Forces of the Arctic Council*, (Dec. 29, 2011), <http://www.arctic-council.org/index.php/en/about-us/working-groups/task-forces/279-task-forces-of-the-arctic-council>.

⁶⁰ Barrow Declaration, Arctic Council, art. 2, Oct. 13, 2000.

⁶¹ REVISED ARCTIC COUNCIL R. P. 32, *available at* <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting>.

2012).⁶² Subsequently, the idea for the establishment of a permanent secretariat was endorsed by the Nuuk Ministerial Meeting in 2011 and it was decided to establish a task force to implement the decisions to strengthen the AC, including any necessary practical arrangements to establish the secretariat;⁶³ the SAO adopted the Terms of Reference of the Arctic Council Secretariat⁶⁴ in 2012, and finally the Tromsø secretariat became the permanent secretariat of the AC in 2013.

III. CLIMATE CHANGE WORKS OF THE ARCTIC COUNCIL

The AEPS, the forerunner of the AC, acknowledged climate change as a major threat to the Arctic environment⁶⁵ and articulated a principle showing “respect the Arctic’s significance for and influence on the global climate”⁶⁶ other than including it in its working agenda. However, the AC has incorporated the climate change issue under its mandate within two years of its inception and at the present the issue of climate change plays a dominant role in the AC.⁶⁷ Being a soft-law form of governance, the AC can do little to mitigate global climate change, which requires a cut in CO₂ emission from all parts of the world. However, contributions for adaptation to climate change and its consequences require actions within the region. The climate change work of the AC includes the establishment of the Arctic Climate Impact Assessment (ACIA), ACIA Policy Document, the Arctic Council Focal Point, Snow, Water, Ice and Permafrost in the Arctic (SWIPA), the Arctic Council Task Force on Short-lived Climate Forcers, climate change related reports/project, and the AC’s involvement in the global climate change regime.⁶⁸

⁶² Norwegian, Danish, Swedish common objective for their arctic council chairmanships, common objectives and priorities for the Norwegian, Danish and Swedish chairmanships of the arctic council (2006-2012).

⁶³ Nuuk Declaration, Arctic Council, at 2, May 12, 2011.

⁶⁴ Terms of Reference of the Arctic Council Secretariat, Arctic Council, ¶ 2, DMM02-15 (May 15, 2012).

⁶⁵ AEPS, *supra* note 5, § 6, at 30.

⁶⁶ *Id.*, § 2.2(iii)(c), at 10.

⁶⁷ See Hasanat, *supra* note 16, at 139-139.

⁶⁸ HASANAT, *supra* note 21, at 117.

A. Arctic Climate Impact Assessment

The AC (AMAP and CAFF) and the International Arctic Science Committee⁶⁹ jointly established the ACIA in 2000 and intended to gather knowledge on climate change and ultraviolet radiation in the Arctic.⁷⁰ ACIA produced an overview report⁷¹ in 2004, mainly prepared for the policy-makers and general public, and produced a scientific report⁷² in 2005 made for people with technical knowledge.⁷³

The ACIA overview report presented significant changes caused from climate change in the Arctic including ten key findings:⁷⁴

1. The Arctic climate is now warming rapidly, and much larger changes are projected;
2. Arctic warming and its consequences have worldwide implications;
3. Arctic vegetation zones are very likely to shift, causing wide-ranging impacts;
4. The diversity of animal species, their ranges and distribution will change;
5. Many coastal communities and facilities face increasing exposure to storms;
6. Reduced sea ice is very likely to increase marine transport and access to resources;
7. Thawing ground will disrupt transportation, buildings, and other infrastructures;
8. Indigenous communities face major economic and cultural impacts;
9. Elevated ultraviolet radiation levels will affect people, plants, and animals;
10. Multiple influences will interact to cause increased impacts on people and ecosystems.

⁶⁹ *About ISAC*, INT'L ARCTIC SCI. COMM., <http://www.iasc.info/home/iasc> (last visited Sept. 5, 2013).

⁷⁰ ACIA, *Arctic Climate Impact Assessment*, 6(2005) [hereinafter ACIA Scientific Report].

⁷¹ ACIA Overview Report, *supra* note 3.

⁷² ACIA Scientific Report, *supra* note 70.

⁷³ Both reports were prepared based on the same data and obtained from a combination of modern research and traditional indigenous knowledge.

⁷⁴ ACIA Overview Report, *supra* note 3, at 10-11.

The report has also presented a number of alarming phenomena relevant to the Arctic.⁷⁵ One of the important elements of the ACIA report is the projection of climate change impacts on human beings (in particular the indigenous peoples of the Arctic) from various perspectives.⁷⁶ Climate change may threaten the cultural survival of Arctic indigenous peoples, whose ways of life are based on herding, hunting, and fishing.⁷⁷ The detrimental consequences of climate change may deprive these peoples of their traditional food and they may have to adapt to new species, which may move to the North.⁷⁸ The change in the Arctic would also cause more challenging conditions for them to hunt marine mammals on thin ice, since open water is less predictable than water that is covered by ice.⁷⁹ In regard to health, new insect and animal vectors may cause new diseases and increasing levels of skin cancer, cataracts, and viral infections are already evident in the region.⁸⁰ The effect of climate change on the petroleum and fishery industries may be mixed. Whilst increased shipping would develop the financial situation of the Arctic, it could also cause further pollution.

⁷⁵ The temperature rise in the Arctic within a century is projected to be up to 7 degrees centigrade. *Id.* at 27. The increase of glacial melt and river runoff flows will deposit more freshwater into the ocean. *Id.* at 37. This may slow the water circulation, which usually carries tropical heat to the Arctic. *Id.* Together with a rise in sea level, the disturbances of insects and other non-native species may cause new diseases. *Id.* at 10, 33, 37. The present level of received UV radiation per person in the Arctic is 30% higher than previously measured. *Id.* at 11. The northern shrimp collection could decline by up to 70%. *Id.* at 115. Infrastructure damage resulting from the thawing of permafrost in Siberia is projected to rise by up to 90% based on a survey of the 1990s. *Id.* at 117. The abundance of sea lions has declined up to 80% over a few decades in the seas adjacent to Chukotka, Alaska and the Western Canadian Arctic. *Id.* at 118. In summertime, the maximum northward retreat of ice is projected to increase from the present 150-200 kilometers to 500-800 kilometers during this century. *Id.* at 120.

⁷⁶ ACIA Scientific Report, *supra* note 70, at 61-98.

⁷⁷ *Id.* at 77.

⁷⁸ *Id.* at 76-77.

⁷⁹ *Id.*

⁸⁰ ACIA Scientific Report, *supra* note 70, at 864-902.

B. ACIA Policy Document

The Arctic Council has issued the ACIA Policy Document inspired by the ACIA report.⁸¹ In order to combat climate change in the Arctic, the ACIA Policy Document suggests two types of actions: mitigation and adaptation.⁸² For the mitigation of climate change-related risks and considering the findings of the ACIA and other relevant studies for the implementation of the recommendations under the United Nations Framework Convention on Climate Change (UNFCCC) and other agreements; the policy document has suggested taking decisive actions without delay, to address global emissions.⁸³ The Document urges the limitation of greenhouse gas emissions to standard levels, the promotion of appropriate technologies and sources of energy, and the adoption of policies and programs for the conservation and enhancement of carbon sinks and reservoirs, following the principles of sustainable development.⁸⁴

The mitigation of climate change in a specific region is both challenging and uncertain, mainly for reasons of regional governance. However, adaptation to climate change could be a useful means in situations where climate change is unavoidable and special attention is needed to strengthen the adaptive capacities of Northern populations.⁸⁵ The Policy Document recommends that the Arctic states work closely with residents of the Arctic (including indigenous and local communities) in order to promote their ability to adapt to and manage the various

⁸¹ Arctic Council [AC], *Arctic Climate Impact Assessment Policy Document*, Fourth Arctic Council Ministerial Meeting (Nov. 24, 2004) [hereinafter *Policy Document*]. The AMAP and the CAFF were invited to prepare the ACIA policy report on the basis of the ACIA findings. They formed a policy drafting team comprising designated people from member states and permanent participants. The team prepared three drafts of the policy report as well as those sent to the SAO in an informal manner. They developed four sets of recommendations (i) mitigation, (ii) adaptation (iii) research and (iv) observation, monitoring, modeling, communication and education including a scientific summary. See Arctic Council, *Draft Minutes*, Arctic Council Meeting for Arctic Officials, ¶ 6.2, (Oct. 23-24, 2004).

