CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Arctic governance: An analysis of a treaty-based cooperation hypothesis
Authors	Kavanagh, Elena
Publication date	2024-02-08
Original Citation	Kavanagh, E. (2024) 'Arctic governance: An analysis of a treaty-based cooperation hypothesis', Spanish Yearbook of International Law, (27), pp. 257-266. https://doi.org/10.36151/SYBIL.2024.013
Type of publication	Article (peer-reviewed)
Link to publisher's version	10.36151/SYBIL.2024.013
Rights	© 2024 Spanish Yearbook of International Law. This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. - https://creativecommons.org/licenses/by-nc-nd/4.0/
Download date	2026-09-17 03:52:49
Item downloaded from	https://hdl.handle.net/10468/15560

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

SYbIL | Spanish Yearbook of International Law

Arctic governance: An analysis of a treaty-based cooperation hypothesis

Elena Kavanagh*

Abstract: This commentary focuses on the method for enhancing cooperation in the Arctic region amidst the challenges posed by global climate change, declining collaboration with Russia, and the growing influence of non-Arctic states such as China.[1] Arctic cooperation can potentially be strengthened by further developing the hypothesis by Timo Koivurova and Akiho Shibata: "Arctic cooperation based on treaties [is] more resilient than that on soft law."[2] Treaty-based cooperation has the potential to foster productive intergovernmental dialogue and ensure procedural justice for all stakeholders, even in the event of conflict escalation within and beyond the Arctic region. Negotiation and adoption of new treaties in the Arctic appear decidedly remote in the short-term future, given geopolitical tensions and mistrust among Arctic states. Nonetheless, the prioritization of treaty-based cooperation should be considered for the future models of Arctic Governance.

Keywords: Arctic indigenous Arctic cooperation Russia governance justice BRICS.

(A) INTRODUCTION

The Arctic region is undergoing rapid and substantial transformations in relation to its environmental, economic, and geopolitical aspects. This rapid change is due to increased globalization and climate warming, four times the global average.[3] The signs of climate change have increasingly become evident in recent decades, significantly impacting the lives of Arctic inhabitants and altering both ocean and terrestrial ecosystems. The melting of ice, changing snowfall, and thawing of permafrost due to climate change will likely bring a surge of economic activity in the High North.[4] The Arctic has become a zone of geopolitical tension and increased interest for both Arctic and non-Arctic entities due to the environmental changes and ongoing conflicts in other parts of the world. The Arctic Council, as the main forum for Arctic cooperation, has long opposed any proposed treaties.[5] It is now struggling to function normally without Russian participation.

---

* PhD Candidate, University College Cork, Ireland, elena.knyazeva@umail.ucc.ie

1 M. Kobzeva, 'New Arctic Seaways and the Role of China in Regime Formation', in M. Finger & G. Rekvig (eds), Global Arctic (Springer, 2022) at 315 330, [https://doi.org/10.1007/978-3-030-81253-9_16].

2 T. Koivurova & A. Shibata, 'After Russia's invasion of Ukraine in 2022: Can we still cooperate with Russia in the Arctic?' *59 Polar Record*, 2023, E12, [https://doi.org/10.1017/S0032247423000049].

3 M. Rantanen, A.Y. Karpechko, A. Lipponen, K. Nordling, O. Hyvärinen, K. Ruosteenoja, T. Vihma, and A. Laaksonen, 'The Arctic has warmed nearly four times faster than the globe since 1979', *3 Communications Earth & Environment*, 2022, [https://doi.org/10.1038/s43247-022-00498-3]; B. Wang, X. Zhou, Q. Ding & J. Liu, 'Increasing confidence in projecting the Arctic ice-free year with emergent constraints', *16 Environmental Research Letters 9*, [https://doe.org/10.1088/1748-9326/acob17].

4 J. Alvarez, D. Yumashev, G. Whiteman, 'A framework for assessing the economic impacts of Arctic change', *49 Ambio 2*, 2020, 407-418, [https://doi.org/10.1007%2Fs13280-019-01211-z].

5 T. Koivurova, 'Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance', *46 The Polar Record 2*, 2010, 146-156, [https://doi.org/10.1017/S0032247409008365].

