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# THE ARCTIC VOICE AT THE UN CLIMATE NEGOTIATIONS

*Interplay Between Arctic & Climate Governance*

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## Abstract

During the past decade, the Arctic has progressively gained the status of a “global barometer” of the implications of climate change. As governments finalize in 2015 the negotiations towards a new climate change agreement and as the priorities of the Arctic Council are shifting towards a stronger focus on climate change, the current year offers a timely opportunity to review the interplay between Arctic policies and the international climate change regime.

Indeed, several of the Arctic states have committed through their Arctic strategies to highlight regional concerns and circumstances in relevant international forums. Additionally, the states and organizations with observer status at the Arctic Council are expected to bring Arctic concerns to global decision-making bodies. The Arctic Council itself has referred repeatedly to the UN Framework Convention on Climate Change in many of its ministerial declaration.

Consequently, this thesis aims at assessing whether the “Arctic voice” has been effectively carried in the climate change process and to what extent the outcomes of this process address, or are informed by, issues specific to the Arctic.

The thesis begins with a review of the consideration of climate impacts and circumstances specific to the Arctic through regional and international cooperation. It then assesses how different actors have raised Arctic concerns in the international climate negotiations. While these negotiations are not designed in a manner facilitating the consideration of regional specificities, governments have several opportunities to raise particular concerns through the process, either as they report on their national circumstances or when they express views related to the development of the climate regime. Non-state actors – including regional forums, NGOs and indigenous peoples, can also contribute to the process, particularly in relation to the construction of public discourses around the negotiations. The present research thus reviews systematically the contributions made by relevant actors to the international climate negotiations.

The main finding of this research highlights that the Arctic has barely been considered under the UN climate regime. Additionally, the present research suggests that this situation results from the fact that few actors have attempted to proactively raise Arctic specific concerns in the international climate change regime.

These findings suggest two main conclusions that could inform the activities of the main actors involved both in Arctic cooperation and in the international climate regime. Firstly, there is a need to better integrate international and regional levels of climate governance in order to ensure that important regional circumstances can inform global climate governance. Secondly, the present research highlights the need for countries, as well as relevant non-governmental actors, to emphasize more proactively Arctic circumstances in the climate negotiations if they want to live up to their commitment to represent the Arctic voice in global forums.

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## Accronyms

AAC	Arctic Athabaskan Council
AAUs	Assigned Amount Units
ACIA	Arctic Climate Impact Assessment
ACS	Arctic Council Permanent Secretariat
ADP	Ad-hoc Working Group on the Durban Platform for Enhanced Action
AEPS	Arctic Environmental Protection Strategy
AIA	Aleut International Association
AILAC	Association of Latin America and the Caribbean
AMAP	Arctic Monitoring and Assessment Programme
AMSA	Arctic Marine Shipping Assessment
AOSIS	Alliance of Small Islands States
AR5	Fifth Assessment Report of the IPCC
ASEAN	Association of Southeast Asian Nations
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad-hoc Working Group on Long-term Cooperative Action
BEAC	Barents Euro-Arctic Council
BRC	Barents Regional Council
CAN	Climate Action Network
CBD	Convention on Biological Diversity
CAFF	Conservation of Arctic Flora and Fauna
CCAC	Climate and Clean Air Coalition
CIEL	Centre for International Environmental Law
CMP	Conference of the Parties acting as Meeting of the Parties to the Kyoto Protocol
CERs	Certified Emissions Reductions
COP	Conference of the Parties
ECLAC	UN Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EIA	Environmental Investigation Agency
EIG	Environmental Integrity Group
ENB	Earth Negotiating Bulletin
ERUs	Emissions Reductions Units
EU-ETS	Emission Trading Scheme
GHG	Greenhouse Gases
HFC	Hydrofluorocarbons
IASC	International Arctic Scientific Committee
ICC	International Circumpolar Council
ICIs	International Cooperative Initiatives
IDR	In-Depth Review

IFIPCC	International Forum of Indigenous Peoples on Climate Change
IISD	International Institute for Sustainable Development
IMO	International Maritime Organization
INC	Intergovernmental Negotiating Committee
INDC	Intended National Determined Contribution
IPCC	Intergovernmental Panel on Climate Change
ITK	Inuit Tapiriit Kanatami
JWG	Joint Working Group
LDCs	Least Developed Countries
LRTAP	UNECE Convention on Long-Range Transboundary Air Pollution
LTGG	Long-Term Global Goal
MEA	Multilateral Environmental Agreement
NWP	Nairobi Work Programme on impacts, vulnerability and adaptation to climate change
PAME	Protection of the Arctic Marine Environment
POP	Permanent Organic Pollutant
QELRC	Quantified Emission Limitation and Reduction Commitment
REDD	Reducing Emissions from Deforestation and land Degradation
RFC	Reasons For Concerns
SAO	Senior Arctic Official
SBI	Subsidiary Body on Implementation
SBSTA	Subsidiary Body on Scientific and Technical Advice
SED	Structured Expert Dialogue
SLCF	Short-Lived Climate Forcers
SWIPA	Snow, Water, Ice, Permafrost
TFBCM	Task Force on Black Carbon and Methane
UNCCD	UN Convention on Combating Desertification
UNECE	UN Economic Commission for Europe
UNEP	UN Environmental Programme
UNFCCC	UN Framework Convention on Climate Change
WHO	World Health Organization
WMO	World Meteorological Organization
WWF	World Wildlife Fund

## 1. Introduction

Thanks to the wild and inspiring beauty of its pristine landscapes, to the presence of charismatic mega-fauna, and to its particular sensitivity to climate variations, the Arctic has become a key reference in the climate discourse. Images of polar bears and the cracking of sea ice illustrate a large number of publications and presentations dedicated to climate change. The vulnerability of the region to climate impacts is enhanced by the fact that local temperatures increase almost twice as fast as the rest of the planet.<sup>1</sup> Furthermore, in the High North, this warming is materialized by dramatic physical changes reshaping landscapes and profoundly affecting human activities. While the increase of temperatures can be more difficult to experience in other regions, the thawing of permafrost and retreating sea ice provide phenomena that individuals can more easily comprehend. In this context, the Arctic has often been described as the climate crisis' "canary in the coal mine" or a "climate bellwether". Additionally, a rise in the average temperature of the region will also have global repercussions. The melting of the Arctic summer sea ice reduces the albedo of the region and consequently increases the amount of solar energy captured by the Arctic Ocean. The thawing of the permafrost over great expenses in Northern Russia, Canada and Alaska also leads to the release of large amounts of methane, a potent greenhouse gas with a climate forcing several times higher than CO<sub>2</sub>. These two phenomenon are only two examples of the positive feedback mechanisms at play in the Arctic which might further increase the concentration of greenhouse gases in the atmosphere and/or amplify the increase of temperatures across and beyond the region. Additionally, the Arctic is one of the main contributors to global mean sea-levels rise as a result of the ongoing melting of the Greenlandic icecap, an icecap defined by climate scientists as particularly vulnerable to small variations of regional temperatures.<sup>2</sup> The impacts of climate change in the Arctic have thus a crucial global dimension.

Additionally, modern narratives related to developments in the Arctic and to the impact of climate change on our natural environment and on local communities are

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<sup>1</sup> RK Pachauri et al. (eds.), *Synthesis Report of the Fourth Assessment Report* (Geneva: IPCC, 2007).

<sup>2</sup> See the Key finding 3 of the Executive Summary of "SWIPA – Snow, Water, Ice and Permafrost in the Arctic", reading as follows: "Arctic glaciers, ice caps and the Greenland Ice Sheet contributed over 40% of the global sea level rise of around 3 mm per year observed between 2003 and 2008", (AMAP, 2011), 11.

difficultly dissociable. The future history of the Arctic is heavily dependent on the pace and scale of anthropogenic climate change. Across the circumpolar world, indigenous peoples are already suffering the consequences of global warming and have already needed to adapt their cultures and way of life. Climate change also results already in new social and health issues in the region. Furthermore, existing infrastructures, including coastal housing, roads and pipelines are threatened by the modification of the physical environment, including permafrost thawing and coastal erosion. On the other hand, the thawing of the sea ice is redefining the range of economic opportunities in all Arctic states, and most particularly for the five coastal states: Canada, Denmark (Greenland), Norway, Russia and the United States. Potential developments in trans-Arctic shipping, offshore fossil fuel exploitation, the opening of new fisheries, and tourism is project by some to reach unprecedented levels in the coming decades. While this ongoing reshaping of the region's economy might benefit local and external actors, they also provide numerous logistical, social and governance challenges.

In this context, climate governance is of undeniable relevance for the region. Global climate change governance is dominated to a large extent by the central role of the UN climate change regime developed under the UN Framework Convention on Climate Change (UNFCCC) adopted in 1992. The UNFCCC enjoys almost universal ratification among UN member states. Since the adoption of the convention, its parties have engaged in a continuous negotiating process in order to promote its implementation and to progressively expand the range of issues addressed under the climate change regime.

Arctic regional cooperation and global climate governance have emerged and matured along a parallel timeframe. Both of them have indeed been initiated two decades ago in the context of the post-cold war in a new era prone to multilateral cooperation on environmental issues. Both of these processes also are currently at a crossroads. The Arctic Council is ongoing a process of institutionalization, with the recent establishment of the Arctic Council Permanent Secretariat and the revision of the role of observers. At the same time the fate of the climate change regime hangs on the adoption of a new agreement expected to result from the Paris Climate Conference at the end of 2015. Consequently, considering the interactions between actors shaping in Arctic governance and the global climate change regime is particularly timely as it could shed a new light on the relevance of the institutionalization of the Arctic Council as well as provide more understanding on how the global climate regime addresses the regional circumstances of vulnerable regions and which actors play a role in influencing such response.

In this context, this thesis proposes therefore to study to what extent the global climate change regime has been able to address Arctic specificities. While many scholars have discussed the interaction between the Arctic and its main actors and the international climate regime, a systematic analysis of the interaction between regional actors and the global forum is lacking. The present thesis proposes consequently to address this gap.

This assessment builds on the legal analysis of the status that relevant actors enjoy under the Arctic Council and in the climate regime. This analysis will consider in particular any relevant commitments of these actors as well as opportunities offered to them to strengthen the Arctic sensitivity of the climate regime.

This analysis will be complemented by a systematic review of all materials related to Arctic governance and to the climate regime and which might indicate that Arctic concerns have been considered through the climate regime, or that individual actors have attempted to promote these concerns. As a result, the sources considered for this narrative analysis include two main categories of documents: the inputs provided, primarily by states, into the Arctic and climate governance, as well as the outputs produced by these processes in the form of formal declaration adopted by the Arctic Council and the decisions and reports adopted by the key bodies of the UN climate change regime.

As the present research focuses on the interplay between national and regional priorities on the one hand, and the international climate regime on the other hand, the sub-national level of Arctic governance will be omitted from this chapter, as well as regional cooperation involving sub-national governments. The Barents Regional Council (BRC) constitutes nonetheless an innovative form of cooperation across borders in the European Arctic. The BRC, which was created as the regional component of the Barents Euro-Arctic Council (BEAC), aims at fostering cooperation among sub-national entities from Finland, Norway, Russia and Sweden.<sup>3</sup> Additionally, the present research considers documents prepared, decisions adopted and interventions undertaken from the early 1990s – when both processes reviewed here were initiated – and until the 31<sup>st</sup> December 2014. More recent documents are only briefly mentioned in the conclusions as we open a discussion on future prospects.

This research attempts to provide elements of response to these questions in three successive steps. Having set the stage with an introduction to the perception of Arctic actors of the relevance of global climate governance to the region (Part 1), the thesis provides a descriptive account of the status of the Arctic in the climate change regime and of the implementation of the UNFCCC across the region (Part 2). The inputs provided by Arctic and non-Arctic actors are then considered to identify to which extent and how have these actors attempted to promote Arctic concerns in the global climate regime (Part 3).

The first substantial chapter of the thesis (chapter 2) thus explores the status of climate change and of international climate governance through the lenses of Arctic policies and of the Arctic Council. The objective of this exposé is not to provide a descriptive account of all climate-related activities implemented in the region. Instead the chapter considers whether, when intervening in the context of Arctic

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<sup>3</sup> See for a description of regional cooperation in the Barents region: Waliul Hasanat, "Cooperation in the Barents Euro-Arctic Region in the Light of International Law, *The Yearbook of Polar Law* 2 (2010).

governance, the role of the climate change regime is emphasized by Arctic states. This chapter attempts to respond to this question both from the point of view of individual Arctic states – providing a systematic analyse of the Arctic strategies of all eight Arctic states – and from the perspective of the Arctic Council. The chapter also contributes to setting the stage for the present thesis by highlighting three main avenues for the Arctic Council to contribute to climate governance.

The second part of the thesis is divided into chapters addressing respectively the current position of the Arctic in the global climate change regime and its main processes, as well as its implementation in each of the eight Arctic states. Chapter 3 assesses the position of the Arctic in the climate change regime and highlights the absence of specific references in the two legally-binding agreement composing the backbone of the regime. Similarly, neither the hundreds of decisions adopted by the parties to the UNFCCC since its entry into force nor the reports of the sessions of its subsidiary bodies contain significant references to the region. Ongoing negotiations aiming at elaborating future commitments and mechanisms appear to possess the same blindness with regards to the circumstances occurring the circumpolar world. The chapter highlights however one ongoing workstream that could provide an adequate forum in the climate change regime for parties to pay attention to ongoing and future Arctic changes.

Chapter 4 complements the previous study with a discussion of the commitments adopted under the UNFCCC by each of the Arctic states. While the previous chapter highlights the universal nature of the climate change regime and the difficulty for regional perspectives to receive significant attention, chapter 4 highlights the fact that the UNFCCC is implemented with large variations across the circumpolar world. These differences result from different ratification status or acceptance of the Kyoto Protocol and its commitment periods, as well as to national specificities. The example of the regime applied to Iceland between 2008 and 2012 under the Protocol demonstrates the capacity for the UN climate regime to accommodate specificities despite its global nature.

The third part of the thesis opens with chapter 5 dedicated to the systematic review of the positions and narratives carried by Arctic actors into the UN climate change regime. Two categories of actors are considered at this point: the individual Arctic states and the Arctic Council (Arctic indigenous peoples being considered in a separate chapter of the thesis). The role of the Arctic states in sharing an “Arctic message” with the global climate community is assessed in two steps. Firstly, the content of their national communications is reviewed in order to study the degree with which these states associate themselves with the Arctic or highlight Arctic-specific measures when on their national circumstances and climate policies. Secondly, their positions in the negotiations is analyzed in order to consider whether these states have suggested over the past years any relevance for the Arctic in the ongoing negotiating process. In relation to the Arctic Council, the status of the Council at the UNFCCC is discussed in more detailed as this current state of play frame to a large extent any opportunity for the Council to provide inputs into the climate change regime.