⁸² *Policy Document*, *supra* note 81.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

impacts of climate change. Further, the Document has encouraged national and international research bodies and sponsors to develop and implement programs since increasing natural and social science research on the impact of climate change and adaptation to it may play a useful role in adapting local people to the changed situation.⁸⁶ Also the dissemination of the ACIA documents in international forums will improve cooperation at both national and local levels if various methods and languages are utilized to include more residents of the Arctic in the process.⁸⁷

C. Arctic Council Focal Point

The Arctic Council Focal Point (FP)⁸⁸ was established in 2005 mainly to take care of ACIA follow-up activities derived from the recommendations of ACIA Policy Document Report.⁸⁹ “The focal point will coordinate the ACIA follow-up activities within the WGs and prepare proposals for the [AC] in relation to ACIA follow-up issues,” as articulated in the Reykjavik Declaration and the SAO report to the fourth Ministerial

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ The “focal point is comprised of the Chairs (or their designated representatives) of the Arctic Council Working Groups. The Senior Arctic Officials are represented in the focal point by the Chairman of the SAOs. The Permanent Participants are invited to nominate one representative to the focal point to represent them all.” Arctic Council [AC], *Minutes*, Arctic Council Meeting of Senior Arctic Officials, at 8-9 (April 6-7, 2005) [hereinafter *Minutes of Meeting of Senior Arctic Officials*].

⁸⁹ “The Impact Assessment recommends to Ministers to: (1) Direct relevant technical working groups of the Arctic Council to review the scientific chapters of the ACIA in the context of their ongoing and future work programmes and to report on the progress made at the 2006 Ministerial Meeting; (2) Decide to keep under review the need for an updated assessment of climate change in the Arctic, drawing *inter alia* on the IPCC fourth assessment report and the results of the International Polar Year 2007-2009; (3) Direct SAOs to nominate a focal point and to be responsible for an ACIA follow up, including an assessment of gaps in knowledge; and (4) Communicate, as appropriate, any Arctic Council ACIA follow-up actions to the Conference of the Parties to the UNFCCC.” Policy Document, *supra* note 81.

Meeting.⁹⁰ The FP was expected to “cooperate closely with the IASC and other relevant actors to ensure that proposals for ACIA follow-up by the [AC] [WGs] are coordinated and harmonized with activities outside of the AC.”⁹¹

The FP prepared the Focal Point Report to SAOs in 2006.⁹² The report recommended the FP as an implementation mechanism in order to prioritize work for advance adaptation in the circumpolar North, “including regular scientific assessment[] or vulnerability and risk.”⁹³ Yet, disagreement arose in whether to establish a new unit or to utilize the existing working groups and to strengthen them where needed. Primarily it suggested a case study approach in which case studies addressing adaptation issues were examined and shared; “to facilitate continuous learning, knowledge sharing and capacity building and to gain experience with and further develop [methods].”⁹⁴ This approach aimed to “clearly demonstrate the issues, the decision making processes, and the results of adaptation measures.”⁹⁵ Another view of undertaking adaptation activities was to strengthen the basis for priority setting and actions intended in regard to adaptation.⁹⁶ It included the seeking of opportunities to promote a global, national, and local awareness of the ACIA results and to advance education, outreach, and information on adaptation issues in the region. It also looked to the follow-through on other recommendations for research, observations, monitoring and modeling, such as those included in the ACIA science report and policy document.⁹⁷ These recommendations were built on the basis of the Third Assessment Report of the IPCC (TAR) and the ACIA reports, and in looking forward to the Fourth Assessment Report of the IPCC (AR4), that the AC should take early and

⁹⁰ Minutes of Meeting of Senior Arctic Officials, *supra* note 88, at 9.

⁹¹ *Id.*

⁹² *Id.*

⁹³ REPORT OF THE ARCTIC COUNCIL FOCAL POINT (FP) FOR ACIA FOLLOW-UP ACTIVITIES 25 (2006).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 26.

⁹⁷ *Id.*

substantive action on adaptation to climate change in the Arctic region.⁹⁸

Yet, within a short period of time it was realized that the FP (as composed in 2005), had insufficient expertise on climate issues. Many units of the AC objected to their limited access or non-access to FP meetings and in particular, the PPs looked for stronger participation.⁹⁹ Under these circumstances, Norway proposed two options for replacing the FP: 1. to create a new climate WG under the AC, with the main responsibility of climate change follow-up and implementation; or 2. establish one of the existing WGs as the lead group for climate change and involve other WGs as appropriate.¹⁰⁰ In 2006, the SAOs recognized that the future work on ACIA follow-up should be undertaken within the existing WGs and thus the FP became inactive.¹⁰¹

D. Snow, Water, Ice and Permafrost in the Arctic

The AC established Snow, Water, Ice and Permafrost in the Arctic (SWIPA) in 2008, which is an update and extension to the ACIA findings on the consequences of change in the Arctic Cryosphere¹⁰² component of the global climate system. The results of the SWIPA assessment were published in the SWIPA Scientific Assessment Report, and the related SWIPA Overview Report. This “assessment of the impacts of climate change on [SWIPA] . . . brings together the latest scientific knowledge about the changing state of each component of the Arctic

⁹⁸ *Id.* at 25.

⁹⁹ *Id.* at 28.

¹⁰⁰ *Id.* at 29-30.

¹⁰¹ *Id.* at 10.

¹⁰² “Cryosphere is the scientific term for that part of the Earth’s surface that is seasonally or perennially frozen. It includes snow, frozen ground, ice on rivers and lakes, glaciers, ice caps, ice sheets and sea ice. The cryosphere structures the physical environment of the Arctic. It provides services to humans such as freshwater supplies and transport routes. The cryosphere is an integral part of the climate system, and affects climate regionally and globally.” ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), SWIPA 2011 EXECUTIVE SUMMARY: SNOW, WATER, ICE AND PERMAFROST IN THE ARCTIC 3 (2011), AVAILABLE AT [HTTP://WWW.AMAP.NO/DOCUMENTS/DOC/SWIPA-2011-EXECUTIVE-SUMMARY-SNOW-WATER-ICE-AND-PERMAFROST-IN-THE-ARCTIC/744](http://www.amap.no/documents/doc/swipa-2011-executive-summary-snow-water-ice-and-permafrost-in-the-arctic/744)

Cryosphere, . . . [and] examines how these changes will impact both the Arctic as a whole, as well as people living within the Arctic and elsewhere in the world.”¹⁰³ The SWIPA overview report and executive summary released in 2011 includes fifteen key findings¹⁰⁴ along with a set of recommendations: adaptation, mitigation, observation, outreach and policy needs.¹⁰⁵ It has included the recommendation that the AC “should conduct an integrated assessment of the combined impacts of change in the Arctic, focused on how to minimize environmental damage and enhance human well-being.”¹⁰⁶ The SWIPA overview report suggests informing and educating Arctic residents along with the global community “about the changes in the Arctic linked to climate change, and how they affect people locally, regionally and globally.”¹⁰⁷ This responsibility is expected to be undertaken by AC members and observers both collectively and individually. This report has also recommended increased cooperation and coordination efforts at all levels of governments and institutions “to respond to the challenges and opportunities associated with [climate] change.”¹⁰⁸ Finally, a shorter summary of SWIPA was published in 2012 for the general public and educational audiences, which contains 17 pages and is translated into different languages – *Climate Change in the Arctic: A Hot Topic*.¹⁰⁹

¹⁰³ *Id.*

¹⁰⁴ ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), *supra* note 1, at v-x . SWIPA 2011 EXECUTIVE SUMMARY: SNOW, WATER, ICE AND PERMAFROST IN THE ARCTIC, *supra* note 102, at 4, 6, 7, 9, 11 and 12.

¹⁰⁵ ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), *supra* note 1, at ix; SWIPA 2011 EXECUTIVE SUMMARY: SNOW, WATER, ICE AND PERMAFROST IN THE ARCTIC, *supra* note 102, at 15.

¹⁰⁶ *Id.*

¹⁰⁷ Arctic Monitoring and Assessment Programme (AMAP), *supra* note 1, at xi.

¹⁰⁸ *Id.*

¹⁰⁹ See generally Symon, Carolyn, *Climate Change in the Arctic: A Hot Topic*, ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP) (2011), available at <http://www.amap.no/documents/doc/climate-change-in-the-arctic-a-hot-topic/101>.