Despite that, Russia consistently views the Arctic as "a territory of peace, stability, and mutually beneficial cooperation."[6] The desecuritization of interstate relations in the Arctic was achieved towards the conclusion of the Cold War by 1987 Gorbachev's Murmansk Speech.[7] In his speech, Mikhail Gorbachev encouraged peaceful cooperation on topics such as resource extraction, scientific exploration, issues of Indigenous peoples, environmental protection, and northern shipping routes, establishing Artic 'exceptionalism'. The main points of the Murmansk approach were a nuclear-free zone in Northern Europe, limitation of naval activity in areas adjacent to the Northern Europe seas, peaceful cooperation on the rational development of the resources of the North and the Arctic, scientific cooperation in the Arctic, environmental protection of the North, and opening of the Northern Sea Route. The commendable efforts of Michail Gorbachev have contributed to establishing the 'Arctic Peace Zone' to maintain a peaceful state of military tension in the Arctic.

(B) ARCTIC GOVERNANCE SYSTEM

The formation of the Arctic Governance system can be traced back to the inception of the Arctic Environmental Protection Strategy (AEPS) in 1991. This strategy relied on a soft-law mechanism and was designed to address the pressing environmental issues in the Arctic region, such as climate change, pollution, and habitat destruction. The AEPS was a pivotal step in establishing a framework for regulating human activities in the Arctic, and it laid the foundation for further international cooperation in this area.

Since the AEPS, there have been significant developments in the Arctic Governance system, including establishing the Arctic Council, a forum for the eight Arctic states to collaborate on issues related to the region. The other Arctic-specific forums include the Arctic Economic Council, the Arctic Coast Guard Forum, the Barents Euro-Arctic Council, the Conference of Arctic Parliamentarians, and the Nordic Council.[8] Overall, the Arctic Governance system is a "web of relations".[9] It is a "plethora of layered rules, both tacit and codified"[10], and a complex network of organizations, policies, and agreements to protect the fragile Arctic environment and ensure sustainable development in the region. As the effects of climate change continue to impact the Arctic, this system will play an increasingly important role in promoting responsible governance and safeguarding the interests of all stakeholders in the region.

---

6 P. Zhuravel 'Russia's Chairmanship in the Arctic Council: Programme and First Results', *233 Research Works of the Free Economical Society of the Russian Federation [Научные Труды ВЭО России]*, 2022, 160, [https://doi.org/10.38197/2072-2060-2022-233-1-147-167].

7 Mikhail Gorbachev, *Murmansk Speech: Presentation of the Order of Lenin and the Gold Star to the City of Murmansk* (translated October 1, 1987, Novosti Press Agency, 1987), 23 31.

8 N. Jouan, T. Ogden, J. Black, C. Wood-Donnelly, and S. Coulson, 'UK Strategy for the High North: Navigating a changing environment out to 2050', RAND Corporation (Santa Monica, 2022), https://www.rand.org/pubs/research_briefs/RBA1091-1.html.

9 Hannes Hansen-Magnusson, 'The web of responsibility in and for the Arctic', *32 Cambridge Review of International Affairs 2*, 2019, 132-158, [https://doi.org/10.1080/09557571.2019.1573805].

10 C. Wood-Donnelly, 'Responsibility of and for Structural (In)Justice in Arctic Governance', in C. Wood-Donnelly, J. Ohlsson (eds) Arctic Justice, (Bristol, UK: Bristol University Press, 2023, p. 23, [https://doi.org/10.51952/9781529224832.ch002].

(C) SUSPENSION OF THE CONSTRUCTIVE DIALOGUE WITH RUSSIA

Presently, the complex regional governance of the Arctic poses significant challenges when it comes to the two key forums: The Arctic Council and the Barents Euro-Arctic Council. In March 2022, following Russia's invasion of Ukraine, cooperation in the Arctic among Western nations was suspended, leading to a loss of opportunities for international collaboration and causing procedural injustice for Indigenous peoples. [11] As a part of procedural justice, "participatory approaches as a means for just procedures in decision making thus play an important role".[12] Therefore, the suspension of cooperation has had far-reaching unjust consequences for all stakeholders in the Arctic.

The seven nations of the Arctic have decided to boycott Russia's membership in the Arctic Council, which is the main forum for dialogue in the region. This boycott has paralyzed Arctic cooperation and undermined the responsibilities of these states in many areas. It is worth noting that the Ottawa Declaration of 1996 does not contain recommendations regulating this unprecedented situation. Even if it did, this document is not a treaty and holds no legal binding.