A similar review is presented in chapter 6 in relation to the role of non-Arctic actors. This chapter considers the role of and opportunities provided to non-Arctic states (and in particular those with observer status at the Arctic Council) and to Non-Governmental Organizations) in order to highlight Arctic specificities in the climate change regime. In relation to non-Arctic states, the chapter highlights two rationales that might justify a duty for these states to carry this Arctic message in the climate process.

Finally, chapter 7 addresses the role of Arctic indigenous peoples in shaping the global change regime and, potentially, in ensuring that Arctic concerns are taken into consideration when further elaborating the regime. This chapter considers first the relevance of Arctic indigenous peoples to regional governance, highlighting their specific status under the Arctic Council. It then highlights the challenge for Arctic indigenous peoples to have their voices heard in the climate process, in particular given the fact that these peoples constitute only a small fraction of the indigenous peoples caucus present at the climate talks. The review of initiatives and actions undertaken by Arctic indigenous peoples in the climate change regime concludes this chapter.

## **Part I: Setting the Stage – Arctic Cooperation on Climate Change**

## 2. Arctic States, Climate Change and International Cooperation

This first chapter intends to provide an overview of the role played by climate change in shaping policy priorities and public rhetoric in the Arctic. To accomplish so, the chapter considers both regional and national levels of Arctic governance. The first section of this chapter provides a comparative review of the national Arctic strategies that have been recently prepared and adopted by each of the Arctic states. The content of the strategies contribute to the identification of the policy priorities of each of the eight Arctic states. Additionally, as documents meant for an external audience at least as much as for internal use within the national administration, the strategies contain insightful information regarding the different public narrative used by each of the Arctic governments. The second section introduces various roles played by the Arctic Council – as the most prominent forum for regional governance – to address climate change in the High North. This section does not intend to present an exhaustive review of the many projects and initiatives implemented or endorsed by the Council on this issue,<sup>4</sup> but instead highlights three main axes of interventions relevant to the present research.

### 2.1. *Setting the stage: Learning from the National Arctic Strategies*

Between 2007 and 2012, each of the eight Arctic states released a national policy framework for the Arctic.<sup>5</sup> These documents – referred to as Arctic strategy,

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<sup>4</sup> For a more comprehensive assessment of the Arctic Council's initiatives on climate change, see Waliul Hasanat, "Towards Model Arctic-Wide Environmental Cooperation Combating Climate Change, *Yearbook of International Environmental Law* 20 (2009).

<sup>5</sup> Canada: Government of Canada, *Canada's Northern Strategy Our North, Our Heritage, Our Future* (Ottawa: Ministry of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, 2009); Denmark: Kingdom of Denmark Ministry of Foreign Affairs, *Denmark, Greenland and the Faroe Islands: Kingdom of Denmark Strategy for the Arctic 2011-2020* (Copenhagen: Ministry of Foreign Affairs, 2011); Finland: Prime Minister's Office, *Finland's Strategy for the Arctic Region*, (Helsinki: Prime Minister's Office Publication, 2009); Iceland: Althingi, *A Parliamentary Resolution on Iceland's Arctic Policy* (Reykjavik: Ministry of Foreign Affairs, 2011); Norway: Norwegian Government, *The Norwegian Government's High North Strategy* (Oslo: Norwegian Ministry of Foreign Affairs,

independently from their original designation – define the national policy objectives and priorities of each of the eight countries for the Arctic. They also provide valuable insights on how these countries perceive the region and their own northern territories.<sup>6</sup> In some cases – most notably Norway, Finland and the US, these documents also enable to review the evolution over time of Arctic policies as these countries have released updated versions of these policy documents.<sup>7</sup>

This section proposes to review the information provided by these documents in order to assess to what extent these strategies might guide the conduct and positions of Arctic actors when acting in international forums and, in particular, in the climate negotiations under the UNFCCC. This review provides useful information both to explain the rationale and motivations of the Arctic states as well as to assess the degree of policy coherence between the positions that these states adopt individually in the Arctic and their positions and interventions in the climate regime.

Firstly, the nature and function of the Arctic strategies is introduced in the first sub-section. Secondly, the importance of climate change in these documents is highlighted as one of the core component of all documents. The third sub-section then analyzes references across the Arctic strategies to the role of international cooperation. In some cases, the importance of the UNFCCC is explicitly emphasized, either when describing the normative frameworks relevant to the region or when identifying the Arctic-related policy objectives or commitments of some of the Arctic states. Finally, some strategies also underscore the importance to strengthen the role and the voice of indigenous peoples in decision-making related to the Arctic, including in international forums for environmental governance.

In addition to the Arctic strategies released by the Arctic 8, three “non-Arctic” actors have also released similar policy documents: Germany, UK and the EU. These documents are reviewed in a subsequent sub-section of this research.<sup>8</sup>

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2006); Russia: President of the Russian Federation D. Medvedev, *The Fundamentals of State Policy of the Russian Federation in the Arctic in the Period till 2020 and beyond* (Moscow: Rossiyskaya Gazeta, 2009); Sweden: Government Offices of Sweden, *Sweden’s strategy for the Arctic region* (Stockholm: XGSGraphics Service, 2011); US: The White House. *National Security Presidential Directive and Homeland Security Presidential Directive* (Washington, D.C.: The White House, 2009).

<sup>6</sup> Ólafur Þór Harðarson, Forward to Alyson JK Bailes and Lassi Heininen, *Strategy Papers on the Arctic or High North: A comparative study and analysis* (Reykjavik: Alþjóðamálastofnun og Rannsóknarsetur um smáriki, 2012), at 5.

<sup>7</sup> Finland: Finnish Government, *Finland Strategy for the Arctic Region* (Helsinki: Prime Minister’s Office, 2013); Norway: Norwegian Ministry of Foreign Affairs, *New Building Blocks in the North: The next Step in the Government’s High North Strategy* (Oslo: Norwegian Ministry of Foreign Affairs, 2009); US: The White House, *National Strategy for the Arctic Region* (Washington D.C: The White House, 2013).

<sup>8</sup> See below, sub-section 6.1.2.

### 2.1.1. Introduction to the Arctic strategies

The publication, within a relatively limited time window, of Arctic strategies by all of the Arctic states demonstrates rapid developments in the region over the past decade. First and foremost, the release of these documents underscores the growing interest in the Arctic and in their Arctic region by all Arctic states.<sup>9</sup> To some extent, the fact that all eight nations have prepared their own strategy for the region can also be explained by the context of a “race to resources” in the High North, in particular in relation to the five coastal states.<sup>10</sup>

Before reviewing the content of the strategies, the dual function of these documents must be understood. Firstly, the Arctic strategy are intended to provide a compass to all actors to which they relate in order to *inform, mobilize, steer and coordinate* their activities in the region and their resources.<sup>11</sup> However, when “strategies” are usually kept as internal documents by their authors, these Arctic strategies share one common feature that greatly influences their nature and their function: all of these have been drafted and designed to be made publicly available. Consequently, the content of the strategies (as well as their existence in itself) intends not only to provide guidance to internal audiences and actors mandated to implement their objectives, but they also send a deliberate message to external audiences.<sup>12</sup> This communicative function applies both in relation to domestic audience – the national media and population – as well as to foreign actors – including foreign governments but also non-governmental entities.<sup>13</sup>

In his study of the Arctic strategies, Heininen identified the following narrative role as the most striking common element of these strategies:

*The modern Arctic strategies and state policies show a growing need and interest of each of the Arctic states to, on one hand, (re)position and (re)define themselves as an Arctic country or nation as well as to (re)construct its internal and foreign policies dealing with Arctic or northern affairs.*<sup>14</sup>

This (re)positioning and (re)definition of the Arctic identity of the eight states is motivated partly by the race to Arctic legitimacy, which Bailes and Heininen

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<sup>9</sup> Lassi Heininen, “State of the Arctic Strategies and Policies – A Summary”, *The Arctic Yearbook* 1 (2012), at 2.

<sup>10</sup> see Christopher Summers comparing the release of Arctic strategies by the five coastal states to “host of suitors jockeying for position in the race to possess the Arctic and all that it contains”, Christopher Summers, “Arctic Solutions The Frozen (Thawing) Relations of the High North”, *Note de l’Institut Français des Relations Internationales* (2010), at 2.

<sup>11</sup> Alyson JK Bailes & Lassi Heininen, *Strategy Papers on the Arctic or High North: A comparative study and analysis* (Reykjavik: Alþjóðamálastofnun og Rannsóknarsetur um smáiríki, 2012), at 21, see also Bailes at 20 for a discussion of the concept of strategy.

<sup>12</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 24.

<sup>13</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 17.

<sup>14</sup> Lassi Heininen (2012), *supra* note 9, at 25.

summarize as competitive claims of “I’m-more-Arctic-than-you-are”.<sup>15</sup> While these documents provide very informative insights into the priorities and perception of all major Arctic actors, their role should also not be overemphasized. Indeed, the form and nature of the strategies limit their capacity to be effectively implemented. In particular, these relatively short policy documents fail in most cases to provide detailed guidelines for particular actors, accompanied by specific timeframes and clear resource allocations directions. Additionally, the strategies are also non-legally binding by definition and thus closer to policy statements than to proper work programs.<sup>16</sup>

### **2.1.2. Climate (and Environmental) Protection: a Consensual Core**

Climate change in the Arctic is mentioned in all of the strategies. This unanimous emphasis is not surprising given that climate impacts in the region are, together with the pressure to promote new economic developments (many of which actually result from the increase of temperatures in the region), one of the two main factors having motivated the Arctic states to publish regional strategies.

Climate change is referred in the strategies in different contexts. The issue is almost systematically mentioned in order to set the background or to present the rationale for the strategies. In relation to more prescriptive references to climate change, the most common action proposed in the strategies is the further advancement of climate science in the region. Climate research is indeed mentioned in all but the Icelandic Arctic strategy.

Some of the other Arctic states also mention national commitment to climate policy, including mitigation and/or adaptation. Denmark, Finland, Iceland and Norway reiterate the importance of their national efforts to cut emissions of greenhouse gases as a general policy that contributes to reducing the threats on the Arctic. The Arctic strategy of Finland is the only one suggesting a special responsibility for the Arctic states to reduce climate pollutants, with a reference to the issue of short-lived climate forcers.

*Arctic countries – many of them economically powerful nations – have a particular responsibility in the efforts to reduce the emissions of greenhouse gases and short-lived climate pollutants, such as black carbon and methane, which speed up the climate change.*<sup>17</sup>

These pollutants have been targeted over the past few years by activities undertaken under the auspices of the Arctic Council.<sup>18</sup>

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<sup>15</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 109.

<sup>16</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 110.

<sup>17</sup> Arctic Strategy of Finland (2013), *supra* note 7, at 15.

<sup>18</sup> See below, sub-section 2.2.2.

Most strategies also tackle the issue of adaptation to ongoing and future climate impacts in the region. The strategies prepared by the Nordic countries and Russia all suggest specific actions in order to facilitate or prepare adaptation responses in the High North. Whereas references to mitigation actions relate to policies adopted at the national level to reduce the emissions of climate pollutants, measures suggested for adaptation are proposed at the regional level. This difference of scales reflects the nature of climate change being a global crisis with locally- and regionally-differentiated impacts.

Finally, and despite the consensus existing among all eight Arctic states that tackling climate change should be a priority in the High North, all of the strategies – including those of countries controlling no fossil fuels reserves under their Arctic territories – also identify the exploitation of fossil fuels in the Arctic as one of the main economic activity providing business opportunities across the region.<sup>19</sup> The emphasis on policy objectives aiming at harvesting the economic potential related to the extraction of fossil fuels across the region combined with the emphasis on the need to tackle climate change in the region exemplifies the challenge for regional policy coherence presented by the phenomenon commonly referred to as the “Arctic paradox”.

### **2.1.3. International Cooperation: the external dimension of the Arctic Strategies**

Recognition of the importance of international cooperation on Arctic issues is also a common element that is explicitly mentioned in all of the strategies. In particular, the eight Arctic states all refer to the need for continued (and strengthened) regional cooperation. Moreover, the Arctic Council is mentioned as a key venue for cooperation in all of the strategies.<sup>20</sup> This emphasis on the regional dimension of international cooperation however tends to overshadow the opportunity and relevance of global processes, a trend that Heininen described as a “surprising lack of global perspective”, given the role of globalization and of climate change in shaping the future of the region.<sup>21</sup>

The role of international cooperation is particularly highlighted in relation to environmental issues, the Arctic state claiming neither that environmental threats to the Arctic might be solved at the regional level only nor denying the importance of international solutions.<sup>22</sup> Among the Arctic states, European governments also highlight in their strategies their readiness to accept and implement international environmental obligations.

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<sup>19</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 99.

<sup>20</sup> Lassi Heininen (2012), *supra* note 9, at 42.

<sup>21</sup> Lassi Heininen (2012), *supra* note 9, at 42.

<sup>22</sup> Alyson JK Bailes & Lassi Heininen (2012), *supra* note 11, at 104

As the issue is of global nature, international cooperation on climate change is logically addressed in many of the strategies. Russia and the US are the only two Arctic states not referring explicitly to the climate negotiations in their Arctic strategies. References to the UNFCCC vary from general mentioning of the agreement, such as Iceland emphasizing, “it is necessary to respond to climate change and its impacts within the UNFCCC”<sup>23</sup>, to more specific policy guidance. The Norwegian strategy contains for instance a reiteration of the country’s commitment to meet its binding mitigation target under the Kyoto Protocol.<sup>24</sup>

In the context of the present research, the Arctic strategies of Canada, Denmark, Finland and Sweden are the most interesting as they explicitly provide indications on the role that the country shall play in the climate negotiations.

*There are other forums that provide opportunities to raise Arctic issues. These include [...], discussions and negotiations at the United Nations Framework Convention on Climate Change [...].*<sup>25</sup>

*The Kingdom [of Denmark] will continue, for example, through the Arctic Council, to contribute with knowledge and information inputs on Arctic climate change to the relevant international forums in which a global climate agreement under the UNFCCC is to be promoted. This also includes the need for climate change adaptation initiatives in the Arctic.*<sup>26</sup>

*In global climate negotiations, Finland advocates ambitious emission reduction targets by highlighting issues related to climate change in the region.*<sup>27</sup>

*Sweden will work to ensure that climate change in the Arctic and its global impact is highlighted in international climate negotiations.*<sup>28</sup>

The Icelandic Arctic strategy also contains references to the importance to promote of Arctic-specific national concerns in relevant international forums but without explicitly referring to the UNFCCC.<sup>29</sup>

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<sup>23</sup> Arctic Strategy of Iceland (2011), supra note 5, at 9.

<sup>24</sup> “The Ministry of Foreign Affairs and the Ministry of the Environment will intensify their cooperation to ensure that Norway fulfils its commitments under the Kyoto Protocol and plays an active role in efforts to achieve a more ambitious climate agreement for the period after 2012.” Arctic Strategy of Norway (2006), supra note 5, at 14.

<sup>25</sup> Arctic Strategy of Canada (2009), supra note 5, at 36.

<sup>26</sup> Arctic Strategy of Denmark (2011), supra note 5, at 50.

<sup>27</sup> Arctic Strategy of Finland (2013), supra note 7, at 15.