E. Arctic Council Task Force on Short-Lived Climate Forcers

The Task Force on Short-Lived Climate Forcers (TFSLCF) was established in 2009 by the AC in order to assess the impacts of short-lived climate forcers (e.g., black carbon, methane, tropospheric ozone precursors) on climate change in the Arctic region.¹¹⁰ The TFSLCF prepared a technical report on mitigation options for Black Carbon (BC) in the Arctic in 2011.¹¹¹ It includes relevant useful information that may contribute to not only determining the sources of BC in the Arctic or limit its emission so as to reduce negative consequences in the region, but also to contribute to the development of general climate science.¹¹² For instance, “BC remains in the atmosphere for days to weeks and warms the climate by absorbing both incoming and outgoing solar radiation and by darkening snow and ice after deposition, thereby reducing the surface albedo, or reflectivity.”¹¹³ Clearly, it is this albedo effect that is particularly pertinent in the Arctic.¹¹⁴ The main findings of the TFSLCF report include:

1. The largest sources of black carbon emissions in Arctic Council nations have been identified;¹¹⁵
2. There is still considerable uncertainty regarding the quantification of the exact magnitude of black carbon emissions, particularly from sources such as agricultural burning, open biomass burning (i.e.,

¹¹⁰ Tromsø Declaration, Arctic Council, Apr. 29, 2012 [hereinafter Tromsø Declaration].

¹¹¹ See generally TECHNICAL REPORT OF THE ARCTIC COUNCIL TASK FORCE ON SHORT-LIVED CLIMATE FORCERS, AN ASSESSMENT OF EMISSIONS AND MITIGATION OPTIONS FOR BLACK CARBON FOR THE ARCTIC COUNCIL (2011), available at http://library.arcticportal.org/1210/1/ACTF_Report_22July2011.pdf.

¹¹² HASANAT, *supra* note 21, at 230.

¹¹³ TECHNICAL REPORT OF THE ARCTIC COUNCIL TASK FORCE ON SHORT-LIVED CLIMATE FORCERS, *supra* note 111, at TS-2.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at TS-3.

- wildfires and prescribed forest burning), and gas flaring,¹¹⁶
3. Overall, the total black carbon emissions from Arctic Council nations are projected to decrease in the coming decades, primarily due to the effective implementation of transportation-related particulate matter controls;¹¹⁷
 4. To maximize climate benefits, PM [Particulate Matter] control programmes must aim to achieve maximum black carbon reductions;¹¹⁸
 5. Several mitigation measures have been identified to further reduce major emission source categories;¹¹⁹
 6. Additional measurements, research, and analyses are needed to better identify the specific BC mitigation measures (both inside and outside of the Arctic Council nations) that will lead to the largest Arctic climate benefits.¹²⁰

F. Climate Change Related Reports/Projects

The AC initially considered the issue of climate change at the secondary level of its mandate while, within two years, the climate change issue became well-known with the publication of the State of the Arctic Environment Report.¹²¹ This report highlighted climate change as a driver of Arctic change, and policy-makers became familiar with the issue. From then on a good number of projects have been undertaken by the various WGs of the AC relating to climate change, with some others still ongoing.¹²² Most of these projects are research-oriented in order to achieve a better understanding of climate change in the Arctic and its impact on arctic environments. Vulnerability and

¹¹⁶ *Id.* at TS-5.

¹¹⁷ *Id.* at TS-6.

¹¹⁸ *Id.* at TS-7.

¹¹⁹ *Id.*

¹²⁰ *Id.* at TS-10.

¹²¹ See generally ARCTIC MONITORING AND ASSESSMENT PROGRAMME (AMAP), *supra* note 1.

¹²² See *Projects*, AMAP, www.amap.no/projects (last visited Oct. 5, 2013).

Adaptation to Climate Change in the Arctic (VACCA)¹²³ could be an example which aimed specifically to increase the adaptive capacity of Arctic communities. Adaptation Actions for a Changing Arctic (AACA) is an ongoing project and aims to collect information on climate change adaptation activities relevant to the Arctic region over the past ten years.¹²⁴ Conducting climate change oriented research by the WGs of the AC has created experts and strengthened their credibility at a global level in producing knowledge related to climate change.¹²⁵ This has encouraged global institutions to work with those experts.¹²⁶ The Climate Change and POPs [Persistent Organic Pollutants]: Predicting the Impacts¹²⁷ report can be taken as an example - the UNEP/Stockholm Convention Secretariat prepared this report jointly with the AMAP Expert Group in 2011. The report suggests that climate change may increase the planet's vulnerability to highly toxic chemicals.¹²⁸ It highlights the complex relationships between climate change and POPs, and human and environmental exposures in a changing climate both in global and Arctic contexts.¹²⁹ It also identifies several key

¹²³ “Main objects of the VACCA was to undertake a scoping study including collect and disseminate information on the expertise, existing and ongoing research and adaptation strategies/measures on adaptation to climate change in the Arctic; and to arrange international expert/stakeholder workshop in which leading experts, policy makers working group representatives and key stakeholders would meet and discuss on vulnerability and adaptation to climate change as well as preparing recommendations for potential future work for the Arctic Council. The project was completed in December 2008 and the Tromsø ministerial noted that vulnerability and adaptation would be strengthened in future reports on climate change.” HASANAT, *supra* note 21, at 232, n.201.

¹²⁴ Arctic Council, *Adaptation of Actions for a Changing Arctic (AACA)*, (May 15, 2012), available at <http://www.arctic-council.org/index.php/en/document-archive/category/118-deputy-ministers-meeting-stockholm-15-may-2012>. See also, Arctic Council, Meeting of Deputy Ministers, 15 May 2012 Final Report, Article 4.

¹²⁵ HASANAT, *supra* note 21, at 232.

¹²⁶ *Id.*

¹²⁷ See generally UNEP/AMAP EXPERT GROUP, CLIMATE CHANGE AND POPs: PREDICTING THE IMPACTS (2011).

¹²⁸ *Id.* at 7.

¹²⁹ *Id.* at 7-8.

areas where knowledge gaps exist and suggests how to address them.¹³⁰

G. Involvement in the Global Climate Change Regime

The AC's involvement with the activities of the UNFCCC was limited (until 2009) to re/affirming its support of the Convention, organizing side-events, and issuing a couple of statements, rather than creating any strong commitment to global emission control.¹³¹

Once the AC noticed that all member states have joined the climate convention,¹³² but they have never discussed the ratification of the Kyoto Protocol in any ministerial meeting. In 2005 the AC members, permanent participants and observers issued a joint statement at the first meeting of the Kyoto Protocol, which also served as the 11th Conference of the Parties to the UNFCCC, to have a climate regime and that the IPCC take ACIA results into account in their future decisions.¹³³ The AC agreed on the active contribution of all Arctic states in reaching an satisfactory outcome at the UNFCCC 15th Conference of the Parties (COP15) in Copenhagen in December 2009 also submitted a summary report of the Arctic Cryosphere: Snow, Water, Ice, and Permafrost to the UNFCCC COP 15 meeting in Copenhagen and IPCC for use in the IPCC's future assessment.¹³⁴

Then again in 2011 the AC “[c]onfirm[ed] the commitment of all Arctic states” jointly with other states in order “to implement the agreement reached in Cancun” by the climate talks in Durban and urged all parties for “urgent action” to

¹³⁰ *Id.*

¹³¹ HASANAT, *supra* note 21, at 232.

¹³² Arctic Council, Salekhard Declaration, at 2 (Oct. 26, 2006), *available at* <http://www.arctic-council.org/index.php/en/document-archive/category/5-declarations?download=39:salekhard-declaration-2006>.

¹³³ News Release, Arctic Athabaskan Council, Arctic Indigenous Peoples Unveil Statement on Climate Change at 12-13 (June 12, 2005) *in* REPORT ON ACTIVITIES UNFCCC COP 11 [hereinafter *Statement on Climate Change*], *available at* http://www.arcticathabaskancouncil.com/aac/files/climate_change/UNFCCCOP11.pdf.

¹³⁴ Tromsø Declaration, *supra* note 110, at 2.

achieve the “long-term goal” of the UNFCCC,¹³⁵ and “direct[ed] SAO[] to review the need for an integrated assessment” of diverse Arctic change.¹³⁶ The AC prepared and submitted a statement to the last Durban Conference of the UNFCCC which includes, *inter alia*, “[c]ombating climate change is an urgent common challenge for the international community and requires immediate global action” and “[w]e therefore urge all countries to take decisive action, recognizing that deep cuts in global GHG emissions are required according to science with a view to reducing global GHG emissions so as to hold the increase in global average temperature below 2 C above pre-industrial levels.”¹³⁷

However, the Arctic states could not succeed in creating a *common Arctic voice* in reducing global carbon emission, even when a few members played different roles than expected throughout its statement. For instance, the withdrawal of Canada from the Kyoto Protocol may surprise scholars in the field of climate change, as it surprised the UNFCCC Executive Secretary Christiana Figueres.¹³⁸ Although Canada cannot deny its legal responsibility as party to the UNFCCC, it hampers a joint Arctic effort to convince non-Arctic states to properly consider global climate change. As Figueres said: “[i]ndustrialized countries, whose emissions have risen significantly since 1990, as is the case for Canada, remain in a weaker position to call on developing countries to limit their emissions.”¹³⁹

In addition to the above mention activities, AMAP has formed a Climate Expert Group (CEP) whose primary aim is to provide expert advice concerning future activities related to

¹³⁵ Nuuk Declaration, *supra* note 63, at 4.