Russia's recently implemented Arctic Policy amendments[13], set to remain in effect until 2035, demonstrate the country's prioritization of national interests and state security. As part of these changes, the Arctic Council and Barents Euro-Arctic region have been deleted from the policy's scope. Instead, Section 16 of the Arctic Policy states that increasing international economic, scientific, technological, cultural, and cross-border cooperation in the Arctic is necessary, including the qualifying requirement: "taking into account the national interests of the Russian Federation." This was followed by a subsequent withdrawal of Russia from the Barents Euro-Arctic Council with the following statement: "the responsibility for breaking down the architecture of Barents cooperation rests entirely with our 'partners'".[14] It was supplemented by a reassurance of openness to dialogue: "[w]e remain open to cooperation with anyone who is committed to constructive engagement".[15]

On May 11, 2023, Norway assumed the Chairship of the Arctic Council, succeeding Russia, and on June 8, 2023, the limited cooperation within the Arctic Council was resumed.[16] The pause in the work of the Arctic Council has been "[f]rom Norway's perspective, absolutely necessary, but it has no doubt impacted the work of the Council".[17]

---

11 *Ibid*, 28.

12 A. Deplazes-Zemp, 'Challenges of justice in the context of plant genetic resources', *10 Frontiers in Plant Science*, 2019, 1266, [https://doi.org/10.3389/fpls.2019.01266].

13 Decree of the President of the Russian Federation dated February 21, 2023, No. 112 'On amendments to the Fundamentals of State Policy of the Russian Federation in the Arctic for the period until 2035'.

14 Foreign Ministry's statement on Russia's withdrawal from the Barents Euro-Arctic Council, 18 September 2023, [https://mid.ru/en/foreign_policy/rso/1904899/].

15 *Ibid*.

16 Swedish Ministry of Foreign Affairs, 'Joint Statement on the Limited Resumption of Arctic Council Co-operation' 8 June, 2022, [https://www.government.se/statements/2022/06/joint-statement-on-the-limited-resumption-of-arctic-council-cooperation/].

17 Arctic Council, An update on the Arctic Council and ambitions during the Norwegian Chairship, 15 May 2023, [https://arctic-council.org/news/q-a-with-morten-hoglund-chair-of-the-senior-arctic-officials/].

The current Norwegian Chairship presents an opportunity for the Arctic Council to reinstate cooperation for the betterment of the people in the region, with a particular focus on the youth and Indigenous peoples, and to involve them more meaningfully in the governance of the Arctic. The Arctic Council website states, "[t]he overall objective for Norway's Chairship of the Arctic Council will be to promote stability and constructive cooperation in the Arctic".[18]

It remains to be seen if Norway will be able to fulfil those objectives. At the time of this writing, Russia continues to be excluded from the spirit of constructive cooperation. In 2023, Russian representatives were not invited to the Arctic Circle Assembly in Iceland.[19] As the geopolitical situation in the world is not improving, there is a developing anxiety that Russia and East-Asian countries will establish their own form of Arctic cooperation, and NATO Arctic states remain in the Arctic Council.[20]

(D) PROCEDURAL INJUSTICE AGAINST INDIGENOUS PEOPLES

The absence of a forum for cooperation has resulted in a lack of representation and a voice for Indigenous communities, which have historically been marginalized and underrepresented. The argument for procedural injustice towards Indigenous peoples is that they were not consulted as Permanent Participants before the boycott of Council meetings. As JUSTNORTH project's Policy Brief stated, the Arctic Governance institutions "can be both facilitators/spaces and barriers for resolving conflicts".[21] Indigenous peoples are currently deprived of those spaces in the Arctic, especially the Russian Indigenous communities. As the Arctic Athabaskan Council Chair, Chief Bill Erasmus, elaborated: "[w]e want to remind all governments that the Arctic Council is the world's only forum where we, as Indigenous People have inclusion at a global level".[22] The impact of the decision to silence Indigenous peoples without asking their opinion cannot be overstated. Opting out of multilateral cooperation with Russia has severe implications on multiple fronts. The rejection to cooperate is the road back to the spirit of the Cold War but with an even higher risk of nuclear conflict.