<sup>28</sup> Arctic Strategy of Sweden (2011), supra note 5, at 24.

<sup>29</sup> “It is also important to inform other States, international organisations and stakeholders about Iceland's views on Arctic issues.” Arctic Strategy of Iceland (2011), supra note 5, at 9.

While most references to the relevance of international cooperation in managing climate change relate to scientific cooperation and mitigation action, Finland and Denmark also emphasize explicitly in their Arctic strategies the importance of international cooperation for adaptation.<sup>30</sup>

These explicit references to the UNFCCC reflect the division existing among references in the Arctic strategies to climate policies. While some of these references only highlight that a stronger agreement (and the contribution of a particular country to such agreement) will be beneficial for the Arctic, other suggest the promotion of more specific Arctic-related aspects in the climate regime.

#### **2.1.4. Strengthening the voice of Indigenous Peoples**

Finally, some Arctic strategies mention a commitment to strengthen the voice of the Arctic Indigenous Peoples in global governance. This strong emphasis on the importance to respect the views and to engage Indigenous Peoples in decision making relevant to the Arctic is shared by many of the Arctic states, including in relation to indigenous peoples located outside of their own national boundaries.<sup>31</sup> In relation to the role of indigenous peoples in the climate negotiations, two of the Arctic strategies contain explicit commitments to support this message.

*The Kingdom [of Denmark] will assist in reinforcing the rights of indigenous peoples in negotiations towards a new international climate agreement by promoting the visibility of indigenous peoples' situation and also ensuring that the principles of the UN Declaration on the Rights of Indigenous Peoples from 2007 are observed.*<sup>32</sup>

*Sweden shall highlight how local Arctic communities, and especially those of indigenous peoples, can cope with changes brought about by the changed Arctic climate. [...] Active participation in decisions affecting them is required if indigenous peoples are to be able to meet future challenges.*<sup>33</sup>

### **2.2. The role of the Arctic Council in tackling Climate Change**

The first major document adopted in the context of Arctic regional cooperation was the Arctic Environmental Protection Strategy (AEPS), which initiated environmental

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<sup>30</sup> Arctic Strategy of Denmark (2011), supra note 5, at 50; and Arctic Strategy of Finland (2013), supra note 7, at 57.

<sup>31</sup> Alyson JK Bailes & Lassi Heininen (2012), supra note 11, at 106

<sup>32</sup> Arctic Strategy of Denmark (2011), supra note 5, at 45.

<sup>33</sup> Arctic Strategy of Sweden (2011), supra note 5, at 41.

cooperation across the circumpolar world in 1991.<sup>34</sup> The AEPS already contained several references to the issue of climate change, elevating the “respect the Arctic’s significance for and influence on the global climate” as one of its five principles.<sup>35</sup> Climate change is mainly mentioned in the AEPS in the section dedicated to highlighting the mandate for the Arctic Monitoring and Assessment Program (AMAP). The AEPS already mentioned climate change as possibly one of the two “most significant threats to the present Arctic environment”.<sup>36</sup> The Strategy noted at that time the existence of other international processes dedicated to researching the causes and impacts of climate. The Arctic Monitoring and Assessment Programme established under the AEPS was mandated to establish linkages with these processes in order to “encourage and facilitate an Arctic component in climate programs”.<sup>37</sup> The fact that climate change is mentioned within the mandate of AMAP and not in those of other working groups established under AEPS, such as the Conservation of Arctic Flora and Fauna (CAFF) or Protection of the Arctic Marine Environment (PAME), highlights the understanding that the AEPS will address climate change through scientific research rather than through the adoption of promotion of more prescriptive actions.

Remarkably, the issue of climate change was not mentioned five years later when the Arctic states decided to institutionalize Arctic cooperation with the adoption of the Ottawa Declaration On The Establishment Of The Arctic Council.<sup>38</sup> The Declaration does focuses mainly on the institutional aspects of the Arctic Council and does not address in details the mandate of the various working groups functioning under the Council, which might explain this absence of explicit reference. However the preamble of the Declaration does refer to the environmental commitments of the Arctic states:

*AFFIRMING concurrently our commitment to the protection of the Arctic environment, the health of ecosystems, the maintenance of biodiversity in the Arctic region and the conservation and sustainable use of natural resources*<sup>39</sup>.

In this context, the absence of any reference to what the Arctic states had previously identified as one of the primary threat to the Arctic environment is noteworthy.

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<sup>34</sup> Arctic Environmental Protection Strategy (AEPS), Rovaniemi, Finland, 14 June 1991, 30 I.L.M. 1624 (1991). For a description of the Rovaniemi Process, which preceded the adoption of the Arctic Environmental Protection Strategy, see Alex Oude Elferink, “Environmental protection in the Arctic—The Rovaniemi process.” *Marine Pollution Bulletin* 24.3 (1992), at 128-130.

<sup>35</sup> *Ibid.*, at 13.

<sup>36</sup> *Ibid.*, at 30.

<sup>37</sup> *Ibid.*, at 34.

<sup>38</sup> Declaration on the Establishment of the Arctic Council, Ottawa, Canada, 19 September 1996, Joint Communiqué and Declaration on the Establishment of the Arctic Council, 35 I.L.M. 1382 (1996).

<sup>39</sup> *Ibid.*, preamble.

Nevertheless, the lack of emphasis on the issue of climate change in the Ottawa Declaration has not prevented the Arctic Council to take actions aimed at tackling regional climate change as well as to refer to the issue in its high level political declarations. The following sub-sections explore these activities under three main axes of interventions used by the Council on this issue. Firstly, and most importantly, the Council has played a critical role in promoting further understanding of climatic changes in the High North. In particular, its flagship Arctic Climate Impact Assessment (ACIA) project constitutes so far the most elaborated and influential regional impact assessment. Secondly, the Arctic Council has shown interest in addressing the issue of Short Lived Climate Forcers (SLCF) in the region. Not only SLCF provide perhaps the most promising and cost-effective short-term opportunity to slow the pace of climate change, but their impact is also amplified in the Arctic due to the presence of snow or ice over a large part of the region during several months each year. The Council has thus promoted further scientific understanding of the issue and is now moving towards initiating concrete actions on this issue. Thirdly, the Arctic Council has demonstrated a limited willingness to build on its regional legitimacy to call on the international community to take urgent action on climate change. The final sub-section of this chapter thus considers references to international climate policies in the Arctic ministerial declarations adopted during the biennial meetings of the Council.

### **2.2.1. Towards a Greater Understanding: Coordinating Climate Research Across the Region**

By the time the Arctic Council initiated its most important project regarding climate research, it could already build on its successful experience in fostering international cooperation on a particularly important issue for the Arctic region. In 2002, the release of the Arctic Monitoring and Assessment Program's (AMAP) "Arctic Pollution" report had played an influential role in informing and setting the agenda of the international community in relation to cooperation on the regulation of pollutants.<sup>40</sup> Also, the agenda-setting role of the Arctic Council is strengthened by its dual nature, closely involving scientific and political projects. While these two functions are more clearly divided between the IPCC and the UNFCCC at the global level, their closer integration in the work of the Arctic Council presents inherent advantages.<sup>41</sup>

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<sup>40</sup> Arctic Pollution, AMAP (2002), Timo Koivurova and Waliul Hasanat, "Climate Policy of the Arctic Council", in Timo Koivurova, E. C. H. Keskitalo and Nigel Banks (eds.), *Climate Governance in the Arctic* (Heidelberg: Springer, 2009), at 57; David Leonard Downie and Terry Fenge, *Northern Lights against POPs. Combating Toxic Threats in the Arctic* (Montreal & Kingston: McGill-Queen's University Press, 2003).

<sup>41</sup> Annika Nilsson, "A Changing Arctic Climate: Science and Policy in the Arctic Climate Impact Assessment" in Timo Koivurova, E. C. H. Keskitalo and Nigel Banks (eds.), *Climate Governance in the Arctic* (Heidelberg: Springer, 2009), 85. This statement can be slightly nuanced by the fact that the IPCC assessment report already includes an element of political processes in the intergovernmental negotiations of its summary for policy makers. Such

The Arctic Climate Impact Assessment (ACIA), initiated by the Arctic Council and International Arctic Science Committee (IASC), was the first major project to address the impacts of climate change in the circumpolar world. This assessment played a crucial role, not only in raising awareness on the scale and pace of climate impacts in the region, but also in forecasting the opportunities for economic developments and governance challenges in the region. Consequently, ACIA has been credited for having been the precursor for the discussions on the strengthening of the Arctic Council and for the increase of interest in the region by non-Arctic actors.<sup>42</sup>

The 2000 Barrow declaration, endorsing the establishment of the ACIA, explicitly mentioned its role as contributing to the work of the IPCC.<sup>43</sup> Although not formally linked to the work of the Panel, the process leading to the preparation of the ACIA report was framed by the interest of the IPCC for further regional climate assessments in order to complete its own work.<sup>44</sup> The contribution of ACIA to the understanding of global climate change was recognized during the World Summit on Sustainable Development, which highlighted the assessment as an example of best practice of regional cooperation on climate research.<sup>45</sup> The ACIA synthesis report, released in 2004, contained an unequivocal assessment of the scale of climate change impacts in the Arctic:

*Key finding 1: The Arctic climate is now warming rapidly and much larger changes are projected.*

*Key finding 2: Arctic warming and its consequences have worldwide implications.*

Most notably, from a policy perspective, the Senior Arctic Officials (SAOs) of the Arctic Council prepared a policy document to complete ACIA with concrete policy recommendations.<sup>46</sup> This broad set of recommendations is organized around the

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negotiations did not take place in the context of the ACIA which resulting in a document based only on scientific inputs and a much more limited role for the governments. Annika Nilsson, *A Changing Arctic Climate Science and Policy in the Arctic Climate Impact Assessment*, Series: Linköping Studies in Arts and Science No. 386 (2007), at 218.

<sup>42</sup> Terry Fenge, "The Arctic Council: Past, Present, and Future Prospects with Canada in the Chair from 2013 to 2015", *The Northern Review* 37 (Fall 2013).

<sup>43</sup> Barrow Declaration on the Occasion of the Second Ministerial Meeting of the Arctic Council, 13 October 2000, section 3.

<sup>44</sup> Annika Nilsson noted that the ACIA and the IPCC were interconnected through many personal connections among the lead authors. Annika Nilsson (2009), *supra* note 41, at 82.

<sup>45</sup> Johannesburg Plan of Implementation, para. 38(i). Nilsson noted that the opportunity for such regional assessments relies on whether the states involved can consider this report as a threat for their national interests, taking the example of the US "whose climate policies were most at odds with a message of the Arctic as a bellwether for climate change", Annika Nilsson (2009), *supra* note 41, at 90.

<sup>46</sup> Report of the Senior Arctic Officials to the Arctic Council Ministerial Meeting, November 2004; see also the Arctic Climate Impact Assessment, Policy Document, Issued by the Fourth

two main dimensions of climate policy: mitigation and adaptation. This policy document provided a link between the work of the Arctic Council and the global climate regime, not only through references to the UNFCCC, but also due to the personal involvement of the national climate negotiators at the later stages of the negotiations of the policy document.<sup>47</sup> In relation to mitigation, the SAOs noted that *“timely, measured and concerted action is needed to address global emissions”* and invited the Arctic states to take into consideration the findings of ACIA in the fulfilment of their obligations under the UNFCCC. The ACIA overview document justified the lack of specific consideration of mitigation of emissions occurring in the Arctic and of regional adaptation throughout the assessment based on the fact that the UNFCCC was already addressing both of the issue of mitigation policy.<sup>48</sup>

The recommendations called the Arctic states to *“adopt climate change mitigation strategies [in order to reduce greenhouse gases to] levels consistent [with] the ultimate objective of the UNFCCC”*, thus, representing the strongest call for climate mitigation policies endorsed by the Arctic Council up to then.<sup>49</sup> Recommendations related to adaptation policies called for close cooperation with Arctic residents in shaping response policies and adaptive management strategies for Arctic ecosystems, and invited the Arctic states to manage economic opportunities related to climate change in a sustainable manner. The SAOs also suggested cross-cutting actions related to research, observations, monitoring and modelling, as well as outreach and education to support action taken in these two policy fields. Finally, the SAOs recommended four measures that the Arctic Council could adopt in order to build on the findings of the ACIA report.

Despite their symbolic importance, these recommendations are rather shallow as they did not consist in any new major obligations, but rather reiterated commitments of the Arctic States.<sup>50</sup> Summarizing the policy document, Annika Nilsson concluded that:

*“member states assert their authority over climate policy [in relation to scientific knowledge and the role of indigenous people], while the role of the Arctic Council is downplayed in relation to the UNFCCC. The only solid commitment made is to promote awareness.”*<sup>51</sup>

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Arctic Council Ministerial Meeting Reykjavík, November 24, 2004, available at [http://www.acia.uaf.edu/PDFs/ACIA\\_Policy\\_Document.pdf](http://www.acia.uaf.edu/PDFs/ACIA_Policy_Document.pdf).

<sup>47</sup> Annika Nilsson (2007), *supra* note 41, at 131-142.

<sup>48</sup> Arctic Climate Impact Assessment, Policy Document, *supra* note 46, at 4.

<sup>49</sup> Annika Nilsson (2007), *supra* note 41.

<sup>50</sup> See Bodansky's concept of depth of international documents, Daniel Bodansky, *The Art and Craft of International Environmental Law*, (Cambridge, Mass.: Harvard University Press, 2010), at 177.

<sup>51</sup> *Ibid.*, at 147.

At its fourth ministerial meeting, the Arctic Council noted the scientific findings of ACIA and endorsed these policy recommendations.<sup>52</sup> One of the main questions arising from the release of the ACIA report related to the follow-up that the Arctic Council would give to this report in order to update the findings at the light of the more recent scientific data available.<sup>53</sup> In 2004 and as suggested in the ACIA policy recommendations prepared by the SAOs, the Arctic Council established a focal point to ensure a follow-up to the assessment. In its report to the SAOs, the Arctic Council Focal Point for ACIA follow-up activities recommended, among other conclusions, to “plan and implement ACIA follow-up assessments as soon as possible”.<sup>54</sup> However, no formal update process of the ACIA taken place since then. The Arctic Council has preferred to initiate different projects introduced as follow-up initiatives rather than to mandate the preparation of reports similar to ACIA. In order to address this gap, the World Wide Fund for Nature (WWF), a non-governmental organization, commissioned its own update to ACIA in 2008.<sup>55</sup> The key finding of this report consisted in affirming that the observed pace of changes of key Arctic systems was higher than predicted in earlier assessments – including ACIA itself.<sup>56</sup>

One additional consequence of the process leading to the release of the ACIA report consists in the inclusion of indigenous knowledge in the scientific outcome document of ACIA. Nilsson pointed out that this process considered such knowledge to a greater extent than ever before,<sup>57</sup> thus providing an indirect entry point for indigenous knowledge in the final outputs of the IPCC. This assessment must, however, be nuanced regarding the process leading to the policy recommendations during which the role of the states was reinforced compared to that of indigenous peoples representatives. This situation has led to the dismissal of the analysis that Arctic states and Indigenous Peoples benefiting from the status of Permanent Participants benefit from a quasi equality in the structure of the Arctic Council.<sup>58</sup>

Following the release of the ACIA and of the SAOs’ policy recommendations, the Arctic Council requested its working groups to continue their work *supporting*,

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<sup>52</sup> Reykjavik Declaration on the occasion of the Fourth Ministerial Meeting of the Arctic Council, November 24, 2004, at 2.