¹³⁶ *Id.*

¹³⁷ Arctic Council, *Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and the United States of America: Statement to UNFCCC COP XVII* (Nov. 28 – Dec. 9, 2011), available at http://www.arctic-council.org/images/attachments/extra_information/arctic_council_statement_to_the_cop_xvii.pdf.

¹³⁸ *Canada's withdrawal from Kyoto Protocol Regrettable – UN Climate Official*, UNITED NATIONS (Dec. 13, 2011), <http://www.un.org/apps/news/story.asp?newsid=40714#.Uduiifk3Ayh>.

¹³⁹ *Id.*

climate change in the Arctic.¹⁴⁰ This CEG has been contributing noteworthy efforts to the development of climate change science although it works in an informal manner.¹⁴¹ The AC also established the “Short-Lived Climate Forcers Contaminants project steering group” tasked with “undertak[ing] circumpolar demonstration projects to reduce BC and other SLCF emissions.”¹⁴²

The AC has considered climate issue seriously when it has adopted the *Vision of the Arctic* recently.¹⁴³ Moreover, Canada as the present chair of the AC has announced the priority areas of the AC that also covers the climate change issue to a limited extent (short-lived climate forcers) achieving “[S]ustainable [C]ircumpolar [C]ommunities.”¹⁴⁴

IV. SHORTCOMINGS OF THE COUNCIL IN ADDRESSING CLIMATE CHANGE CHALLENGES

There are some shortcomings of the AC concerning addressing climate change challenges and carrying out its general activities.

A. Nascent Secretariat

¹⁴⁰ See Hasanat, *supra* note 16, at 147 n.156. “The Climate Expert Group is co-chaired by Dr. John Walsh (University of Alaska) and Øystein Hov (Norwegian Meteorological Institute). There are no fixed members in the Group. However, the co-chairs may request distinguished climate experts if they desire to have a meeting.” *Id.*

¹⁴¹ Meeting of Senior Arctic Officials, Narvik, Nor., Nov. 28-29, 2007, *Final Report*, § 9.1.

¹⁴² Nuuk Declaration, *supra* note 63, at 3.

¹⁴³ Arctic Council, *Vision for the Arctic*, at 3 (May 15, 2013), available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1749:kiruna-vision-for-the-arctic>.

¹⁴⁴ GOV'T OF CAN., DEVELOPMENT FOR THE PEOPLE OF THE NORTH: THE ARCTIC COUNCIL PROGRAM DURING CANADA'S CHAIRMANSHIP (2013-15) (2013), available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1763:canadian-chairmanship-program-2013-2015-english>.

As discussed above, the AC did not have any permanent secretariat until this year. However, there is a need of a permanent secretariat for a soft-law institution like the AC in order to “deepen and solidify” the cooperation at international level.¹⁴⁵ A permanent secretariat provides a forum with individual personality in operating its activities, keeping the forum outside from the exclusive control of any powerful state or the chair state. It may take some time for the newly established ASC to be fully operational and to realize how Norway, the host country, and other member states cooperate with the secretariat.

B. Weak Funding Mechanism

The AC lacks its own funds to be used for its projects, which can be seen as a drawback to fulfilling the main objectives.¹⁴⁶ Any Arctic state or permanent participant may propose any projects within the AC so long as those projects serve the key interests of the AC, subject to showing a guarantee of adequate funding and support from another Arctic state.¹⁴⁷ However, states may propose projects not intending to serve the main goal of the AC – but simply to get credit for being the lead country of an AC project.¹⁴⁸ The AC manages regular work with annual fees from the members; however, there is no regular budget for implementing its development projects, mainly related to climate change. The AC has very limited control over its projects; one of the main reasons for this is the issue of funding – any lead country may even withdraw a project at any phase. For instance, Norway withdrew a follow-up to the VACCA project in 2009.¹⁴⁹

¹⁴⁵ Nikolas Stellheim, *The Establishment of the Permanent Arctic Council Secretariat: Challenges and Opportunities*, in *THE ARCTIC COUNCIL: ITS PLACE IN THE FUTURE OF ARCTIC GOVERNANCE* 60, 63 (Thomas S. Axworthy, Timo Koivurova & Waliul Hasanat eds., 2012).

¹⁴⁶ Hasanat, *supra* note 16, at 148.

¹⁴⁷ *Rules of Procedure*, *supra* note 19, pt. 26, annex 1. Terms of Reference for a Sustainable Development Programme, *supra* note 26, s.2.

¹⁴⁸ Hasanat, *supra* note 16, at 148.

¹⁴⁹ Regular Meeting in Copenhagen, Denmark, Sustainable Development Working Group (Nov. 10-11, 2009) (observation by author).

C. Poor Coordination with WGs

There are no clear boundaries of working areas of the WGs. The activities of the WGs generally lack specificity and are largely descriptive.¹⁵⁰ The participants at the SDWG meeting once used such wording to criticize the fact that AMAP deals with health care issues, while CAFF handles cultural matters.¹⁵¹

D. Problems Concerning National Delegates

Arctic states' delegates in the various committees or meetings within the AC mainly come from their respective foreign ministries and participate in the activities of the AC in addition to performing their regular tasks.¹⁵² The member states frequently change their SAO and other representatives to the AC.¹⁵³ For these reasons they can neither pay satisfactory attention to the AC's work nor become deeply knowledgeable about the AC's climate change related activities, which results in the national delegations having few experts (subject to exceptions, of course), as opposed to the PPs who use consultants with real knowledge about the functioning and activities of the AC and other issues related to the North.¹⁵⁴ A member state may even include people who cannot make a useful contribution in its delegation or send a big team without proper coordination.¹⁵⁵

E. Lack of Realization of Northern Needs at the National Level

It is common for AC member states to disregard issues related to climate change in the North when setting up their

¹⁵⁰ *Id.*

¹⁵¹ Regular Meeting in Copenhagen, Denmark, *supra* note 149.

¹⁵² Hasanat, *supra* note 16, at 149.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

national political priorities.¹⁵⁶ This may result from the fact that inhabitants in the North do not have enough influence in national policy-making.¹⁵⁷ National delegates to the AC may lack knowledge on issues related to the North since most of them are chosen by the capitals, mainly by the Ministry for Foreign Affairs, which are located far away in the south (except Iceland). In fact, the Arctic part of the Arctic states is different from the national capitals in many respects. A survey conducted in certain southern cities of the Arctic states revealed that few people living in the non-Arctic parts of the member states know about the AC.¹⁵⁸

F. Lack of Confidence in the AC

The AC has been unable to create confidence in its members, in particular in addressing the consequences of climate change in the region. Ilulissat Declaration¹⁵⁹ could be an example: five Arctic Ocean coastal states (Canada, Denmark, Norway, Russia, and the USA), who are members of the AC, adopted the declaration in 2008 aimed at dealing with the increasingly open Arctic Ocean due to climate change.¹⁶⁰ Their initiative can be seen as a major challenge to the AC since a core Arctic issue is being dealt with outside the AC. However, the coastal states, in the declaration, do not see the necessity of creating any new legally binding instruments since existing international agreements, mainly the UNCLOS, seem sufficient to address the increasing challenges in the marine Arctic.¹⁶¹

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ The interviews conducted by the present author took place in Washington, New York, Moscow, Copenhagen, Aarhus, Stockholm, and Helsinki.

¹⁵⁹ Arctic Ocean Conference, Ilulissat Declaration at 1-2 (May 28, 2008), available at http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf (“We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.”).

¹⁶⁰ Hasanat, *supra* note 16, at 149.

¹⁶¹ Arctic Ocean Conference, Ilulissat Declaration at 1-2 (May 28, 2008), available at http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf (“We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.”).

G. Lack of Unity

The Arctic states observe different challenges and opportunities caused by climate change in terms of their national interests which has prevented the member states from creating *common Arctic voice*. Their different role in climate change issues is viewed not only within the AC but also in global climate regime.