There are 40 officially recognized Indigenous peoples in Russia; they inhabit a vast territory, covering a notable 53% of the Arctic coastline[23], which is practically equivalent

---

18 Arctic Council, Norway's Chairship 2023-2025, [https://arctic-council.org/about/norway-chair-2/].

19 Arctic Circle Assembly, 'The 2023 Assembly Programme', [https://www.arcticcircle.org/assemblies/arctic-circle-assembly-2023].

20 Paul, Michael, 'Arctic repercussions of Russia's invasion: council on pause, research on ice and Russia frozen out', *39 SWP Comment*, 2022, 4, [https://doi.org/10.18449/2022C39]; S. Kirchner, "Enduring Value': Preserving the Arctic Council in the Second Cold War', 5 November, 2022), [http://dx.doi.org/10.2139/ssrn.4269326]; Oxford Analytica, 'Arctic Council faces uncertain future without Russia', Expert Briefings, 2022, [https://doi.org/10.1108/OXAN-ES270735].

21 A. Stępień, E. Conde, T. Joona & C. Wood-Donnelly, *'JUSTNORTH Policy Brief 6: Arctic Governance Institutions as Enablers and Barriers of Justice'*, 2022, [https://justnorth.eu/wp-content/uploads/2023/03/JUSTNORTH_POLICYBRIEF-6_FINAL.pdf.].

22 Arctic Athabaskan Council, 'Press Release: Conflict Continues in the Crimean Peninsula, Ukraine', *ArcticAthabaskanCouncil.com*, February 14, 2022 (March 1, 2022), [https://arcticathabaskancouncil.com/conflict-in-the-crimean-peninsula/].

23 Arctic Council, 'Russia and the Arctic region', [https://arctic-council.org/about/states/russian-federation/].

to half of the Arctic. Sustainable development of the Arctic and its communities is impossible without the coordinated actions of all stakeholders and the engagement of the scientific community and civil society, despite the whole range of existing contradictions. Losing years of cooperation is counterproductive, given that global efforts to combat climate change require the participation of all nations, including Russia.

To effectively tackle the multifaceted challenges encountered in this area, it is imperative to implement a holistic approach that encompasses two interdependent yet distinct strands. Indigenous peoples are highly capable of serving as mediators, negotiators, and custodians of traditional knowledge in fostering cooperation between the Arctic Seven states. Arctic governance is a multifaceted concept encompassing a range of interconnected components, including global, regional, and local institutions, agreements, and non-state actors. Indigenous actors are crucial to the process of starting the debate, building trust, and establishing sustainable cooperation. They occupy a critical position in Arctic governance, although they are often relegated to a secondary role in relation to the member states.

Nevertheless, indigenous peoples' collaboration and initiatives can potentially shape the future of Arctic cooperation. They have long advocated through the UN Permanent Forum on Indigenous Issues and worked together as Permanent Participants in the Arctic Council to foster collaboration among nations and address pressing issues such as pollution and climate change. [24] Moreover, Indigenous peoples across the Arctic share cultural connections, including traditional livelihoods, languages, and worship practices. Their holistic worldview is less influenced by political realities but rather by family, religious, and cultural ties between intertwined indigenous communities of the High North.[25]

(E) DEVELOPING SINO-RUSSIAN AND BRICS COOPERATION IN THE ARCTIC

While Russia was excluded from cooperation with the Arctic Seven, the events centered around Russian priorities continued during the Russian Chairship of the Arctic Council 2021-2023. Russia hosted 116 events in its Arctic region.[26] Participants from the Western hemisphere have elected to refrain from participating in the scheduled activities. Even though some Russian and international scholars continue to discuss the importance of the international situation around the Arctic Council[27], calling for cooperation, the

---

[24] 7th session of the United Nations Permanent Forum on Indigenous Issues, 21.04-2.05.2008, New York, 'Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges'.

[25] S. Chatwood, Francois Paulette, G. Ross Baker, Astrid M. A. Eriksen, Ketil Lenert Hansen, Heidi Eriksen, Vanessa Hiratsuka, Josée Lavoie, Wendy Lou, Ian Mauro, and et al. 'Indigenous Values and Health Systems Stewardship in Circumpolar Countries', *14 International Journal of Environmental Research and Public Health 12*, [https://doi.org/10.3390/ijerph14121462].