<sup>53</sup> See Timo Koivurova and David VanderZwaag, “The Arctic Council at 10 Years: Retrospect and Prospects”, *University of British Columbia Law Review* 40 (1) (2007), at 173.

<sup>54</sup> See the recommendation 4 of the Report of the Arctic Council Focal Point for ACIA Follow-up Activities, presented to the Senior Arctic Officials on 23 October 2006, available at [www.arctic-council.org](http://www.arctic-council.org).

<sup>55</sup> Martin Sommerkorn and Neil Hamilton, *Arctic Climate Impact Science* (Oslo: WWF International Arctic Programme, 2008)

<sup>56</sup> *Ibid.*, at 6.

<sup>57</sup> Annika Nilsson (2009), *supra* note 41, at 83-84.

<sup>58</sup> Annika Nilsson (2007), *supra* note 41, at 146. See below section 7.1 for a discussion of the status of Permanent Participant at the Arctic Council.

*analyzing, and synthesizing Arctic climate research.*<sup>59</sup> Consequently, the AMAP launched its cryosphere project in order to increase the understanding of *changes in Arctic snow, water, ice and permafrost conditions and their effects*. The project resulted in the release of an intermediary report on “The Greenland Ice Sheet in a Changing Climate”.<sup>60</sup> The final outcome of the project, later renamed as “SWIPA: Snow, Water, Ice and Permafrost in the Arctic” was released during the 2011 Arctic Council meeting and highlighted the dramatic changes affecting the Arctic cryosphere over the past decades. Similarly to the emphasized contained in ACIA’s key finding that Arctic changes are relevant to the rest of the world, SWIPA also highlighted the implications of these changes for the global climate system.<sup>61</sup> The willingness to ensure that this report informs the work of the IPCC has been made explicit, the AMAP working group having highlighted its willingness to cooperate with the IPCC in order to constitute the SWIPA assessment results as “an important contribution” to the process leading to the IPCC fifth assessment report.<sup>62</sup>

### **2.2.2. Reducing Emissions of Short-Lived Climate Pollutants in the Arctic Region**

#### ***Work undertaken under the Arctic Council on the issue of SLCFs***

The role of Short-Lived Climate Forcers (SLCF) in the increase of the temperatures in the Arctic has been discovered in recent years. UNEP evaluates these pollutants, and in particular deposit of black carbon (or soot) in the Arctic region, to contribute for at least to half of the change observed in the region.<sup>63</sup> Contrary to the reduction of greenhouse gases (GHG), actions aimed at reducing emissions of SLCF would, given the physical characteristics of these pollutants, have an almost immediate effect in slowing the increase of regional temperature. Additionally, research has demonstrated that regional sources, including flaring related to the oil and gas industry, shipping and residential heating, contribute to a large extent to the amount

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<sup>59</sup> The Salekhard Declaration on the occasion of the Fifth Arctic Council Ministerial Meeting, October 26, 2006, at 2.

<sup>60</sup> AMAP, *The Greenland Ice Sheet in a Changing Climate: Snow, Water, Ice and Permafrost in the Arctic*, (Oslo: AMAP, 2009).

<sup>61</sup> “SWIPA – Snow, Water, Ice and Permafrost in the Arctic”, (AMAP, 2011).

<sup>62</sup> Report of AMAP activities, SAO report to the 2011 Arctic Council Ministerial Meeting (2011), at 33.

<sup>63</sup> UNEP/WMO, “Integrated Assessment of Black Carbon and Tropospheric Ozone”; available at [www.unep.org/dewa/Portal/67/pdf/BlackCarbon/\\_SDM.pdf](http://www.unep.org/dewa/Portal/67/pdf/BlackCarbon/_SDM.pdf) (last accessed on January 6, 2015).

of black carbon deposited in the Arctic.<sup>64</sup> SLCF are however not taken into consideration under the global climate regime which focuses only on the reduction of emissions of GHG and ignores, for the time being, other pollutants contributing to the increase of mean temperatures. Consequently, and while the Arctic States lack of the jurisdiction to address on their own many of the pollutions affecting the Arctic, such as the issue of Permanent Organic Pollutants or Mercury Pollution, they do have the capacity to tackle decisively SLCF pollution.<sup>65</sup>

In 2009, the Arctic Council established a specific task force to address the issue of short-lived climate forcers. According to the Tromsø Declaration, the mandate of the task force was:

*to identify existing and new measures to reduce emissions of these [short-lived climate] forcers and recommend further immediate actions that can be taken and to report on progress at the next Ministerial meeting.*<sup>66</sup>

The recommendations provided by the task force concerned both mitigation measures and further research activities. Mitigation policies, both individual and collective were also proposed.<sup>67</sup> At its Nuuk ministerial meeting, the Arctic Council however only encouraged its members to take national actions and requested that the task force would continue its work for another two years.<sup>68</sup> Prior to the 2013 Kiruna ministerial meeting, Arctic environment ministers met in order to prepare recommendations for their colleagues from the foreign offices. The Swedish chairpersonship prepared for this meeting a background note articulating concrete and ambitious outcomes that the Arctic Council could adopt at the upcoming Kiruna

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<sup>64</sup> A. Stohl, Z. Klimont, S. Eckhardt, K. Kupiainen, V. P. Shevchenko, V. M. Kopeikin, and A. N. Novigatsky, "Black carbon in the Arctic: the underestimated role of gas flaring and residential combustion emissions", *Atmospheric Chemistry and Physics* 13 (2011).

<sup>65</sup> Given the provisions of the UN Convention on the Law of the Sea in relation to shipping in the Exclusive Economic Zone (EEZ) and in the High Seas, Arctic states have a more limited capacity to regulate emissions of black carbon resulting from Arctic shipping, another important contributor of SLCF in the region. The International Maritime Organization (IMO) has however begun to address this issue through the adoption of the Polar Code in 2014. See Laura Boone, "Development of an Environmental Chapter in the Polar Code: Introducing a New Player – Black Carbon", *The Yearbook of Polar Law*, 4 (1) (2012), 541 ff.

<sup>66</sup> The Tromsø Declaration on the occasion of the sixth Arctic Council Ministerial Meeting, April 29, 2009.

<sup>67</sup> Arctic Council Task Force on Short-Lived Climate Forcers, "Technical Report: An assessment of Emissions and Mitigation Options for Black Carbon for the Arctic Council", (Arctic Council, 2011). See also for a description of the process: Erika Rosenthal and Robert Watson, "Multilateral Efforts to Reduce Black Carbon Emissions: A Lifeline for the Warming Arctic?", *Review of Economic Community and International Environmental Law*, 20 (1) (2011).

<sup>68</sup> The Nuuk Declaration on the occasion of the Seventh Arctic Council Ministerial Meeting, May 12, 2011, at 3.

ministerial meeting.<sup>69</sup> The note suggested for instance the Arctic states might commit to provide by 2015 inventories of emissions of SLCF based on inventory guidelines available under the UN Economic Commission for Europe (UNECE). The environmental ministers dedicated a large section of their conclusions to the need for the Arctic Council and Arctic States to “spearhead greater international action on SLCFs.”<sup>70</sup> The conclusions also highlighted the possibility for the Arctic Council to initiate a process dedicated to the reduction of emissions of SLCFs:

*Ministers encouraged the Arctic Council to consider establishing a process at the Kiruna Ministerial meeting aiming for an instrument or other arrangements to enhance efforts to reduce emissions of black carbon from the Arctic States for review and appropriate decision at the next Ministerial meeting in 2015.*<sup>71</sup>

At the Kiruna meeting, the foreign ministers of the Arctic states however fell short of endorsing all of the recommendations forwarded by their colleagues. The ministerial declaration supported recommendations included in the report of the task force, “including that national black carbon emission inventories for the Arctic should continue to be developed and reported as a matter of priority” – but without providing any specific timeframe for the realization of these inventories – and established a Task Force mandated develop by the 2015 ministerial meeting “arrangements on actions to achieve enhanced black carbon and methane emission reductions in the Arctic” (TFBCM).<sup>72</sup> Since then, the newly established Task Force has met several time, building on the technical work accomplished by the previous task force on SLCFs and focusing its work on the preparation of a political agreement to be submitted for approval at the 2015 ministerial meeting.<sup>73</sup> In particular, the TFBCM has worked to prepare a framework for action, which will include an inspirational goal, periodic reporting, peer-review, a role for observers, as well as possibly a higher policy level dialogue.<sup>74</sup> Throughout the work of the TFBCM, the experience of the UNFCCC was mentioned in relation to its experience in conducting peer-review of emission inventories. Contrary to references to other international organizations such as the World Health Organizations (WHO), the International Maritime Organization (IMO), the Climate and Clean Air Coalition (CCAC) and the Convention on Long-Range Transboundary Atmospheric Air Pollution (LRTAP), the

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<sup>69</sup> Ministry of Environment of Sweden, “Arctic Environment Ministers meeting: Arctic Change – Global Effects; Discussion note” (2013), at 8.

<sup>70</sup> Ministry of Environment of Sweden, “Chair’s conclusions from the Arctic Environment Ministers meeting: Arctic Change – Global Effects” (2013).

<sup>71</sup> *Ibid.*, at 2.

<sup>72</sup> The Kiruna Declaration on the occasion of the Eighth Arctic Council Ministerial Meeting, May 15, 2013, at 5.

<sup>73</sup> Arctic Council Task Force for Action on Black Carbon and Methane, Report of the Introductory Meeting and Scoping Session, September 2013, TFBCM I Meeting.

<sup>74</sup> Arctic Council Task Force for Action on Black Carbon and Methane, Report of the 5th Meeting in Iqaluit, ACSAO-CA03 Yellowknife, DOC 5.1 Oct 2014.

UNFCCC was however not mentioned as an organization with which contacts shall be established in the context of the mandate of the TFBCM.

Once finalized by the TFBCM, the framework prepared by the TFBCM will be proposed for adoption by the Arctic ministerial meeting in spring 2015. The conclusion of an agreement by the Arctic Council to curb regional emissions of SLCFs could demonstrate the council's ability to act strategically and position the Arctic states in a leading role when advocating for a global agreement on SLCF.<sup>75</sup> The upcoming US chairpersonship of the Arctic Council is likely to provide a renewed momentum for the Arctic Council to take a leadership role on this issue. US Amb. Papp has indeed announced that the US will make use of "bully pulpit of the Arctic Council" to advocate for strengthening science on SLCF.<sup>76</sup>

### ***Role of other international processes related to SLCFs***

In parallel to efforts to address SLCF through the Arctic Council, other international processes have also considered this aspect of anthropogenic climate change. The UNECE Convention on Long-Range Transboundary Air Pollution (LRTAP)<sup>77</sup> is the main international legally-binding instrument that has considered the regulation of emissions of SLCF so far.<sup>78</sup> This MEA is particularly relevant in the context of Arctic cooperation as all eight Arctic states are parties to the LRTAP. SLCF have been included in the scope of the convention on LRTAP for the first time in 2012 with the adoption of an amendment to the Gothenburg protocol.<sup>79</sup> The amendment establishes emissions standards for fine particulate matter (PM<sub>2.5</sub>) and urges the parties to the protocol to "seek reductions from those source categories known to emit high amounts of black carbon, to the extent it considers appropriate".<sup>80</sup> Consequently, the proportion of emissions of black carbon within the more general ceiling defined for fine particles is left to the discretion of the parties. Considering the importance of climate, social (including health) and economic benefits of early action on SLCF, the amendment fell short of some of the expectations placed on the

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<sup>75</sup> Terry Fenge, "Canada and the Arctic Council: Our Turn to Conduct the Arctic Orchestra", *Institute for Research in Public Policy – Policy Options* (2012), at 67.

<sup>76</sup> Randy Showstack, "U.S. Readies "Aggressive" Arctic Council Agenda" *Eos*, 95 (46) (2014), at 419.

<sup>77</sup> UNECE Convention on Long-Range Transboundary Air Pollution, 18 ILM 1442 (1979)

<sup>78</sup> For additional background on the process leading to the adoption of the amendment, see Sara Terry, Erika Sasser, and Marcus Sarofim, "U.S. and International Efforts to Address Black Carbon, Ozone, and Methane", *Air & Waste Management Association - EM Magazine* (April 2011), 22-24

<sup>79</sup> Gothenburg Protocol. Amendment: Executive Body of the LRTAP, Decision 2012/2 Amendment of the text of and annexes II to IX to the 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone and the addition of new annexes X and XI, UN Doc. ECE/EB.AIR/111/Add.1.

<sup>80</sup> *Ibid*, art. 3.

meeting.<sup>81</sup> Indeed, the new ceilings will apply only in 2020 and the reference to black carbon defines only a voluntary commitment, deceiving the hopes to see the LRTAP adopt mandatory targets for this pollutant.

A second multilateral initiative is also relevant to the discussion of the role of the Arctic states in reducing emissions of SLCP. Since 2012, several states have joined a rapidly growing coalition to promote voluntary actions to address SLCP: the Climate and Clean Air Coalition (CCAC). Arctic Countries – Canada and the US in particular, but also Sweden – played a key role in establishing the CCAC. Since then all other Arctic states having joined the CCAC, except for Iceland that remains outside of this coalition. The purpose of the CCAC is to provide a voluntary international framework for concrete action to accelerate efforts to reduce SLCPs, while fostering co-benefits related to the protection of the environment, to public health and to food security.<sup>82</sup> The non-legal nature of the CCAC is emphasized as the framework provides that it “does not create any legally binding obligations between or among its Partners”.<sup>83</sup>

Additionally, and while it remains “governments-led”, the CCAC explicitly welcomes the participation of non-state actors as partners of the coalition as long as those can identify concrete relevant actions to which they could contribute. The concept paper of the CCAC notes the important role expected to be played by stakeholders.

*Non-government actors play an important role in the Coalition as technical experts, conveners of stakeholders at the regional and national level, implementers, co-funders of program activities and as champions of the initiative’s political and policy agenda.*<sup>84</sup>

Responding to concerns raised that the CCAC might be conceived by some of its participants as an alternative to the UNFCCC, the framework for the coalition explicitly acknowledges the “central importance of reducing GHGs, including through national action and multilateral cooperation under the UNFCCC”.<sup>85</sup> By the end of 2014, the membership of the CCAC already expanded to 45 states partners and 53 non-states partners. While the CCAC has already catalyzed further action on this emerging issue and might even have the potential to deliver half of the technical mitigation potential,<sup>86</sup> the reliance on voluntary actions and the lack of any

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<sup>81</sup> See for instance Erika Rosenthal and Robert Watson (2011), *supra* note 67, at 7.