They failed to reach agreement in order to introducing mandatory financial contribution and formalizing the AC.¹⁶² For instance, Canada from the very beginning wanted to have a formal international organization; while Finland took the initiative of reforming the AC during its chairmanship and Norway tried to bring significant changes within the AC's functioning system during its chair period, which did not work out due to different opinions among the member states.¹⁶³ However, the United States seems reluctant to acknowledge the AC as a formal international organization.¹⁶⁴ It is well accepted that uniting states associated with the AC may yet bring about a functional global climate regime since two members (Russia and the U.S.) and two observers (China and India) are able to play a key role in global climate politics.¹⁶⁵

H. Other Deficiencies

There are many scholars who see the soft-law nature of the AC as a major deficiency since it cannot create any legally

¹⁶²VanderZwaag, *supra* note 15, at 267. Samantha Smith, *Ministerial with Only Three Ministers*, 4 WWF ARCTIC BULL. 4, [PINCITE] (2000) ("For a variety of reasons, the US has worked to ensure that the Arctic Council has a limited mandate, and thus has limited significance.").

¹⁶³ Interview with Stein Paul Rosenberg, Senior Advisor, Norwegian Ministry of Foreign Affairs, Section for the High North, Resources, and Russia, in Copenhagen, Den. (Nov. 11, 2009).

¹⁶⁴ Hasanat, *supra* note 16, at 150.

¹⁶⁵ See Olav Schram Stokke, *Protecting the Arctic Environment: The Interplay of Global and Regional Regimes*, 1 Y.B. POLAR L. 349, 349-50 (2009).

binding obligations to its members.¹⁶⁶ However, the present author views the soft-law nature as an advantage mainly when dealing with the consequences caused from climate change in the North, also involving local residents in AC's policy making [see below in Part V (B)].

There are however, still many problems that need to be addressed in the AC if it can serve as a platform for effective action against climate change challenges.¹⁶⁷ The AC also lacks a separate unit dealing with the external relations with other states and relevant international platforms, sufficient practical activities which utilize the results of research, robust evaluations of prepared documents (guidelines and reports) in terms of their influence and value and a strong social media center.¹⁶⁸

¹⁶⁶ For instance, Oran R. Young, *If an Arctic Ocean Treaty is Not the Solution, What is the Alternative?*, 47 POLAR REC. 327, 331 (2011). PHILIPPE SANDS ET AL., PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 597 (3rd ed. 2012).

¹⁶⁷ See Alison Ronson, *Political Climate Change: The Evolving Role of the Arctic Council*, 33 NORTHERN. REV. 95, 100-01 (2011); see also Oran R. Young, *Whither the Arctic? Conflict or Cooperation in the Circumpolar North*, 45:232 POLAR RECORD 73, 73, 79 (2009).

¹⁶⁸ "A strong media centre seems important for the AC in order to supply relevant news to the governments and local inhabitants mainly focusing on member states contributions and other sensitive events so as to avoid unexpected tension caused from wrongly broadcasting in other media. An example of such broadcasting was when in August 2007, two Russian mini-submarines planted a Russian flag at the bottom of the Arctic Ocean at the North Pole, it was in fact an adventure trip partly financed by a Scandinavian businessman. The flag of the Adventurer's Club of New York was also on board and an Australian and an American citizen, who were the masterminds of the trip, were included in the mission. However, the media presented the event in a different way, and that Russia had occupied the North Pole as part of its sovereign territory although it was no way an official act of the Russian Government." HASANAT, *supra* note 21, at 238 n.217. See also Martin Breum, *When the Arctic Council Speaks: How to Move the Council's Communication into the Future*, in THE ARCTIC COUNCIL: ITS PLACE IN THE FUTURE OF ARCTIC GOVERNANCE 114, 120 n.1 (Axworthy, Koivurova & Hasanat, *supra* note 145). However, see also Pavel Baev, *Russia's Race for the Arctic and the New Geopolitics in the North Pole*, OCCASIONAL PAPER 3-4 (October 2007); Klaus Dodds, *Flag Planting and Finger Pointing: The Law of the Sea, the Arctic and the Political Geographies of the Outer Continental Shelf*, 29 POLITICAL GEOGRAPHY 63, (2010).

V. HOW TO STRENGTHEN THE AC TO COMBAT CLIMATE CHANGE

Enhancing the strength of the AC in general may result in better addressing the consequences of climate change in the North. Several proposals made by different scholars for reforming the AC already exist. Looking at these proposals may provide meaningful assistance in preparing recommendations aiming to tackle the climate change challenges in the North.

A. Existing Reformation Proposals

Donat Pharand proposed to develop an international organization by drafting a formal treaty under the auspices of the Canadian Arctic Resources Committee during the formation of the AEPS.¹⁶⁹ However, his proposal has not been accepted and has been criticized by scholars because they do not see the possibility of it being a formal international organization within a short period of time.¹⁷⁰ Linda Nowlan has also suggested the formalization of the AC through an international treaty, which would derive inspiration from the Madrid Protocol to the Antarctic Treaty and contain principles, substantive legal obligations and innovative features relevant to the Arctic.¹⁷¹ However, at some point she has argued for allowing a certain period of time to evaluate the effectiveness of the existing soft-law arrangement and determine whether it needs to be supplemented by a treaty.¹⁷²

David Leary does not support considering the Antarctic Treaty System (ATS) as a model for the AC since the Arctic includes areas that are mainly under the national jurisdiction of

¹⁶⁹ See generally Donat Pharand, *Draft Arctic Treaty: An Arctic Region Council*, in THE ARCTIC ENVIRONMENT AND CANADA'S INTERNATIONAL RELATIONS (1991), available at <http://www.carc.org/pubs/v19no2/5.htm> (describing the formation of the Arctic Regional Council).

¹⁷⁰ See generally VanderZwaag, et al., *supra* note 15, at 156, 166-67 (describing limitations on the power and regulatory regime of the AEPS and the Arctic).

¹⁷¹ Linda Nowlan, *Arctic Legal Regime for Environmental Protection*, 44 IUCN ENVTL POL'Y & L. 1, 41, 60-66 (2001).

¹⁷² *Id.* at 59.

the Arctic states and there are territorial disputes concerning areas that lie beyond national jurisdiction.¹⁷³ While Philippe Sands has argued for a formal organization for the AC, similar to that which exists for Antarctica, in the near future:

The adoption of the Arctic Environmental Protection Strategy and the establishment of the Arctic Council [provide] a useful opportunity to develop new legal arrangements and institutions to govern an ecosystem which transcends national boundaries and requires international co-operation for its adequate protection to be assured. The soft law approach currently envisaged provides a first step; ultimately, it will be necessary to establish appropriate institutional arrangements and substantive rules, perhaps similar to those applied in the Antarctic, to ensure that agreed obligations are respected and enforced.¹⁷⁴

The European Parliament has proposed that an Antarctic treaty modeled agreement should be negotiated to govern the Arctic (even if they have recently changed their course and no longer advocate for an Arctic treaty).¹⁷⁵ The indication of the Parliament's proposal was to copy the governance framework from the other Pole, the Antarctic Treaty's Environment Protocol, and adjust it to Arctic circumstances.¹⁷⁶ While, some scholars also suggested for an overarching treaty.¹⁷⁷

Timo Koivurova has suggested a framework treaty managed by the Arctic states as a faster way to proceed since the consequences of climate change in the Arctic opening up the

¹⁷³ David Leary, *Bi-polar Disorder? Is Bioprospecting an Emerging Issue for the Arctic as well as for Antarctica?*, 17 REV. EUR. COMMUNITY & INT'L ENVTL. L. 41, 42, 49, 54-55 (2008).

¹⁷⁴ PHILIPPE SANDS ET AL., PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 597 (3d ed. 2012).

¹⁷⁵ See generally A Sustainable EU Policy for the High North, PARL. EUR. DOC. (TA 0024) (2011), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-20110024+0+DOC+XML+V0//EN> (showing that the EU does not propose an Arctic Treaty modeled after the Antarctic Treaty).

¹⁷⁶ HASANAT, *supra* note 21, at 235-36.