[26] Russia's Chairmanship of the Arctic Council 2021-2023, [www.arctic-council-russia.ru].

[27] Bhagwat Jawahar Vishnu, I.V. Rogachev 'Cooperation Between Russia and Norway: Strengthening Dialogue in the Arctic' [Вестник Волгоградского Государственного Университета] *28 Science Journal of Volgograd State University. History. Area Studies. International Relations 3*, 2023, 128-136 [https://doi.org/10.15688/jvolsu4.2023.3.12]; M. Petrova, A. Shumilov, O. Shumilova, 'Geopolitical Aspects of the Redevelopment of

paradigm shift is apparent through the latest publications by Russian and Chinese scholars who continue to explore themes of developing Sino-Russian cooperation.[28] This increasing tendency intensified with the adoption of the first Chinese Arctic Strategy.[29]

In the context of the weakening activities of the Arctic Council, other forums are becoming more important. The BRICS are increasing the Arctic focus as these countries agree that isolationism can impede scientific endeavors and be detrimental to everyone.[30] The Russian side seeks prospects for Arctic cooperation within BRICS on economic development, transport, science, inter-university interaction, global climate change, and the development of Indigenous peoples and nationalities. The upcoming BRICS summit in Kazan is set to take place in 2024 under the auspices of the Russian Federation. Meanwhile, China, as the primary beneficiary of Russian economic activity in the Arctic, plays a critical role in mapping the future of the Arctic without much needed meaningful global debate. This is not an advantageous situation for any of the participants.

(F) TREATY-BASED COOPERATION IN THE ARCTIC

The hypothesis that a treaty-based regime might ensure long-term stability is essential to explore further in a more comprehensive study. Koivurova's and Shibata's preliminary study on the consequences of the recent paralysis of the Arctic Council demonstrated that the stable framework is potentially capable of ensuring ongoing collaboration and effective conflict resolution. [31] A similar strategy was offered by Finland back in 2013: "Finland supports the plan to establish the Council as an international treaty-based organization".[32] The soft-law framework in the Arctic was widely criticized by the research community for years[33], even though there were studies proving that, at the

---

the Russian Arctic: From Cooperation Towards Expansion', *4 Politbook*, 2022, 74-97; A. Sergunin, 'Russia and the arctic council: Toward a new cooperative agenda?' in M. Lebedeva, V. Morozov, '*Turning Points of World Transformation: New Trends, Challenges and Actors*', (Singapore: Springer Nature Singapore, 2022), 117-138, [https://doi.org/10.1007/978-981-19-1758-5_8].

28 L. Filippova, 'Bilateral Cooperation Between Russia and China in the Arctic Against the Weakening Institutions for Regional Cooperation', *13 Russia and China: History, Future and Cooperation* [Россия и Китай: История, Перспективы, Сотрудничество], Institute of China and Modern Asia of the Russian Academy of Sciences, 2023, 473-477; S.N. Leonov, E.A. Zaostrovskikh, 'Possible Benefits and Potential Risks in Terms of Cooperation Between Russia and China in the Arctic', *13 Asia-Pacific Journal of Marine Science & Education 1*, 2023, 87-97; Zhou Geer [*ЧжоуГээр*], 'Development of the Northern Sea Route: prerequisites and factors for cooperation between Russia and the countries of North-East Asia using the example of China, Japan and South Korea [Развитие Северного морского пути: предпосылки и факторы сотрудничества России со странами Северо-Восточной Азии на примере Китая, Японии и Южной Кореи], *13 Issues of national and federal relations 1(94) [Вопросы национальных и федеративных отношений]*, 2023. V. Pryakhin, 'Russia and China in the Arctic [Россия и Китай в Арктике]', [https://russiancouncil.ru/blogs/vpryahin/rossiya-i-kitay-v-arktike/].

29 White Paper 'China's Arctic Policy', the State Council Information Office of the People's Republic of China, Jan. 2018, First Edition 2018.

30 Yaxin Wang, 'International Scientific Cooperation in the Arctic among the BRICS Countries' 3 Administrative Consulting, Russian Presidential Academy of National Economy and Public Administration. North-West Institute of Management, 2023.

31 T. Koivurova, A. Shibata, *supra* note 2.

32 Finland's Strategy for the Arctic Region 2013, Government resolution on 23 August 2013, Prime Minister's Office Publications, 16/2013, 14.