<sup>82</sup> Framework for the Climate and Clean Air Coalition to reduce Short-Lived Climate Pollutants, adopted in February 2012, available at [www.ccacoalition.org/](http://www.ccacoalition.org/), article 1.

<sup>83</sup> *Ibid.*, Article 3.F.

<sup>84</sup> Climate and Clean Air Coalition Concept Paper, available at [www.ccacoalition.org/](http://www.ccacoalition.org/), at 4.

<sup>85</sup> Framework for the Climate and Clean Air Coalition, *supra* note 82, preamble.

<sup>86</sup> Kornelis Blok, Niklas Höhne, Kees van der Leun and Nicholas Harrison, “Commentary: Bridging the greenhouse-gas emissions gap”, *Nature Climate Change* (2012), at 4.; See also Remi Moncel and Harro van Asselt, “All Hands on Deck! Mobilizing Climate Change Action beyond the UNFCCC”, *Review of Economic Community and International Environmental Law* 21 (3) (2012), at 167.

accountability mechanism however raises questions on the capacity of the CCAC to ensure the delivery of a sufficient level of actions in the long-term.

Despite progress accomplished under these processes, many stakeholders remain unsatisfied with the lack of mandatory action on the issue of SLCF as well as the limited amount of voluntary initiatives resulting from the processes mentioned above. In 2013, the lack of adequate national policy to reduce emissions of SLCF in Canada motivated the Arctic Athabaskan Council (AAC) to submit a petition against Canada with the Inter-American Commission on Human Rights.<sup>87</sup> The petition emphasizes the role of SLCFs in the increase of temperatures in the Arctic and refers to the implications that the lack of action by the country has on the exercise of the human rights of Arctic Athabaskan peoples. The petition highlights that, despite participation in multilateral processes aiming at SLCF, domestic policies of the states involved might still fall short of the expectations of stakeholders.

### **2.2.3. Towards global leadership? The Climate Regime in the Arctic Ministerial Declarations**

The lack of a coordinated presence at the climate negotiations<sup>88</sup> or of a uniform implementation of the Convention across the circumpolar world has not prevented the Arctic Council from referring to the issue, and sometimes more specifically to the UN climate change regime, in its declarations.<sup>89</sup> While such statements seldom result in concrete outcomes, they might be relevant to climate change negotiations in influencing the rhetoric used.

The Arctic Environmental Protection Strategy (AEPS) was the first major declaration adopted in the context of regional cooperation among the eight Arctic states.<sup>90</sup> The AEPS, thus, set the stage for further circumpolar cooperation, which would eventually lead to the establishment of the Arctic Council. The AEPS was adopted in 1991 before completion of the negotiations on the Framework Convention and does not refer to this process. The AEPS did highlight the potential impact of climate change in the region and mentioned the existence of relevant international processes addressing the issue of climate science, implicitly referring to the IPCC.<sup>91</sup> The Nuuk Declaration, adopted at the following Arctic ministerial conference, also

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<sup>87</sup> Petition to the Inter-American Commission on Human Rights seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples resulting from rapid Arctic warming and melting caused by emissions of Black Carbon by Canada, submitted on 23 APRIL 2013, available at [earthjustice.org/sites/default/files/AAC\\_PETITION\\_13-04-23a.pdf](http://earthjustice.org/sites/default/files/AAC_PETITION_13-04-23a.pdf).

<sup>88</sup> See below, sub-section 5.2.2.

<sup>89</sup> For another account of the references to climate change and the UNFCCC in the declaration of the Arctic Council, see Timo Koivurova and Waliul Hasanat (2009), *supra* note 40, at 64.

<sup>90</sup> Arctic Environmental Protection Strategy (1991), *supra* note 39.

<sup>91</sup> *Ibid.*, at 6.

does not mention the impact of climate change in the Arctic.<sup>92</sup> It however expresses “support [for] the early ratification of the United Nations Convention [...] Climate Change”.<sup>93</sup> Awareness of climate impacts in the Arctic then increased with the redaction and release of the Arctic Climate Impact Assessment (ACIA). In this context, Arctic ministers refer to climate change without mentioning explicitly the role of the UNFCCC in following declarations. The Barrow Declaration requested the ACIA to contribute to the work of the IPCC.<sup>94</sup> The Inari Declaration highlighted the growing recognition of the importance of climate impacts in the Arctic, as it includes many references to the issue, as well as a full section dedicated to it.<sup>95</sup> However, the ministers referred to the 2002 World Summit on Sustainable Development and World Conference on Climate hosted by Moscow in 2003, while ignoring the ongoing climate negotiations.<sup>96</sup>

The UNFCCC is mentioned explicitly in the following three declarations adopted by the Arctic Council, all of which consider the importance for the scientific outputs produced under the authority of the Council to be considered in the climate regime.<sup>97</sup> The Salekhard Declaration and the Tromsø Declaration also both contained an affirmation of the commitment of the Arctic States to the climate regime.

The 2011 Nuuk Declaration is particularly interesting from the viewpoint of the possible function of the Arctic as a “canary in the coalmine” in the climate process as it is the first Arctic Council declaration to contain an external aspect with regards to the climate negotiations since the entry into force of the Convention.<sup>98</sup> Indeed, aside from the usual reiteration of their commitment to the climate regime, the Arctic ministers also “urge[d] all parties [to the UNFCCC] to take urgent action to meet target of 2 degrees”.<sup>99</sup> The Nuuk Declaration also refers to the most recent scientific

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<sup>92</sup> Nuuk Declaration on Environment and Development in the Arctic, September 16, 1993.

<sup>93</sup> *Ibid.*, para 10.

<sup>94</sup> Barrow Declaration on the Occasion of the Second Ministerial Meeting of the Arctic Council, October 13, 2000, para. 3.

<sup>95</sup> Inari Declaration on the occasion of the Third Ministerial Meeting of the Arctic Council, October 10, 2002.

<sup>96</sup> *Ibid.*, para. 8.

<sup>97</sup> Both Reykjavik Declaration and Salekhard Declaration invited the UNFCCC to consider the ACIA, while the Tromsø Declaration refers to the promotion of the report entitled “The Greenland Ice Sheet in a Changing Climate”. Reykjavik Declaration on the occasion of the Fourth Ministerial Meeting of the Arctic Council, November 24, 2004; The Salekhard Declaration on the occasion of the Fifth Arctic Council Ministerial Meeting, October 26, 2006; The Tromsø Declaration on the occasion of the sixth Arctic Council Ministerial Meeting, April 29, 2009.

<sup>98</sup> The Nuuk Declaration on the occasion of the Seventh Arctic Council Ministerial Meeting, May 12, 2011.

<sup>99</sup> *Ibid.*, at 4.

output of the Council – the Snow, Water, Ice, and Permafrost in the Arctic (SWIPA)<sup>100</sup>.

Finally, during the 2013 Kiruna ministerial meeting, ministers confirm the commitment of all Arctic states to a successful outcome to the negotiations taking place on the basis of the Durban Mandate.<sup>101</sup> Additionally, they renewed their call to all parties to the UNFCCC to take urgent action contributing to the 2°C global goal. The declaration also mentioned the need for action in relation to two categories of climate pollutants not considered under the UNFCCC. Besides reiterating their commitment to addressing the issue of SLCF in the Arctic, the Arctic states also called on all parties to the Montreal Protocol on Substances that Deplete the Ozone Layer to take action in order to phase-down hydrofluorocarbons (HFC).

In addition to the Ministerial Declaration adopted under the auspices of the Arctic Council, the “Arctic Ocean 5” cooperation provides another important forum for intergovernmental cooperation in the high North. This informal forum built on the Arctic Ocean Conference organized in May 2008 in Greenland. The forum is particularly exclusive as neither Arctic non-coastal states nor Indigenous Peoples were invited to take part or to attend the meetings of the Arctic 5.<sup>102</sup> The most prominent outcome of this process was the Ilulissat Declaration.<sup>103</sup> The five Arctic coastal states highlighted in this occasion the position of the Arctic as standing “at the threshold of significant changes”.<sup>104</sup> Since 2008, and despite concerns being by some of the participating states over the format of the meetings, the Arctic 5 have continued to meet regularly, in particular to continue work on thematic dimensions of managing the Arctic Ocean in a warmer world. Neither the Ilulissat declaration nor the outcomes of the follow-up ministerial meeting held in 2010 in Chelsea did refer explicitly to the relevance of the UNFCCC in this context.

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<sup>100</sup> “SWIPA – Snow, Water, Ice and Permafrost in the Arctic”, (AMAP, 2011).

<sup>101</sup> Kiruna Declaration on the occasion of the Eighth Ministerial Meeting of the Arctic Council, May 15, 2013, at 5

<sup>102</sup> See for instance the Circumpolar Inuit Declaration on Sovereignty in the Arctic, adopted in April 2009, available at <https://www.itk.ca/publication/circumpolar-declaration-sovereignty-arctic>.

<sup>103</sup> The Ilulissat Declaration, adopted at the Arctic Ocean Conference, Ilulissat, Greenland, May 29, 2008.

<sup>104</sup> Ibid., para. 2.

## Part II: The Arctic under the UN Climate Change Regime<sup>105</sup>

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<sup>105</sup> This part of the research has been published as Sébastien Duyck, “Which canary in the coalmine? The Arctic in the International Climate Change Regime”, in Gudmundur Alfredsson and Timo Koivurova (eds.), *The Yearbook of Polar Law* 4 (Leiden: Brill Editions, 2012).

### **3. The Arctic through the Glance of the International Climate Change Regime**

This chapter seeks to define whether and to which extent the Arctic is explicitly referred to or mentioned in the climate change regime. This comprehensive review considers the legally-binding outcomes of the process initiated since the initiation of negotiations on the UNFCCC, as well as political decisions and negotiating texts adopted or made available along the process. The first section considers references contained in UNFCCC (and explain the lack thereof) as well as those included in any decision adopted by the UNFCCC main decision-making body, the Conference of the Parties (COP) as well as its Subsidiary Bodies. The results of a similar exercise are presented in the second section of this chapter in relation to the Kyoto Protocol<sup>106</sup> – the mitigation-focused legally-binding agreement adopted in 1997 under the Convention. Having considered references to the Arctic in all formal outcomes adopted by the main institutions established under the UNFCCC, the third section considers references to the region in the negotiations processes aimed at further developing the climate change regime. This section thus addresses the two cycles of negotiations having structured the session of this process during the past decade: the negotiations initiated in 2005 and 2007 in order to define new obligations after the end of the first commitment period of the Kyoto Protocol, and the ongoing process aimed at finalizing a new legally-binding agreement by December 2015. Finally, the fourth section of this chapter introduces and reviews relevant references occurring in a specific workstream of the climate change regime: the 2013-2015 review of the adequacy of the Long-Term Global Goal (LTGG). This workstream is singled out as it could allow for the Arctic to be considered specifically in the climate change regime, an opportunity demonstrated by the amount of references to the region during the proceedings of the workstream.

#### **3.1. Framework Convention on Climate Change**

##### **3.1.1. Introduction to the UNFCCC**

The release of the first assessment report of the IPCC opened the path for the negotiations of a new legal regime. The UN General Assembly established a

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<sup>106</sup> Protocol to the Framework Convention on Climate Change [hereinafter Kyoto Protocol], 37 ILM (1998), 22.

negotiation process aiming to prepare an effective framework convention on climate change that will contains specific commitments.<sup>107</sup> As an outcome of this process, the UNFCCC was formally adopted in 1992 during the Rio Conference on Environment and Development. According to its article 2, the ultimate objective of the Convention is to stabilize the amount of greenhouse gases in the atmosphere in order to limit the increase of global temperatures below a dangerous level. Such a threshold is to be determined by considering the natural adaptive capacity of ecosystems, the production of food, and economic development.<sup>108</sup> The Convention provides a set of principles guiding the parties for their implementation, including the principles of equity, common but differentiated responsibility, as well as a reference to the precautionary approach and the right to sustainable development.<sup>109</sup> It also establishes a set of institutions and bodies to support parties in their efforts to fulfil this ultimate objective, including the Conference of the Parties (COP), the secretariat of the Convention, Subsidiary Body on Scientific and Technological Advice (SBSTA) and on Subsidiary Body on Implementation (SBI).<sup>110</sup>

However, the UNFCCC lacks many of the features and mechanisms that were key to the relative success of the previously established regime in addressing a global atmospheric crisis: the protection of the Ozone Layer.<sup>111</sup> In particular, mandatory targets for the reduction of emissions were omitted in order to increase the political acceptability of the agreement and to guarantee its ratification by all states members to the UN.<sup>112</sup> The only commitment expressed in the text of the Convention consists in the “aim” for developed countries to stabilize their emissions at levels comparable to 1990 levels before the end of the decade. However, this commitment was set without defining the consequences that parties would face if they failed to comply with this objective.<sup>113</sup> The Convention did not aim to set a full-fledged regime, but to provide – in a similar manner to the design of the Ozone regime – the framework within which states could develop further agreements and adopt concrete commitments.<sup>114</sup> This is exemplified by the fact that it contains a call for a review of the adequacy of the mitigation commitments provided in the Convention.<sup>115</sup>

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<sup>107</sup> UN Doc. A/RES/45/212, para. 2.

<sup>108</sup> UNFCCC, art. 2.

<sup>109</sup> *Ibid.*, art. 3.

<sup>110</sup> *Ibid.*, art 7-10.

<sup>111</sup> See the Convention on the Protection of the Ozone Layer, 26 ILM 1529 (1985) and the Montreal Protocol, Protocol on Substances that Deplete the Ozone Layer (Montreal), UKTS 19 (1990).

<sup>112</sup> Daniel Bodansky, “The United Nations Framework Convention on Climate Change: A Commentary”, *Yale Journal of International Law*, Vol.18 (1993), at 555.

<sup>113</sup> UNFCCC, art. 4.2(b).

<sup>114</sup> See Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2009).

<sup>115</sup> UNFCCC, art. 4.2(d).

### 3.1.2. References to the Arctic in the Convention and in the Decisions Adopted under the Convention

The Convention takes a universal approach to the issue of climate change, affirming as one of its core principles the common (but differentiated) responsibility of the parties to protect the climate.<sup>116</sup> The differentiation between the obligations of various sets of countries is based on economic rather than geographic criteria, distinguishing between developing countries, developed countries, and developed countries undergoing the process of transition to a market economy.<sup>117</sup> The Convention also notes the particular vulnerability of *low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems [which] are particularly vulnerable to the adverse effects of climate change*.<sup>118</sup> Consequently, it calls on parties to the Convention to implement their obligations with particular regards to the needs of the countries falling within one or more of these categories.<sup>119</sup> This list only contains references to specific geographic factors on the basis of which the implementation of the Convention might be differentiated. Reference to the particular vulnerability of the Arctic would not have fitted within this provision as the region falls exclusively within the territorial jurisdiction of developed countries. The Arctic was also never mentioned in any of the draft documents that were prepared by the INC in the course of the negotiations towards the Convention.