¹⁷⁷ Timo Koivurova, *Alternatives for an Arctic Treaty - Evaluation and a New Proposal*, 17 REV. EUR. COMMUNITY & INT'L ENVTL. L. 14, 16 (2008).

region to various economic activities will create environmental problems for the region.¹⁷⁸ His detailed proposal with Erik Molenaar was published as a report of the WWF International Arctic Program, which suggests that the Antarctic Treaty does not provide a viable basis for a legally binding Arctic instrument but does suggest elements for an overarching Arctic treaty.¹⁷⁹ Their suggested model derives from the regional seas agreements; their argument being that the law of the sea and UNCLOS encourages states to implement their framework type obligations on a regional basis.¹⁸⁰ However, this would have the effect of shifting the governance to only marine areas, in contrast to the AC approach which includes both the land and marine areas of the region.¹⁸¹

The SAOs made a concrete proposal to reform the AC which included *inter alia* better coordination among the WGs, communication with other regional bodies, increased funding, provide financial support to permanent participants, and the expansion of the role of observers.¹⁸² Pekka Haavisto's report was used as the background paper for the report.¹⁸³ Later on, the Arctic Athabaskan Council, a permanent participant in the AC, suggested reforms in the light of selected weak points,¹⁸⁴ which are quite similar to suggestions made during the Finnish Chair period 2001-2002.¹⁸⁵

¹⁷⁸ *Id.* at 22-23, 25-26.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 3, 4, 14.

¹⁸¹ Olav Schram Stokke, *A Legal Regime for the Arctic? Interplay with the Law of the Sea Convention*, 31 MARINE POL'Y 402, 407-08 (2007).

¹⁸² Arctic Council, *SAOs Report to Ministers on the Review of The Arctic Council Structures*, at 2, 4, 9, SAO2002/A/8.0 (May 15, 2002).

¹⁸³ Arctic Council, *Review of the Arctic Council Structures*, at 2, SAO/2001/B/10 (Oct. 18, 2001). Finland commissioned Mr. Pekka Haavisto to prepare a report for the SAOs concerning the structure of work in the AC to be discussed at the SAO meeting on 12-13 June 2001. The final report was delivered to the AC secretariat on 29 June 2001 after the SAOs had discussed the draft report. *Id.*

¹⁸⁴ ARCTIC ATHABASKAN COUNCIL, IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE ARCTIC COUNCIL: A DISCUSSION PAPER 6-8 (2007).

¹⁸⁵ *Id.* at 8.

The World Wildlife Fund (WWF), an international NGO established in 1961,¹⁸⁶ has proposed forming a commission under the present AC in order to conclude a formal treaty protecting the nature in the Arctic.¹⁸⁷ As Neil Hamilton, who was then the Director of the WWF Arctic Program, said:

We need a new approach, which includes thinking about a solid Arctic Treaty and a multilateral governance body. . . . This is the only way to ensure the implementation of sustainable development regimes and help the Arctic adapt to the severe impact of climate change and ultimately stabilise the world's climate.¹⁸⁸

Olav Schram Stokke has argued for a flexible approach to norm-building through interaction of the AC with other existing institutions.¹⁸⁹ However, his proposal is not new because the AC has already involved a number of existing institutions and produced scientific data.¹⁹⁰ He and Geir Hønneland have noticed “three great powers” in terms of Arctic actors: Russia, the European Union (EU), and the U.S. Any initiative concerning the AC needs their support and active contribution to succeed.¹⁹¹

Julia Jabour and Melissa Weber have proposed a “flexible governance structure” for the AC to “advance national interests

¹⁸⁶ See *About Us*, WWF, <http://worldwildlife.org/about/history> (last visited Sept. 13, 2013).

¹⁸⁷ See *New Rules Needed for the Arctic*, WWF (Aug. 17, 2007) http://www.wwf.org.uk/what_we_do/press_centre/?134/New_rules_needed_for_the_Arctic_WWF.

¹⁸⁸ *Id.*

¹⁸⁹ OLAV S. STOKKE, THE LAW OF THE SEA CONVENTION AND THE IDEA OF A BINDING REGIME FOR THE ARCTIC MARINE ENVIRONMENT 12, available at http://www.arcticparl.org/_res/site/File/images/Underlagsrapport%20eng-rysk3.pdf.

¹⁹⁰ For instance, the AC affirms support to many legal regime (e.g., international convention and treaty) and developed its relationship with a number of organizations by accrediting as observer. See *Observers*, ARCTIC COUNCIL, (Apr. 27, 2011), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>.

¹⁹¹ GEIR HØNNELAND & OLAV S. STOKKE, INTERNATIONAL COOPERATION AND ARCTIC GOVERNANCE: REGIME, EFFECTIVENESS AND NORTHERN REGION BUILDING intro. at 6-8 (Olav S. Stokke & Geir Hønneland eds. 2007).

in a cooperative manner” that takes into account the regional interdependence of the Arctic states and their own economic and technological advancements.¹⁹² Meanwhile, Hans Corell has proposed the implementation of existing international treaties rather than building a new regime, although he has advocated engaging more entities within the AC such as the general public, politicians, businesses, and governments.¹⁹³ The AC has accredited a good number of states as observers this year and initiated for establishing a Circumpolar Business Forum (CBF).¹⁹⁴

Rothwell has proposed that the Arctic could be seen as part of the common heritage of mankind (CHM).¹⁹⁵ Even though this is an inspiring idea, it is still important that it conforms to law of the sea.¹⁹⁶ Only the deep seabed is currently seen as CHM, and after the Arctic states have drawn the outermost limits of their continental selves, then there is not much seabed left.¹⁹⁷

The present author suggested establishing a well-structured permanent secretariat for the AC in 2010 rather than forming a formal international organization.¹⁹⁸ An innovative idea that may surprise many scholars is how does such a secretariat fit into a soft-law body. However, the suggestion was forwarded in the context of new practical challenges faced by the region, which cannot be managed with the governance established under old structure of international law – innovative ideas are needed to overcome those challenges. The main issue is to enhance trust among the members and their confidence in the AC. The ACS could be the permanent venue where the members and other states may exchange their views with open minds and may form different types of instruments that fit suitably from issue to issue,

¹⁹² Julia Jabour & Melissa Weber, *Is it Time to Cut the Gordian Knot of Polar Sovereignty?*, 17 REV. EUR. COMMUNITY & INT’L ENVTL. L. 27, 40 (2008).

¹⁹³ Hans Corell, *Reflections on the Possibilities and Limitations of a Binding Legal Regime*, 37 ENVTL. POL’Y & L. 321, 321-24 (2007).

¹⁹⁴ Kiruna Declaration, *supra* note 13, at 2, 5.

¹⁹⁵ See DONALD R. ROTHWELL, *THE POLAR REGIONS AND THE DEVELOPMENT OF INTERNATIONAL LAW* 229–31 (1996).

¹⁹⁶ Hasanat, *supra* note 16, at 155.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 157.

including formal international agreements with legally binding obligations.

B. Evaluation of the Reformation Proposals

Many of the above mentioned proposals urge for a treaty based international organization for the AC. However, it would be reasonable to evaluate whether special features of the climate change issue and Northern inhabitants match appropriately to create any classical international organization with legally binding obligations under international law, as explained below.¹⁹⁹

Climate Change Issue

Climate change itself is a complex issue primarily when someone tries to understand Arctic climate science²⁰⁰ and possible ways to combat global climate change.²⁰¹ Principles and recommended policy actions regarding climate change are vague to some extent and seem more ambitious compared to their practical implementation – they focus on what should be done rather than what the member states intent to be done – the result of any activity combating climate change cannot be observable within a short period of time; and CO₂ emission conducted elsewhere impacts the climate change of whole globe irrespective of emitting states.²⁰² The emission cutting of

¹⁹⁹ See Hasanat, *supra* note 21, at 201-08.

²⁰⁰ See generally David N. THOMAS ET AL., THE BIOLOGY OF POLAR REGIONS (2008); GUDMUND HERNES, HOT TOPIC - COLD COMFORT: CLIMATE CHANGE AND ATTITUDE CHANGE (2012) (describing the complexity of climate change in the Arctic).

²⁰¹ See CHRISTIAN BJØRNÆS & PÅL PRESTRUD, THE STATE OF THE POLES: CLIMATE LESSONS FROM THE INTERNATIONAL POLAR YEAR (2012) (describing methods of combating climate change).