33 T. Koivurova, and D.L. Vanderzwaag, 'The Arctic Council at 10 years: retrospect and prospects', *40 UBCL Rev.*, 2007, 121; Paula Kankaanpää & Oran R. Young, 'The effectiveness of the Arctic Council', *Polar Re-*

time, the soft-law approach was the only possible form to combat climate change in the Arctic. [34] Moreover, the soft law mechanisms, while not necessarily binding, play an integral role in the process of negotiating treaties. These agreements serve as a means of establishing a foundation for further negotiations and facilitating discussion and compromise between parties. [35] As such, soft-law mechanisms should be considered a vital component of any treaty negotiation process.

In accordance with customary international law and the 2011 Draft Articles on the Effects of Armed Conflicts on Treaties adopted by the International Law Commission[36], it is generally understood that international treaties should not be invalidated due to conflict. Article 54 of the Vienna Convention on the Law of Treaties requires the explicit provision of the treaty or consent of all the parties before termination of or withdrawal from a treaty. [37] No such internationally recognized legal justifications were engaged under the Arctic binding agreements. Therefore, if the cooperation in the Arctic was predicated on a treaty, it would have persisted despite the military conflict in Ukraine. Given that cooperation with Russia is in the best interest of the Arctic region, it is interesting to consider a theory of Mitranian functionalism[38] and draw inspiration from Russian-Japanese relations regarding the significance and nature of cooperation.[39]

After three decades, Arctic Governance soft-law mechanisms prove to be less resilient than a cooperative framework based on treaties. Even though soft-law cooperation promised to be more flexible and adaptable[40], the reality has shown a different picture. The soft-law-based cooperation within the Arctic Council was easily paused. According to T. Koivurova and A. Shibata, "if the Arctic Council were treaty-based, policy-makers and scholars would have considered it as an Arctic cooperative framework that could continue despite the Russian aggression".[41] Even though "it is not necessarily so that hard law is more effective for ensuring implementation than soft law"[42], it is noteworthy that legally binding or treaty-based frameworks are less susceptible to the Western-Russian fallout. The multiple treaties that continue being implemented in the Arctic, according to Koivuriva and Shibata, are the Polar Code 2017, the Svalbard Treaty 1920, the Central

search 31 (2012) [https://doi.org/10.3402/polar.v31i0.17176]; T. Koivurova and E.J. Molenaar, 'International governance and regulation of the marine Arctic', *Oslo: WWF International Arctic Programme*, 2009.

34 For example, W. Hasanat, 'Soft-Law Cooperation in International Law: The Arctic Council's Efforts to Address Climate Change' (PhD thesis, Lapland University Press: Rovaniemi, 2013), pp. 306+XV.

35 W. Hasanat, 'Definitional constraints regarding soft law', *AALCO Quarterly Bulletin 1& 2*, 2007, 18.

36 United Nations, 'Draft articles on the effects of armed conflicts on treaties, with commentaries', *Yearbook of the International Law Commission*, 2011.

37 Vienna Convention on the Law of Treaties, 23 May 1969, entered into force on 27 January 1980, United Nations Treaty Series 1155, 331.

38 R.I. McLaren, 'Mitranian Functionalism: Possible or Impossible?' *11 Review of International Studies 2*, 1985, 139 52, [https://doi.org/10.1017/S0260210500114275].

39 G.F. Ishkineeva, F.F. Ishkineeva 'Functionalist Approach to Explain Russian-Japanese Relations under Abe and Putin Administrations', *5 Russian Japanology Review 1*, 2022, 49-75 [https://doi.org/10.55105/2658-6444-2022-1-49-75].

40 H. Nadarajah, 'Fewer treaties, more soft law: what does it mean for the arctic and climate change', *Arctic yearbook*, 2020, 1-14.

41 T. Koivurova, A. Shibata, *supra* note 2.

42 I.F. Soltvedt, 'Soft law, solid implementation? The influence of precision, monitoring and stakeholder involvement on Norwegian implementation of Arctic Council recommendations', *8 Arctic Review on Law and Politics*, 2017, 88 [https://doi.org/10.23865/arctic.v8.639].

Arctic Ocean Fisheries Agreement (CAOFA) 2021, the Arctic Council's Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic 2011, Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic 2013, Agreement on Enhancing International Arctic Scientific Cooperation 2017, and Bilateral treaties with Russia concluded by Finland and Norway.