Among the 352 decisions adopted by the COP since the Convention's entry into force – and totalizing over 1700 pages of texts and annexes, the Arctic is only referred to twice. Both of these references occur in contexts related to its perception as an indicator of climate change and as a region devoted to science. The first reference is included in the preamble of the decision establishing the Nairobi Work Programme on Impacts, Vulnerability and Adaptation to Climate Change. The decision provides that the COP:

*Not[ed] further the increasing body and evolving nature of scientific knowledge, including new information about significant changes in the Arctic and other areas, and of practical experiences responding to adaptation needs.*<sup>120</sup>

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<sup>116</sup> Ibid., art. 3.1.

<sup>117</sup> Ibid. art. 4 and Annexes I and II.

<sup>118</sup> Ibid., preamble, para. 19.

<sup>119</sup> Ibid., art. 4.8.

<sup>120</sup> Decision 2/CP.11, "Five-year programme of work of the Subsidiary Body for Scientific and Technological Advice on impacts, vulnerability and adaptation to climate change" (2005), UN doc. FCCC/CP/2005/5/Add.1.

The release of ACIA shortly before the adoption of this decision explains this unusual explicit reference to the region.<sup>121</sup> The only other specific mentioning of the region in a COP decision is found in a technical annex to the revised “UNFCCC reporting guidelines on global climate change observing systems.”<sup>122</sup> While the COP has remain almost entirely blind to the Arctic climate changes, the situation is even more striking in relation to the two subsidiary bodies established under the Convention. Up to June 2014, neither of the Subsidiary Bodies has explicitly referred to the Arctic or to the Polar Regions in any of their conclusions.<sup>123</sup>

As the impacts of climate change are already irrevocably affecting local communities in the Arctic, adaptation and community resilience to climate changes have already become an important issue in the region. However, in the climate regime, adaptation is mainly considered to be an issue related to the needs of developing countries and the necessary support that developed countries must commit.<sup>124</sup> The main obligations of developed countries in relation to domestic adaptation policies remain limited to their obligation to provide a description of adaptation measures in their periodic national communications.<sup>125</sup>

### **3.2. The Kyoto Protocol and its Mechanisms**

#### **3.2.1. Introduction to the Kyoto Protocol**

Upon the entry into force of the UNFCCC, the first COP was held in 1995. COP-1 carried out the review of the mitigation commitments mandated by the Convention and reached the conclusion that such actions were not adequate to meet the

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<sup>121</sup> ACIA, Arctic Climate Impact Assessment: Scientific Report (Cambridge: Cambridge University Press, 2005). The ACIA is discussed below in subsection 4.1.

<sup>122</sup> These guidelines require parties to include in the reporting of their scientific activities *data on steps implemented to increase the number of buoys, vessels and sonars for Arctic and Antarctic climate research*. Decision 11/CP.13, “Revised UNFCCC reporting guidelines on global climate change observing systems” (2007), UN Doc. FCCC/CP/2007/6/Add.2.

<sup>123</sup> The SBI only noted in the context of its work on awareness raising the fact that the 2007 World Meteorological Day focused on the issue of polar meteorology. Report of the SBI, 26<sup>th</sup> session, UN Doc. FCCC/SBI/2007/15, at 15 (under Article 6).

<sup>124</sup> In the Convention, adaptation is mentioned under Article 4.1, paragraphs (b) and (e), but without specific obligations. Article 4.2, defining in more specific terms the obligations of developed countries, does not address adaptation.

<sup>125</sup> UNFCCC, art. 12.1(b); requiring all parties to include in the report “a general description of steps taken or envisaged by the Party to implement the Convention”, thus also covering the obligations provided by Article 4.1(b) and (e). See below sub-section 5.1.1. for a discussion of the contents and of the role of national communications.

ultimate objective of the Convention.<sup>126</sup> It, thus, established a negotiation process (on the basis of the “Berlin Mandate”) to strengthen the commitments of developed countries. This new round of negotiations resulted in the adoption of the Kyoto Protocol in 1997. The main feature of the protocol consists of the adoption of quantified mitigation targets contained in its Annex B. In this annex, each developed country is assigned a specific objective for the reduction of its emissions during the so-called first commitment period (2008-2012) compared to a historical baseline (1990 in most cases). These objectives result in an aggregated target of 5 percent emissions reduction during the first commitment period compared to the emissions of 1990.<sup>127</sup>

In order to promote implementation in the most cost-effective manner, the protocol authorizes parties to rely on “flexibility mechanisms” in meeting their commitments.<sup>128</sup> These three mechanisms enable parties or private entities to cooperate across borders and trade carbon allowances, thus promoting mitigation actions where their abatement costs are the lowest. The protocol also establishes a strong compliance mechanism in ensuring the implementation of the obligations defined in the annex.<sup>129</sup> Due to the complexities of the implementation of the quantified targets, and of the flexibility mechanisms, the operationalization of the Kyoto Protocol required a further definition of many commitments and mechanisms introduced by the Protocol. The Marrakech Accords, adopted by the COP in 2001, defined the rules and procedures applicable under the Kyoto Protocol in more detail, thus completing the most important stages in the establishment of the climate change regime, as is currently applicable.<sup>130</sup>

### **3.2.2. The Kyoto Protocol and the Arctic**

Since the main purpose of the Kyoto Protocol is limited to providing concrete obligations to developed countries and to establish various mechanisms and rules for the implementation of those obligations, the Kyoto Protocol does not differentiate between various world regions. Indeed, the protocol lacks any reference to a specific geographic context. This absence of consideration of regional circumstances is also reflected in the decisions adopted since its entry into force. The

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<sup>126</sup> Decision 1/CP.1, “The Berlin Mandate: Review of the adequacy of Article 4, paragraph 2 (a) and (b), of the Convention, including proposals related to a protocol and decisions on follow-up” (1997), UN Doc. FCCC/CP/1995/7/Add.1.

<sup>127</sup> Kyoto Protocol, art. 3.1.

<sup>128</sup> The three flexibility mechanisms are the Clean Development Mechanism defined in article 12 of the protocol (involving a developed and a developing country), the Joint Implementation under Article 6 and International Emissions Trading under Article 17 (the later both involving two developed countries).

<sup>129</sup> Kyoto Protocol, art. 13. Birnie, Boyle and Redgwell describe this mechanism as “among the most elaborate in any environmental treaty”, *supra* note 114, at 368.

<sup>130</sup> Decisions adopted at the COP 7, “Marrakech Accords” (2001), UN Doc. FCCC/CP/2001/13/Add.1.

Conference of the Parties, acting as a Meeting of the Parties to the Kyoto Protocol (CMP), has never referred to the specific case of the Arctic in its decisions. Meinhard Doelle noted that, in addition to the lack of particular references to the Polar Regions, the obligations defined in the Protocol also fall short of matching the level of necessary mitigation action to prevent irreparable harm in the Arctic.<sup>131</sup>

### **3.3. Negotiations on the future of the climate regime: 2005-2015**

The subsidiary bodies established under the convention continuously review the implementation of existing obligations and to consider improvements to further implement these commitments. Political negotiations taking place under the UNFCCC and aiming at defining the future of the climate regime, on the other hand, are characterised by their cyclic nature. These negotiations take place in separate bodies – named Ad-hoc Working Groups – that work on the basis of a specific mandate and towards a clearly defined goal. The first of these cycles was initiated in 1995 during the first COP in order to further define the obligations of each party included in the Annex I of the convention.<sup>132</sup> This first Ad-hoc Group on the Berlin Mandate concluded its work after two years of negotiations with the adoption of the Kyoto Protocol and its first commitment period (2008-2012). Two additional negotiating cycles have been initiated since the adoption of the Kyoto Protocol. Both of these processes are introduced below together with their relevance to the Arctic region.

#### **3.3.1. Negotiating a second commitment period to the Kyoto Protocol and a agreement under the Bali Mandate**

A second round of negotiations was initiated in 2005 with the objective of defining the obligations of parties after the end of the first commitment period. Indeed, as mentioned in the previous subsection, only countries included in Annex I have a quantified target for the reduction of their emissions, and these targets only concern the period covering 2008-2012. Hence, the first meeting of the CMP launched a negotiation process aimed at defining what the emission reduction targets of those countries would be in a second commitment period. The Ad-hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) was established in order to facilitate these discussions.<sup>133</sup> Its mandate was to define new quantified targets, as well as to address issues that have arisen in the

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<sup>131</sup> Meinhard Doelle, “The Climate Change Regime and the Arctic Region”, in Timo Koivurova, E. C. H. Kesitalo and Nigel Banks (eds.), *Climate Governance in the Arctic* (Heidelberg: Springer, 2009), 32.

<sup>132</sup> See Decision 1/CP.1, *supra* note 126.

<sup>133</sup> Decision 1/CMP.1, “Consideration of commitments for subsequent periods for Parties included in Annex I to the Convention under Article 3, paragraph 9, of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.1.

implementation of the Protocol. While the mandate of the group is to finish its work “as early as possible and in time to ensure that there is no gap between the first and second commitment periods”,<sup>134</sup> progress in these negotiations was particularly slow. However, the CMP-7 achieved a major step forward as the decision regarding the establishment of a second commitment period was finally made adopted.<sup>135</sup> Consequently, an amendment to the Kyoto Protocol was adopted at CMP-8 in Doha and the AWG-KP was discontinued.<sup>136</sup> The second commitment period does however not apply to all Annex I parties to the Kyoto Protocol as some of them have expressly rejected the definition of new commitments under the Kyoto Protocol.<sup>137</sup>

The adoption of a second commitment period under the Kyoto Protocol resolves however only a minor part of the issues needing to be addressed by the UNFCCC. Besides the fact that its commitment only apply to a limited amount of parties, the Protocol is also almost exclusively focused on mitigation action with very few references to adaptation policies.<sup>138</sup> In order to address this gap, the parties to the UNFCCC also agreed in 2005 to launch parallel negotiations to address issues not covered by the AWG-KP. These negotiations resulted in the adoption of the Bali Action Plan by the COP two years later.<sup>139</sup> The Bali Action Plan set a roadmap for post-2012 climate regime negotiations based on four main pillars: mitigation action of Annex I and non-Annex I countries, adaptation, technologies development, and the transfer of finances.<sup>140</sup> The Bali Action Plan also established an Ad-hoc Working Group on Long Term Cooperative Action (AWG-LCA) with the mandate to conclude its work in 2009.<sup>141</sup> Since the stalemate reached in 2009 at the COP-15 in Copenhagen, the mandate of the group was prolonged. The main outcome of the AWG-LCA was adopted in 2010 at the COP-16 Cancun conference. The Cancun Agreements addressed all main issues under the Convention: mitigation for developed and developing countries (including Reducing Emissions from Deforestation and land Degradation), adaptation, financial support, transfer of technology, capacity building and transparency of action.<sup>142</sup> The following two

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<sup>134</sup> *Ibid.*

<sup>135</sup> Decision 1/CMP.7, “Outcome of the work of the AWG-KP at its sixteenth session” (2011), UN Doc. FCCC/KP/CMP/2011/10/Add.1.

<sup>136</sup> Decision 1/CMP.8, “Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9 (the Doha Amendment) (2012), UN Doc. FCCC/KP/CMP/2012/13/Add.1.

<sup>137</sup> In addition to Canada’s recent withdrawal from the Kyoto Protocol, Russia and Japan have also expressed that they would not accept targets for a second commitment period under the Kyoto Protocol. See below, sec. 3.1.2.

<sup>138</sup> The rather weak reference to this issue is contained in Article 10 of the Kyoto Protocol.

<sup>139</sup> Decision 1/CP.13, Bali Action Plan (2007), UN Doc. FCCC/CP/2007/6/Add.1.

<sup>140</sup> *Ibid.*, para. 1.

<sup>141</sup> *Ibid.*, para. 2.

<sup>142</sup> Decision 1/CP.16, “The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention” (2010), UN Doc. FCCC/CP/2010/7/Add.1

conferences focused on the adoption of more technical decisions in order to operationalize all the commitments, mechanisms and institutions established in Cancun. The COP-17 decided that the AWG-LCA would conclude its work in 2012.<sup>143</sup>

None of the decisions adopted as a result of the two processes described previously does refer directly to the Arctic. Additionally, no reference was included in any of the draft negotiating texts prepared in the process, despite the comprehensiveness of some of these documents, reflecting all of the proposals tabled by the parties to the Convention. The only specific circumstances mentioned in the outcomes of these processes concern the small island developing states, least developed countries, and African countries affected by droughts.<sup>144</sup> The outcome of the AWG-LCA, adopted at the COP-17, also refers to the special condition of some countries due to economic and geographic factors, as defined in the Convention.<sup>145</sup> These geographic references relate to special needs in terms of support for adaptation policies and additional flexibility required for the mitigation action of some developing countries. In this context, there is still little opportunity for the recognition of the special situation of the Arctic states in these processes.

### **3.3.2. The Durban Platform for Enhanced Action: towards a new comprehensive agreement**

Despite the adoption of the comprehensive Cancun Agreements and the inclusion of all key issues in this decision, parties nevertheless failed to conclude adequately the discussions on the “agreed outcome” expected in the Bali Action Plan. Indeed, having been adopted as a decision of the COP, the Cancun Agreements lack the legally-binding nature of a protocol. Additionally, commitments included in the Cancun Agreements on mitigation and financial support only cover the period up to 2020.<sup>146</sup> Consequently, parties agreed in 2011 to launch a new process for the negotiation of a comprehensive agreement.<sup>147</sup> The third negotiation cycle thus initiated is expected to deliver “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties.”<sup>148</sup> The Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established in order to facilitate negotiations related to this new outcome. The

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<sup>143</sup> Decision 1/CP.17, “Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action”, UN Doc. FCCC/CP/2011/9/Add.1, para. 1.

<sup>144</sup> See for instance Decision 1/CP.13, *supra* note 139, para. 1.(c)i and Decision 2/CP.17, “Outcome of the work of the AWG-LCA” (2011), UN Doc. FCCC/CP/2011/9/Add.1, para. 32, 41 and 58.

<sup>145</sup> *Ibid.*, para. 89, for a reference to Article 4, see paras 8 and 9.

<sup>146</sup> *Ibid.*, paras 48 and 98 as well as document UN Doc. FCCC/SB/2011/INF.1 which list the commitments submitted by developed countries.

<sup>147</sup> Decision 1/CP.17, *supra* note 143.

<sup>148</sup> *Ibid.*, para. 2.

timeframe defined for this new process foresees the conclusion of negotiations for the new agreement in 2015, while its entry into force and implementation would begin in 2020.<sup>149</sup> These COP decisions adopted annually on the basis of the work conducted by the ADP up to now mainly pave the road for the preparation of the 2015 climate agreement, in particular identifying the process for the submission by each party of an Intended Nationally Determined Contribution (INDC) prior to the COP-21.<sup>150</sup> These INDCs will constitute the main commitments expected from each party, with no additional substantial obligations imposed by the COP on individual parties. Similarly to the documents and outcome decisions prepared in the context of the previous two negotiating cycles, the Arctic is mentioned explicitly neither in the mandate for the negotiations towards a 2015 climate agreement, nor in the key documents released since the Durban conference by the officials of the negotiations.