²⁰² For instance, increased amount of total CO₂ in the atmosphere leads to global warming and causes global climate change. For detailed treatment, see Susan Solomon et al., *Irreversible climate change due to carbon dioxide emissions*, 106:6 PROC. OF THE NAT'L ACADEMY OF SCI. OF THE U.S., 1704-09 (2008); Michael R. Raupach et al., *Global and regional drivers of accelerating CO₂ emissions*, 104:24 PROC. OF THE NAT'L ACADEMY OF SCI. OF THE U.S.

greenhouse gases negatively impacts economic development and human living standards in a state – it is tough to sacrifice present advantages of modern science to protect the future environment. States outside of the region, therefore, are less likely to sacrifice their national interests for the sake of the northern environment. Imposing binding obligations against uncertain outcome may result to lessen the number of members, since international law has recognized the “sovereign equality and independence of all states and non-interference in the domestic affairs of [s]tates,”²⁰³ freedom to join an international treaty, make reservations²⁰⁴ or withdraw from a treaty.²⁰⁵

Changes in the North are rapidly occurring due to climate change and immediate action is required to address some of those changes. The adoption of a formal international treaty may be a lengthy process, but addressing climate change in the region may not provide a favorable context for the creation of treaty regime.²⁰⁶

Northern Inhabitants

The Northern inhabitants also include numbers of indigenous communities who have resided in the region for long periods of time from generation to generation. As a result, the indigenous peoples of the region have developed distinct livelihoods and cultures. It is understandable that national decision-making takes place in the national capital cities, which are located far south of the region, and also that there is a clear difference in the lifestyles enjoyed by Arctic and non-Arctic residents. Thus, Northern residents may have closer ties to similar groups of peoples living in different parts of the

10288, 10288–93 (2007); JOHN HOUGHTON, GLOBAL WARMING: THE COMPLETE BRIEFING, 34-49 (4th ed. 2009).

²⁰³ Vienna Convention on the Law of Treaties intro. para. 6, May 23, 1969, 1155 U.N.T.S. 331, 332.

²⁰⁴ *Id.* arts. 19-23, 1166 U.N.T.S. at 336-38.

²⁰⁵ *Id.* arts. 54-56, 1166 U.N.T.S. at 344-45.

²⁰⁶ See Judith Goldstein & Lisa L. Martin, *Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note*, 54 INT’L ORG. 603, 604-05 (2000); Md Waliul Hasanat, *Definitional Constraints Regarding Soft Law*, 3 AALCO Q. BULL. 8, 31-32 (2007).

Circumpolar North beyond traditional state boundaries. However, formal international organizations operating under classical international law do not allow for the parallel participation of these groups with states, despite the fact that decisions made for the wellbeing of the region require the participation of local residents. As a result, the Northern indigenous peoples have gained a substantial role in the AC as PP status, which is important in the decision-making processes concerning regional challenges. A forum of sub-national governments from the Circumpolar North (Arctic Regional Council) within the AC or maintaining closer contact may be supportive to the local peoples to bring Northern concerns to the national level.²⁰⁷

Forming an Arctic treaty may offer the opportunity for much more ambitious governance in the North than could be achieved within the AC. A downside of a formal treaty is it may pose new challenges to the indigenous peoples retaining their special position (PP status) gained through the AC.²⁰⁸ The realities in the region do not support this as a desirable way to conduct matters, since the consequences of both hard law (treaty based) and soft law (non-treaty based) in international law mainly depend on how types of law interact with changing conditions in specific regions.²⁰⁹ Further, there are multiple levels of international, regional, national and sub-national governance layers in the Arctic, which do not seem amenable to creating an overarching treaty structure.²¹⁰ Moreover, much of the Arctic Ocean and waters are under the jurisdiction of the Arctic states, making it more difficult to introduce overarching

²⁰⁷ There is a Barents Regional Council under the Barents cooperation which has contributed to satisfactory result during last 20 years. Md. Waliul Hasanat, *A Unique Arrangement of Soft-Law Cooperation in the Barents Region*, in *POLITICS OF DEVELOPMENT IN THE BARENTS REGION* 65, 70-72 (Monica Tennberg ed., 2012).

²⁰⁸ Koivurova, *supra* note 177, at 25; Kiruna Declaration, *supra* note 13, at 6. The AC supports the Indigenous Peoples Secretariat (IPS) along with granting them permanent participant status. Koivurova, *supra* note 177, at 25.

²⁰⁹ See Jon B. Skjærseth, *Exploring the Consequences of Soft Law and Hard Law: Implementing International Nutrient Commitments in Norwegian Agriculture*, 10:1 INT'L ENV'L AGRE. POL. L. & ECO. 1-14 (2010).

²¹⁰ HASANAT, *supra* note 21, at 237.

international treaties to the region. The Arctic possesses permanent human residents and territories under national jurisdiction of the Arctic states which are absent in the Antarctica; thus, considering the ATS model does not seem viable for the AC.

Moreover, the currently fragmented governance of the region could be more consistently governed by a set of regional institutions that could coordinate how various treaties (applicable in the region) could be synergistically implemented.²¹¹ Yet, a political will does not seem to exist to create such a treaty – none of the current Arctic states seem to be willing to engage in negotiating an Arctic treaty, as testified by their newly revised Arctic national policy documents.²¹² While states voluntarily expressed cooperation and support with other states and local people, this seems to be more effective mainly in the field of environmental protection.²¹³

C. Ongoing Development

In fact, the AC is on the way to massive transition. However, this part limits to only the developments of the AC concerning the above-discussed shortcomings [Part- IV].

The AC has developed Project Support Instrument (PSI) as a funding mechanism jointly with Nordic Environment Finance Corporation to finance some of its projects, which seems successful since there has been a trend to invest a lot of money from different states. For instance, the U.S. invested up to 5 Million USD²¹⁴ in 2012 and Russia up to 10 Million Euro²¹⁵ in

²¹¹ See generally ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTIONS (1992).

²¹² See HARRY BORLASE, CONSISTENCIES AND INCONSISTENCIES IN THE NATIONAL STRATEGIES OF THE ARCTIC LITTORAL STATES (2010), available at http://skemman.is/stream/get/1946/5645/16724/1/Harry_Final.pdf; see also Peter H. Huang, *International Environmental Law and Emotional Rational Choice*, 31 J. LEGAL STUD. 237 (2002).

²¹³ See generally LOUIS HENKIN, HOW NATIONS BEHAVE: LAW & FOREIGN POLICY 47 (1979); ARTHUR A. STEIN, WHY NATIONS COOPERATE: CIRCUMSTANCE & CHOICE IN INTERNATIONAL RELATIONS 45 (1990).

²¹⁴ U.S. Allocates 5 Million to the Environment in the Arctic, ARCTIC COUNCIL (June 11, 2012), <http://www.arctic-council.org/index.php/en/>

2011 in order to implement AC's priority projects. The AC had little control over its project for a long time;²¹⁶ however, it has been able to exercise control to some extent when the PSI is functioning.

The five Arctic Ocean coastal states, who adopted the Ilulissat Declaration, changed their view – at the moment it seems that much of the momentum behind the declaration is overshadowed because of developments in the AC, and at the second meeting in Chelsea, Canada was heavily criticized by the then US Secretary of State Hillary Clinton, who argued that the AC is the best place for dealing with Arctic issues.²¹⁷

The AC has approved the Terms of Reference of the ACS, its Staff Rules, Financial Rules, Roles and Responsibilities of the Director; has also approved the budget for the secretariat for the year 2013, and instructed SAOs to approve budget for the next term (years 2014-2015).²¹⁸ The secretariat gained legal personality including the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal proceedings when it recently concluded an agreement with Norway.²¹⁹ The agreement allows immunity to the secretariat and its property from legal process,²²⁰ grants inviolability of its premises,²²¹ and other privileges and facilities which are generally enjoyed by a classical foreign diplomatic mission.

resources/news-and-press/news-archive/492-us-allocates-5-million-to-the-environment-in-arctic.

²¹⁵ *Russia Allocates EUR 10M Towards Pollution Prevention Initiatives*, ARCTIC COUNCIL (Oct. 6, 2011), <http://www.arctic-council.org/index.php/en/resources/news-and-press/news-archive/205-psi-agreement-russia>.

²¹⁶ Hasanat, *supra* note 16, at 147.

²¹⁷ *Canada Gets Cold Shoulder at Arctic Meeting*, TORONTO STAR (Mar. 29, 2010), <http://www.thestar.com/news/canada/article/787178--canada-gets-cold-shoulder-at-arctic-meeting>.

²¹⁸ Kiruna Declaration, *supra* note 13, at 6.

²¹⁹ The Host Country Agreement between the Government of the Kingdom of Norway and the Arctic Council Secretariat, art. 2, (Jan. 23, 2013) available at <http://www.arctic-council.org/index.php/en/document-archive/category/103-20-admin-issues-effectiveness-and-efficiency-of-the-arctic-council?download=390:doc-22d-host-country-agreement>.

²²⁰ *Id.* art. 6.

²²¹ *Id.* art. 8.