The Arctic region's sustainable development initiatives should be anchored on binding agreements, such as the International Maritime Organization (IMO) Polar Code. These agreements offer a more predictable future, remaining operational even during uncertain times. According to T. Koivuriva and A. Shibata, "Russia continues to participate in relevant IMO Polar Code meetings".[43] L. Brigham and J. Gamble presented 12 key strategic goals that could protect the Arctic Ocean and ensure sustainable development in the region in the study published shortly after February 2022. The authors center their argument around implementing the existing legal measures in the Arctic, developing integrated policy approaches, and expanding infrastructure investment.[44] However, most of the 12 goals are connected with implementing binding agreements that continue working despite geopolitical tensions.[45]

One possible scenario of the treaty-based regime could be the creation of the Arctic Military Code of Conduct (AMCC). With the view to continue keeping tensions under control, in the 2019 Arctic Yearbook, Boulègue and Depledge suggested adopting an AMCC as a treaty preserving the Arctic as a low-tension security environment. The nature of the AMCC was offered to be two-fold. Firstly, the instrument will define the borders of military activities in the northern high latitudes. Secondly, it will assist in creating conditions for dialogue and "lay the ground for less conflict-prone relationship between NATO and Russia in the region".[46] This could be supplemented by the "Arctic-specific agreement on nuclear safety and security"[47] that does not yet exist. However, nuclear safety was discussed in the Arctic Council's Working Group on Emergency Prevention, Preparedness, and Response, which resulted in establishing the Radiation Expert Group in 2019.

(G) CONCLUSIONS

In conclusion, climate change has brought about significant changes to the ecosystems and vulnerable biodiversity, affecting the lives of Arctic peoples, flora, and fauna. The fragmented and soft-law structure of Arctic Governance has led to procedural injustice, particularly with regard to the representation of Indigenous peoples, resulting in their invisibility. A potential solution to address the current challenges in the Arctic is to

43 T. Koivurova, A. Shibata, *supra* note 2.

44 L.W. Brigham and J.T. Gamble, "Strategy for protecting the future Arctic Ocean", 35 *Oceanography* 3/4, 2022, 167–77, [https://doi.org/10.5670/oceanog.2022.131], 169.

45 Koivurova, A. Shibata, *supra* note 2.

46 D. Depledge, M. Boulègue, A. Foxall, and D. Tulupov, 'Why we need to talk about military activity in the Arctic: Towards an Arctic Military Code of Conduct', *4 Arctic Yearbook*, 2019, 85.

47 M.N. Lysenko, A.N. Vylegzhanin, and O.R. Young, 'Nuclear Safety and Security in the Arctic', *Arctic Review on Law and Politics*, *13*, 2022, 191-212 [https://doi.org/10.23865/arctic.v13.3820].

strengthen the existing system of the Arctic Council through a treaty-based regime based potentially on the idea of the Military Code of Conduct.

Furthermore, the incorporation of traditional indigenous knowledge is a vital element of starting the dialogue, as the Arctic has been "home to Indigenous peoples from time immemorial".[48] Reestablishing cooperation among the Arctic states is a crucial task that demands time and effort. However, this initiative could bring about groundbreaking concepts into the realm of Arctic international law. Climate change and security concerns in the region are the primary factors driving the need for cooperation.

On the other hand, the tensions due to the conflict in Ukraine and subsequent sanctions would likely make restoring cooperation with Russia impossible due to mistrust. In that case, the Arctic Seven alone or including non-Arctic member states might consider cooperating based on a binding agreement. In predicting future scenarios of Arctic cooperation[49], whether it be a restoration of constructive dialogue among the Arctic Eight or a split into two halves, the primary focus should be environmental and scientific cooperation (Arctic science diplomacy) and addressing global climate change.

[48] E. Yua, J. Raymond-Yakoubian, R. Daniel & C. Behe 'A framework for co-production of knowledge in the context of Arctic research', *27 Ecology and Society 1*, 2022, [https://doi.org/10.5751/es-12960-270134].

[49] L. Kauppila, and S. Kopra, 'The War in Ukraine as a Critical Juncture: China, Russia, and the Arctic Collaboration up to 2035', *Arctic yearbook*, *2022*, 233-248.