### ***3.4. Reviewing the adequacy of the Long Term Global Goal and of the implementation of commitments***

While the political processes and the main institutions established under the UNFCCC have failed so far to consider specifically the circumstances and the impacts resulting from climate change in the Arctic, these issues have been raised in the climate regime through some of its more technical workstreams. The climate change regime is indeed composed, in addition to the more prominent negotiations taking place in the Ad-Hoc Working Group described previously, of several workstreams. These processes are dedicated to the promotion of the implementation of commitments adopted previously, to the review of technical information and to the promotion of international cooperation on specific areas of the climate change regime. In particular, the 2013-2015 review of the adequacy of the Long Term Global Goal (LTGG) is particularly relevant to the integration of Arctic concerns in the climate change regime. Indeed, its mandate and format contributes to raise its receptiveness to regional examples of several climate impacts.

#### **3.4.1. Introduction to the 2013-2015 review**

In relation to the final objective of the climate change regime, the provisions of the Convention do not identify a quantified target but define the objective of the convention and any related legal instrument as the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.<sup>151</sup> To guide the interpretation of the concept of dangerousness, the convention indicates that three criteria should

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<sup>149</sup> Ibid., para. 4.

<sup>150</sup> See Decision 1/CP.19, “Further advancing the Durban Platform” (2013), UN Doc. FCCC/CP/2013/10/Add.1, para. 2; and Decision 1/CP.20, Lima Call for Climate Action (2014), UN Doc. FCCC/CP/2014/10/Add.1, para. 9-14.

<sup>151</sup> UNFCCC, art. 2..

be taken into consideration: the capacity of ecosystems to adapt naturally, the guarantee that food production is not threatened, and the continuation of sustainable development.<sup>152</sup>

Until recently, no serious attempt was made in the negotiations to define a concrete threshold equivalent to “dangerous” anthropogenic interference. Instead parties focused on the more concrete commitments provided under article 4 of the convention. Over the past decade, researchers have debated over the pros and cons of such an approach.<sup>153</sup> In order to inform any debate on the interpretation of article 2, the IPCC assessed in its third report the relationships between temperatures increase and the vulnerabilities of ecological and socioeconomic system identified as “Reasons For Concerns” (RFC).<sup>154</sup> While highlighting that translating the objective provided in article 2 of the convention into a quantified objective “involves value judgements”, the IPCC highlighted some criteria to guide this interpretation, among which the issue of the distribution of impacts and vulnerability.<sup>155</sup> The IPCC noted an “increasing evidence of greater vulnerability of specific groups such as the poor and elderly not only in developing but also in developed countries”.<sup>156</sup>

At the COP-15, the ultimate objective defined in article 2 was quantified for the first time in the process as a goal to limit the increase of temperatures to 2° Celsius.<sup>157</sup> Due to the failure to formally adopt a decision at the COP-15, the goal was adopted formally by all parties in the Cancun Agreements.<sup>158</sup> Several of the most vulnerable countries, and in particular the small islands states, were originally opposed to this threshold, considering that an increase of global temperatures by two degrees will

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<sup>152</sup> Ibid, second paragraph.

<sup>153</sup> For a list of benefits associated to the establishment of a quantified target, as well as for a consideration of technical and political obstacles to such an adoption, see Jonathan Pershing and Fernando Tudela, “A Long-Term Target: Framing the Climate Effort”, in *Beyond Kyoto Advancing the international effort against climate change* (Arlington: Pew Centre on Global Climate Change, 2003) at 14 and 28-30.

<sup>154</sup> Figure TS-12 in IPCC, *Climate Change 2001: Impacts, Adaptation, and Vulnerability - Contribution of Working Group II to the Third Assessment Report of the IPCC*, (Cambridge: Cambridge University Press, 2001).

<sup>155</sup> IPCC, *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC*, (Geneva, IPCC 2007), Box ‘Key Vulnerabilities and Article 2 of the UNFCCC’, Topic 5

<sup>156</sup> Ibid., at 65, see also Michael Oppenheimer, & Annie Petsonk, “Article 2 of the UNFCCC: Historical Origins, Recent Interpretations”, *Climatic Change* 73 (3), (2005).

<sup>157</sup> Decision 2/CP.15, “Copenhagen Accord” (2009), UN Doc. FCCC/CP/2009/11/Add.1, para. 2. The degrees target was first endorsed by the EU in 1996. See Proceedings of the 1939th Council Meeting—Environment, Brussels June 25–26, 1996. Prior to the Copenhagen conference, this target was brought at the forefront of the negotiations by its consecutive endorsement by the GO (G8 2009, p. 19) and by the “Major Economies Forum” (Major Economies Forum 2009).

<sup>158</sup> Decision 1/CP.16, supra note 142, para. 4.

seriously threaten their communities, and for some, their existence as an independent state. In order to accommodate these concerns in relation to the 2°C target, the Cancun Agreements also established a periodic review of the adequacy of this global goal – in particular in relation to an alternative goal of maintaining the increase of global temperatures below 1.5°C.<sup>159</sup> The first review of the adequacy of the LTGG was mandated to take place between 2013 and 2015. The outcome of this first review could have policy relevance for the climate regime, for instance in informing the level of ambition of the agreement negotiated for the post-2020 period by the ADP.<sup>160</sup> COP-17 and COP-18 defined the terms of reference for the first periodic review, listing sources of information to be considered and establishing the process dedicated to the technical aspects of this discussion: the Structure Expert Dialogue (SED).<sup>161</sup>

The SED is meant to “support the work of the [Subsidiary Bodies] through a focused exchange of views, information and ideas, to ensure the scientific integrity of the review”.<sup>162</sup> In parallel to the technical proceedings of the SED, parties discuss under the SBI and the SBSTA the political implications of the SED for the climate regime, including the negotiations towards a comprehensive agreement in 2015. Consequently, the technical and political aspects of this review are separated in two parallel processes. The SED has been ongoing since 2013 and has held four sessions up to December 2014, the fourth meeting being expected to conclude the work of the SED in early 2015.<sup>163</sup>

During its first session of the SED in 2013, scientists highlighted that the adequacy of the 2 degrees target was not a scientific question but rather a normative one. As noted by Schneider and Lane in 2006, this reflected the “common view of most natural and social scientists that it is not the direct role of the scientific community to define what dangerous’ means. Rather, it is ultimately a political question because it depends on value judgments”.<sup>164</sup> This assessment thus raise the question of whether the situation of specific regions should be considered when considering the level of warming to avoid or whether this decision should only rely on aggregate and global estimate.

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<sup>159</sup> Ibid. para 139.

<sup>160</sup> Decision 1/CP.17, supra note 143, para. 6.

<sup>161</sup> Decision 2/CP.17, supra note 144, para 157-167; Decision 1/CP.18, “Agreed outcome pursuant to the Bali Action Plan” (2012) UN Doc. FCCC/CP/2012/8/Add.1, para. 79-91.

<sup>162</sup> Ibid., para 85.

<sup>163</sup> Report of the SBI, 40<sup>th</sup> session, UN Doc. FCCC/SBI/2014/8, para. 194.

<sup>164</sup> S.H. Schneider and J. Lane, An overview of „dangerous“ climate change. In: Schellnhuber, H.J., Cramer, W., Nakicenovic, N. (eds) *Avoiding Dangerous Climate Change* (Cambridge, UK, Cambridge University Press, 2006). At 14, emphasis in the original.

### 3.4.2. The Arctic as an barometer: the Long Term Global Goal

The first session of the SED, which took place before the release of any of the reports composing the fifth assessment report of the IPCC (AR5), considered presentations from a broad range of sources. Arctic changes were mentioned in a couple of expert presentation.<sup>165</sup> The presentation by the WMO mentioned the trends in observed decrease of sea ice extent. The UK Met-Office referred to several potential impacts in the Arctic region as “large-scale climate thresholds”. A representative from a party suggested during the discussion to take into consideration materials produced by the International Arctic Science Committee into consideration during the upcoming sessions of the SED.<sup>166</sup>

The second session of the SED contemplated the report produced by the WG-I of the IPCC, which had been adopted by governments a few weeks before the conference.<sup>167</sup> Thomas Stocker, chair of the IPCC WG-I, mentioned the ranges of likelihood of an ice-free Arctic depending on the four scenarios used in the AR5. Jonathan Gregory, lead author for the chapter related to sea level change, also mentioned the Arctic in relation to the impact of the melt of the Greenlandic icecap on the increase of global mean sea level rise. During the discussions following the presentations, parties raised a couple of questions related to the Arctic: seeking clarification on the issue of any tipping point related to the loss of mass of the ice sheets and on the timescales related to the melt of the Greenlandic ice sheet.<sup>168</sup>

The third sessions of the SED, which took place in June 2014, was particularly relevant to consideration of Arctic climate change.<sup>169</sup> Indeed, the recently published AR5 reports from the WG-2 and WG-3 of the IPCC were considered during the session. As the WG-2 is dedicated to the study of climate impacts, adaptation and vulnerabilities – including from a regional perspective, the presentations related to this report contained several references to the Arctic. Two presentations mentioned

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<sup>165</sup> The presentations delivered during the first meeting of the structured expert dialogue are available at [http://unfccc.int/science/workshops\\_meetings/items/8477.php](http://unfccc.int/science/workshops_meetings/items/8477.php).

<sup>166</sup> Summary report on the in-session workshop held at the first structured expert dialogue on the 2013–2015 review, Note by the co-facilitators, UNFCCC Doc. StructuredExpertDialogue.2013.2.InformalSummary, Annex.

<sup>167</sup> The presentations delivered during the second meeting of the structured expert dialogue are available at [http://unfccc.int/science/workshops\\_meetings/items/7803.php](http://unfccc.int/science/workshops_meetings/items/7803.php)

<sup>168</sup> Summary report on the second meeting of the structured expert dialogue, Note by the co-facilitators, UNFCCC Doc. StructuredExpertDialogue.2014.1.SummaryReport, at 8 and 12.

<sup>169</sup> The presentations delivered during the first meeting of the structured expert dialogue are available at [http://unfccc.int/science/workshops\\_meetings/items/8622.php](http://unfccc.int/science/workshops_meetings/items/8622.php), see in particular the presentations delivered by Chris Field and Christian Huggel.

specific impacts on Polar Regions and Arctic livelihoods.<sup>170</sup> Most notably, two additional presentations insisted on the difference between impact in the Arctic and in other regions of the world. While in other regions most of the impacts can be prevented or reduced through adaptation policies and measures, Arctic communities and ecosystems face the risk of irreversible impacts, impacts in relation to which the potential for adaptation is particularly limited. The issue of Arctic impacts was mentioned several times in the following discussion, in particular in relation to the difference between a 1.5°C increase of temperature compared the impacts projected from a 2°C warmer world. One expert highlighted the fact that limiting the increase of global temperatures to 1.5°C had particular benefits for vulnerable ecosystems such as the Polar Regions.<sup>171</sup> A governmental representative also highlighted that four out of the five “Reasons For Concerns” identified by the IPCC demonstrated a non-linear increase of the risk between 1.5°C and 2°C, especially for large-scale singular events such as the disintegration of ice sheets in Greenland.<sup>172</sup>

The fourth session of the SED took place in December 2014 during the COP-20. It considered both the main elements highlighted in the AR5 Synthesis Report, adopted in October 2014, as well as presentations by other international organizations. The Arctic was only briefly mentioned in the review of climate impacts in all regions.<sup>173</sup>

Parties and observers were also regularly requested to submit views on the work of the SED. The members of the Umbrella Group (Canada, Japan, New Zealand, Norway and the US) suggested in May 2013 that the report of the UNEP on the consequences of permafrost melting be included in the sources to be considered by the SED.<sup>174</sup> In March 2014 the same countries also suggested that the SED, when reviewing the adequacy of the LTGG, considers observed and projected changes, including regional variability in, among other areas of inquiry, the polar systems.<sup>175</sup> No other party or observers suggested that the Arctic be specifically considered in the review.

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<sup>170</sup> See the presentations delivered by presentations delivered by Penny Urquhart and Hans Portner.

<sup>171</sup> Summary report on the third meeting of the structured expert dialogue Bonn, Germany, Note by the co-facilitators, UNFCCC. Doc. StructuredExpertDialogue.2014.3.SummaryReport, at 11.

<sup>172</sup> Ibid., at 32.

<sup>173</sup> See the presentation delivered by Chris Field. The report from the discussions taking place during the event was not available at the time of the finalization of this review.

<sup>174</sup> Submission on Views on the future work of the SED, including the further use of different sources of information, by Canada, Japan, New Zealand, Norway and the US, May 2013. Referring to the report “Policy Implications of Warming Permafrost”, UNEP, available at <http://www.unep.org/pdf/permafrost.pdf>.

<sup>175</sup> Submission on Views on the future work of the SED, including the further use of different sources of information, by Canada, Japan, New Zealand, Norway and the US, March 2014, UN Doc. FCCC/SB/2014/MISC.1.

This review could provide a good opportunity for the Arctic to fully play its role as a canary in the coalmine or bellwether. In 2004, Arctic indigenous peoples had urged the UNFCCC to ensure that the Arctic could play this role in relation to the global climate governance.<sup>176</sup> The proposed 2°C increase of mean temperatures is particularly significant for the Arctic considering that the regions is warming twice faster than the rest of the planet. A resulting raise of four to five degrees in regional temperatures is expected to have severe impacts both on local communities, but also on other global regions of the planet considering the role of the Arctic as a regulator of the global climate. In this context, scientific and traditional knowledge related to Arctic changes could be provide a crucial source of information to interpret the content of the ultimate objective of the convention, possibly requiring the endorsement of a lower LTGG and more stringent emissions cuts than currently considered in the mid- and long-term.<sup>177</sup>

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<sup>176</sup> See below, sub-section 7.3.3.

<sup>177</sup> See for instance for a discussion of this opportunity: Paul Crowley, “Interpreting ‘dangerous’ in the United Nations Framework Convention on Climate Change and the human rights of Inuit”, *Regional Environmental Change* 11 (2011): 265–274.

## 4. Implementation of the UNFCCC in the Arctic

With regard to the role of individual states, the Convention places a strong emphasis on the principle of common but differentiated responsibility.<sup>178</sup> In practice, this principle has led to a very simple categorization of the parties in three categories, which were, for the first twenty years of the climate regime, considered as set in stone by the listing provided by the two annexes to the Convention. In these annexes, the status of a party determines its obligations under the Convention.<sup>179</sup> In current negotiations, this categorization and the relevance of the “firewall” resulting from these annexes to the future climate change agreements have remained one of the most controversial issues.<sup>180</sup> Considering that all Arctic states are considered to be developed nations, their status under the Convention and the Protocol should thus be rather comparable. The following section highlights however the differences existing between the legal obligations related to each of the Arctic states under the climate change regime.