Canada, one lead country for AACA project, expected to complete this climate change project as one of their main priorities.²²² The SAO submitted Recommendations to Reduce Black Carbon and Methane Emissions to Slow Arctic Climate Change, a report prepared by the SLCFTF, to the last Ministerial Meeting (in Kiruna 2013), and a technical report is at preparing stage at the moment.²²³ The report suggests that more than 30% of total methane (CH₄) emissions are from the AC member states, emphasized for new measures to limit the emission, and encouraged Arctic states to cooperate with other states to reduce total emission.²²⁴ AMAP plans to complete a scientific assessment on BC, tropospheric ozone and methane by 2015.²²⁵ The Ministers of Environment from the Arctic states have proposed to negotiate an international instrument on BC.²²⁶

The Kiruna ministerial meeting has expressed promoting dynamism and sustainable economies in the region based on best practices under its Corporate Social Responsibility (CSR) and decided to establish a Task Force to facilitate the creation of a Circumpolar Business Forum (CBF), which is a great initiative to enhance interaction and trust among peoples in the North.²²⁷ The AC has “acknowledged the decision” of “relocat[ing] the Indigenous Peoples Secretariat” by the PPs “to Tromsø, Norway”²²⁸ (from Copenhagen, Denmark) – there is no doubt that it would encourage the PPs to become closely involved in the AC activity.

Recently the AC has endorsed the Arctic Council Observer Manual for Subsidiary Bodies aiming to strengthen the work of

²²² Arctic Council, *Meeting of Senior Arctic Officials* §3.1(B) (Mar. 20-21, 2013), available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1758:kiruna-senior-arctic-officials-report-to-ministers>.

²²³ *Id.* §3.3.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ MINISTRY OF THE ENV'T OF SWED., ARCTIC ENVIRONMENT MINISTERS MEETING: ARCTIC CHANGE - GLOBAL EFFECTS DISCUSSION NOTE 8 (2013).

²²⁷ Kiruna Declaration, *supra* note 13, at 4; see also *Kiruna Ministerial Meeting*, *supra* note 9.

²²⁸ Kiruna Declaration, *supra* note 13, at 8.

the different subsidiary bodies of the AC; and established TFII²²⁹ in 2011 to implement its decisions to strengthen the AC.²³⁰ The Kiruna Ministerial Meeting “has instruct[ed]” the SAOs “to review and adjust the mandates and work plans” of the WGs “including following up their activity.”²³¹ Then the priorities of AC during Canadian chair include strengthening the AC by focusing on implementation and how to minimize duplication of activities, which would support the WGs to clarify their boundaries; and more closely involving PPs in the AC activity,²³² may ensure to bring regional issues within AC activity.

VI. CONCLUSION AND RECOMMENDATIONS

A number of existing proposals recommend for a formal international organization for the AC although the member states lack consensus of opinion in order to proffer support for binding instruments. While, compliance of any decision (derived from either hard or soft-law) mainly depends on the intentions of the member states²³³ – it does not always depend on the nature of the instrument²³⁴ - states follow international agreements because of

²²⁹ *Task Force for Institutional Issues*, ARCTIC COUNCIL (December 29, 2011), <http://www.arctic-council.org/index.php/en/password-for-tfii>.

²³⁰ Nuuk Declaration, *supra* note 63, at 2.

²³¹ Kiruna Declaration, *supra* note 13, at 8.

²³² Arctic Council, *supra* note 222, ¶ 7.2.

²³³ *See, e.g.*, Agreement between the Governments in the Barents Euro-Arctic Region on Cooperation within the Field of Emergency Prevention, Preparedness and Response (Dec. 11, 2008), *available at* http://www.barentsinfo.fi/beac/docs/Agreement_Emergency_Preparedness_and_Response_English.pdf. For instance, as a soft-law body, the Barents Euro-Arctic Council has contributed to the conclusion of a legally binding instrument. *See id.*

²³⁴ *See* Bank of International Settlements, the *Basel Capital Accord* (July 1988) *available at* <http://www.bis.org/publ/bcbs04a.htm>. The *Basel Accord* could be used as an example in this context. The Basel Committee on Banking Supervision set out a group of policies for financial institutions in 1988. *See id.* The Accord, never considered as a treaty under international law, and thus does not create binding obligations on the states involved. *See id.* Not even the Committee has the authority to enforce recommendations, although most of the states incorporated the policies in their financing system by enacting relevant national legislation. *See id.* Surprisingly, the policies have been observed not

their own interests or to maintain their reputation in international society.²³⁵

One needs to bear in mind that the AC can handle the climate change issue in a better way, if it becomes stronger in general and develops expertise in climate change science mainly relevant to the North. The reality is that the special situations in the region facilitate a soft-law form of cooperation other than formal international organization.²³⁶ It is also of importance to emphasize the unique nature of this emerging practice of a soft-law body producing proactive and legally binding agreements – conclusion of the Search and Rescue (SAR)²³⁷ agreement and Oil Spill Agreement²³⁸ could be used as two examples.

A promising next step is the most recent development in the AC, which can be seen as being unique in international relations.²³⁹ These developments within the AC have made it the main platform for assessing the pace and scale of climate change in the North, thereby influencing global science processes such as the IPCC assessments.²⁴⁰ Also indirectly influences decision-makers to perceive how to forward with climate change proceedings. Since decision-makers at various levels have to rely on established climate science to make climate change mitigation decisions, it can be argued that the AC does have a role to play in the overall efforts to mitigate climate change.

only by the states that negotiated the Accord but also by states who were not involved. *See id.*

²³⁵ See Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1864 (2002).

²³⁶ Md. Waliul Hasanat, *Diverse Soft-Law Cooperation Forms in the Arctic – Do They Complement or Contradict Each Other?* 14 INT'L COMMUNITY L. REV. 273, 298 (2012).

²³⁷ Aeronautical and Maritime Search and Rescue in the Arctic (Apr. 21, 2011), available at <http://www.arctic-council.org/index.php/en/document-archive/category/20-main-documents-from-nuuk> (Click “Download” button across from “Arctic Search and Rescue Agreement – English” for .pdf).

²³⁸ Arctic Council, Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (May 15, 2013), available at <http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting> (Click “Download” button across from “Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic” for .pdf).

²³⁹ HASANAT, *supra* note 21, at 238.

²⁴⁰ *Id.* at 242.

Yet, the climate science work in the AC does not include only to mitigate climate change but also to adapt to the consequences of climate change.²⁴¹ The AC has managed to involve a satisfactory number of states outside of the Arctic, along with international organizations, for this purpose by developing awareness among the local peoples to enable them to adapt to the changes, and producing climate change science.²⁴² It simultaneously feeds information to various levels of Arctic governance. In respect of this, the members need to take into account how their activities are in-line with cutting-edge knowledge of how climate change is proceeding in the region, and take necessary measures to adapt to its consequences.

Even though climate change is rapidly transforming the region, it does seem (at the time of writing in July 2013) that the Arctic Council is moving in the right direction. Yet, this is not to say that there is no need for reform in the Arctic Council. The author submits the following recommendations for reform:

- There would clearly be the need to create a form of Arctic Regional Council (ARC), to include Arctic sub-national governments (e.g., county and provincial governments) in the work of the AC.²⁴³ The proposed ARC could play an advocacy role to develop closer contacts of national governments with residents of the Circumpolar North.
- Working groups, engaged in producing climate change science, should be coordinated more effectively, and their working boundaries should be clarified.²⁴⁴ Alternatively, a fresh working group could be created for taking care only climate change issues namely Climate Change Working Group.
- The Arctic states should ensure that extra burdens are not imposed on national delegates, so that they can spend enough time on the AC's activities; national governments should develop closer contacts with

²⁴¹ *Id.*

²⁴² *Id.* at 234.

²⁴³ *Id.* at 241.

²⁴⁴ *Id.*

residents of the Arctic and ensure their proper representation in the national delegations; The SAOs should not be changed too frequently; if an SAO retires from governmental service, the position should be filled by someone who has experience participating in the delegation.

- A strong and independent ACS may play a very important role in combating climate change in the region, which the AC has established recently.²⁴⁵ Arctic states may take the opportunity to exchange their opinions in a more comfortable setting at the premises of the ACS, which might lead to the conclusion of several international instruments or arrangements regarding different issues. Establishment of confidence and faith among the members is largely a political issue; more interaction may be a means for gaining that confidence and faith. In addition to the ongoing development, the ACS could be surrounded by various units: one could assess the utilization of research findings conducted under the auspices of the AC, another could coordinate international external relations, and another could evaluate prepared documents (guidelines and reports) in terms of influence and value.
- Many AC activities are mainly based on climate change during the last few years. The overall strengthening of the AC, along with creating *common Arctic voice* against climate change in the Arctic and at the UNFCCC would better perform in the field of climate change – a good number of initiatives achieving the goal are already under the way of implementation.

²⁴⁵ Hasanat, *supra* note 16, at 147.