### 4.1. *The Convention and the Protocol setting Differences between the Eight Arctic States*

#### 4.1.1. European States, implementing the Convention collectively

All member states of the European Union (EU) and the European Economic Area (EEA) are party to both the UNFCCC and the Kyoto Protocol, and almost all are also included in the Annex I of the Convention.<sup>181</sup> The EU itself is also party to both the

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<sup>178</sup> UNFCCC, art. 3.

<sup>179</sup> UNFCCC art. 4.1 and 4.2.

<sup>180</sup> Daniel Bodansky, *The Art and Craft of International Environmental Law*, (Cambridge, Mass.: Harvard University Press, 2010), 232. See also Lavanya Rajamani, “The Warsaw Climate Negotiations: Emerging Understandings and Battle Lines on the Road to the 2015 Climate Agreement”, *International and Comparative Law Quarterly* 63 (03) (2014), at 730.

<sup>181</sup> Except for Cyprus and Malta, which were at the time not included in Annex 1 and hence has not been allocated any quantified emission reduction target under the Kyoto Protocol. The inclusion of Malta to the Annex 1 took place through an amendment to the Annex

Convention and the Kyoto Protocol, as the two agreements are also open for ratification, acceptance, and approval – not only by individual states but also by regional economic integration organization.<sup>182</sup> The quantified targets set in the Kyoto Protocol's Annex B require most EU countries to reduce their emissions by eight percent.<sup>183</sup>

One particular aspect of the implementation of the Convention by the EU member states consists in their internal decision to jointly implement this target within the so-called “EU bubble”.<sup>184</sup> The EU Effort Sharing Agreement, one of the key legislations composing the EU climate policy, defines a specific target for each of the member states, taking into consideration the national circumstances prevailing in each country.<sup>185</sup> In relation to Arctic EU member states, the national targets diverge broadly. During the first commitment period, Denmark was required to reduce its emissions by 21 percent; Finland is required to stabilize its emissions while Sweden is required to limit their increase to four percent compared to the levels emitted in 1990. During the second commitment period of the Kyoto Protocol, the targets allocated to these countries imply a reduction of 20, 16 and 17% respectively, based on the level of emissions prevailing in 2005.<sup>186</sup> Furthermore, according to the Kyoto Protocol's Annex B, Norway and Iceland were allowed to increase their emissions respectively by one and ten percent during the first commitment period. The two countries are expected to reduce their emissions during the second commitment period respectively by 16 and 20 percent compared to 1990.

Again, EU countries also distinguish themselves from other parties to the Convention as they have established an internal Emission Trading Scheme (hereinafter EU-ETS).<sup>187</sup> The EU-ETS is currently the largest of such trading schemes. The establishment of this scheme is made possible by Article 17 of the Kyoto Protocol, which allows the use of emissions trading in the fulfilment of targets set under the

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adopted in 2009, Decision 3/CP.15, “Amendment to Annex I to the Convention” (2009), UN Doc. FCCC/CP/2009/11/Add.1.

<sup>182</sup> UNFCCC, art. 22.2.

<sup>183</sup> With the notable exception of Hungary and Poland for which a reduction of emissions by 6 percents is expected.

<sup>184</sup> Such an arrangement is explicitly made possible by the provision of the Kyoto Protocol, Kyoto Protocol Article 4. The member states of the EU have been the only parties to the Kyoto Protocol making use of this option.

<sup>185</sup> EC Council Decision 2002/358/EC of 25 April 2002.

<sup>186</sup> EU Parliament and EU Council Decision No 406/2009/EC of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020.

<sup>187</sup> EC Council Directive 2003/87 establishing a scheme for greenhouse gas emissions allowance trading within the Community. For a thorough analysis of the EU-ETS, see Markus Pohlmann, “The European Union Emissions trading Scheme”, in David Freestone and Charlotte Streck, *Legal Aspects of carbon trading: Kyoto, Copenhagen, and beyond* (Oxford: Oxford University Press, 2010), 337-366.

Protocol.<sup>188</sup> Despite being designed to comply with the modalities established under the Protocol, the EU-ETS is however independent from the climate regime in the sense that it is based on the EU's own internal emissions reductions targets and would, thus, still operate even in the case of an absence of legally binding target under the Protocol. The geographic scope of the EU-ETS increased in 2007 when an agreement was reached with three non-EU countries (Norway, Iceland and Liechtenstein) participating in the European Economic Agreement.<sup>189</sup> The scheme, thus, now involves five out of eight Arctic states.

#### **4.1.2. Russia, Party to both Agreements but with Different Obligations**

##### ***Differences between Annex I and Annex II Parties***

Until 2012, the primary difference between the status of European states and Russia in the climate regime was based on the categorization of Russia as one of the "*countries that are undergoing the process of transition to a market economy*" listed in Annex I of the Convention, but not its Annex II. While all Annex I parties are expected to take the lead in reducing emissions of greenhouse gases, only those also listed in Annex II have the obligation to support the implementation of the Convention in third countries. These obligations include financial and technological transfers to assist other states (thus including economies in transitions) to comply with the implementation of the Convention.<sup>190</sup> Annex II countries are also expected to cover the costs of reporting to the COP by developing countries, as well as to assist most vulnerable developing countries to bear the costs of adaptation. In this sense, Russia is expected to take domestic measures to implement its obligations under the Convention, while European countries are expected to both take these domestic actions as well as provide international support.

##### ***The Decision by Russia not to accept a Second Commitment Period***

In the final hours of the COP-16, Russia announced that it would not participate in the second commitment period of the Kyoto Protocol, a position rapidly rallied by

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<sup>188</sup> The main requirements set by the protocol for the use of such scheme are that such use is supplementary of domestic actions and that it complies with the modalities, rules and guidelines adopted by the COP, currently contained in Decision 11/CP.1, "Initial guidance on policies, programme priorities and eligibility criteria to the operating entity or entities of the financial mechanism" (1995), UN Doc. FCCC/CP/1995/7/Add.1.

<sup>189</sup> Decision of the EEA Joint Committee 146/2007 of 26 October 2007.

<sup>190</sup> UNFCCC art. 4.3. and 4.5. Yamin and Depledge note that this provision has been progressively applied also to transfers destined to EIT countries, Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: a guide to rules, institutions and procedures*, (Cambridge: Cambridge University Press, 2004), 265.

Japan.<sup>191</sup> Despite this position, Russia did not go as far as Canada in unilaterally withdrawing from the Kyoto Protocol.<sup>192</sup> Consequently, the Russian refusal to accept a second commitment period will result in the absence of a new mitigation target post-2012.<sup>193</sup> The obligation to submit yearly inventories of its emissions remains identical for Russia as for any other Annex I party to the protocol, independent of the decision of the country not to accept a second commitment period.<sup>194</sup> Finally, in relation to flexible mechanisms, Russia will no longer be allowed to take part in any of the mechanisms, the Joint Implementation – a mechanism that Russia utilized during the first commitment period – and Emissions Trading Schemes rely on an exchange of allowances, which are determined on the basis of the national target defined for a given commitment period.<sup>195</sup>

## ***4.2. The Special Regimes of Iceland and Greenland***

While the obligations of European states and Russia differ in the climate regime due to their statuses in the annexes of the Convention, the positions of Iceland and Greenland in the climate regime also present specificities. Those are the consequences of the particular national circumstances of the two actors.

### **4.2.1. The “Icelandic Exception”**

While a party to both the UNFCCC and the Kyoto Protocol, Iceland held for several years a particular position in the climate regime as it had successfully negotiated a special exception that only applies to the country in practice. Since this exception

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<sup>191</sup> Russian communicated its decision not to accept a new commitment period under the Kyoto Protocol to the UNFCCC secretary on 9<sup>th</sup> December 2010, followed by Japan one day later. While the Kyoto Protocol provides that amendment to its Annexes might be adopted by a three-fourth majority if all efforts to achieve consensus have failed, amendments to the national obligations of parties contained in Annex B require prior written consent of the party. Kyoto Protocol, art. 20 and 21.

<sup>192</sup> See below subsection 4.3.2 for a discussion of the consequences of the Canadian unilateral withdrawal from the Kyoto Protocol. In October 2012, media coverage indicated that the Russian Prime Minister had ordered a review of the involvement of the country in the Kyoto Protocol. The status of Russia under the Protocol might thus be subject to change after 2012.

<sup>193</sup> Contrary to Canada, the review of the compliance of Russia with its target for the 2008-2012 commitment period will take place as originally foreseen under the protocol, independently of its position in the future climate regime, according to the regular procedure.

<sup>194</sup> These obligations are provided in Article 7, which does not refer to the commitment period.

<sup>195</sup> The third flexible mechanism, the Clean Development Mechanism, only addresses projects developed in non-Annex 1 country. See Kyoto Protocol, art. 12.2.

has been the subject of little attention in academic analysis of the climate regime, the rationale justifying it and its consequences are introduced in this section.

### ***Content of the Exception***

Under a special regime established by the decision 14/CP.7, a government can decide to opt for the separate accounting of emissions of major industrial projects if it fulfils a certain number of restrictive criteria. In practice these criteria are so restrictive that this rule applies only to Iceland and was generally described as the “Icelandic exception”. The participation of a state to this special regime would have two consequences. The first one is to exclude projects whose emissions are accounted for under this rule from participation in the flexibility mechanisms (Joint Implementation and Emissions Trading Scheme).<sup>196</sup> Secondly, the country receives a unique two-fold target under the Kyoto Protocol as a consequence of the exception. During the first commitment period Iceland is, thus, allowed to emit a maximum of 1.6 tonnes of CO<sub>2</sub>e from single projects annually, in addition to the amount of Allocated Allowance Units defined by its national emissions reduction target. According to Annex B of the Kyoto Protocol, the annual emissions of the country not covered by this specific allowance should not exceed 110% of their levels in 1990.<sup>197</sup>

### ***Rationale***

The main reason behind this Icelandic exception lies in the development of large industrial projects in the country since 1990. Despite the use of renewable energies, and due to the importance of these projects compared to the relatively limited population of the country, the emissions resulting from the industrial processes involved in these specific projects have a high impact on overall national emissions. In 2007, emissions from industrial processes represented a third of the overall Icelandic emissions of greenhouse gases, the highest proportion anywhere in the world.<sup>198</sup> Reducing emissions below business as usual scenarios is also more challenging in Iceland due to the fact that about 80% of the energy consumed is already produced from renewable sources – geothermal and hydroelectric – thus leaving only little opportunities for the country to reduce emissions from the energy sector. In addition, the large share of aluminium smelters in the Icelandic emissions of greenhouse gases renders any mitigation policy challenging as the mitigation potential of this sector is expected to remain insignificant up to 2020 due to the lack of alternative technologies.<sup>199</sup> Jóhannesson also suggested the strong domestic

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<sup>196</sup> Decision 14/CP.7, “Impact of single projects on emissions in the commitment period” (2001), FCCC/CP/2001/13/Add.1, para. 3.

<sup>197</sup> Considered in relation to the Icelandic target, the cap of 1.6 millions tons of CO<sub>2</sub>e represents an increase of the target of about 50%.

<sup>198</sup> Icelandic 5<sup>th</sup> National Communication (2010), at 32.

<sup>199</sup> Brynhildur Davíðsdóttir and Sveinn Agnarsson, *The cost effectiveness of mitigating greenhouse gas emissions in Iceland*, (Reykjavik: Haskola Islands, 2010), 3 and 9.

perception of the island's uniqueness as another motivation for the negotiations of this unique exception.<sup>200</sup>

### *Negotiations of the Exception*

Since the negotiations began, Iceland has focused on ensuring that its commitment under the Kyoto Protocol would not impede opportunities for the development of the energy intensive industries in the country.<sup>201</sup> In 1997, the country obtained already a decision on the future opening of discussions related to the impact of single projects for parties with low reference levels.<sup>202</sup> Since then, Iceland promoted the proposal of an exception to the regime for the "Impact of Single Projects on Emissions in the Commitment Period". In 1998, the Icelandic delegation introduced a proposal providing as follow:

*"[...] process emissions from a single project, which comes into operation after 1990 and adds in the first commitment period more than five percent to the total greenhouse gases of a Party listed in Annex B to the Protocol shall be reported separately and not included in the national totals to the extent that they would cause a Party to exceed its assigned amount".<sup>203</sup>*

After negotiations taking place over several consecutive sessions of the SBSTA, this proposal was finally adopted as one of the elements of the Marrakech Accords in 2001. Decision 14/CP.7 defines the terms of application of the exception. Four conditions determine when emissions of industrial projects might be accounted for separately from the rest of national emissions. The first three conditions are drawn directly from the original Icelandic proposal. Accordingly, only parties whose global emissions were less than 0.05% of total Annex I emissions in 1990 are eligible under this rule. The industrial project concerned must also make use of renewable energy in order to reduce the emissions per unit of production. Finally, the best available practice must be used on site. First and second conditions demonstrate that this rule was tailor-made for Iceland. In addition to the rules proposed by Iceland, the COP-7 decision also defines a cap of a maximum of 1.6 millions of CO<sub>2</sub> tons that can be exempted annually on average.<sup>204</sup> States interested in benefiting from this measure

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<sup>200</sup> Ingólfur Ásgeir Jóhannesson, "Icelandic Nationalism and the Kyoto Protocol: an Analysis of the Discourse on Global Environmental Change in Iceland", *Environmental Politics* Vol. 14 (4) (2005): 499.

<sup>201</sup> In relation to the negotiations process relative to the "Impact of single projects on emissions in the commitment period", see <http://unfccc.int/cop7/issues/iceland.html>.

<sup>202</sup> Decision 1/CP.3, supra note 139, para 5.d.

<sup>203</sup> Submission by Iceland on Matters related to the Kyoto Protocol, including in UN Doc. FCCC/CP/1998/MISC.11/Add.1.

<sup>204</sup> Decision 14/CP.7, supra note 196, para. 3. See for a legal discussion of the repartition of the use of this exception throughout the commitment period, Michael Günther, Hans-Gerd Heidel, Ulrich Wollenteit and Martin Hack "The impact of the operations of the Aluminium

were required to notify the UNFCCC secretariat before COP-8, with only Iceland and Monaco expressing their interest in due time. The reach of an agreement on the issue of the impact of single projects prompted the rapid accession by Iceland to the Kyoto Protocol.<sup>205</sup>

Some environmental NGOs criticized the “single project exception” while recognising that the implementation of the Kyoto Protocol should not prevent small countries from developing energy intensive industries. However, NGOs have emphasized that the Kyoto Protocol, in itself, would not prevent Iceland from establishing new industries constituting important sources of greenhouse gases. Indeed, Iceland could compensate for the additional emissions both domestically and through the use of flexibility mechanisms. Domestically, Land Use, Land Use Change and Forestry rules of the Protocol could allow the country to offset a part of the emissions resulting from new industrial projects. The country could also make use of the flexible mechanisms. This later option would allow Iceland to offset the emissions above its target by purchasing Certified Emissions Reductions (CERs) from Clean Development Mechanisms projects in non-Annex I countries. It could also acquire Emissions Reduction Units (ERUs) or Assigned Amount Units (AAUs) from other developed states relying either on joint implementation or emissions trading.

While a minor and generally ignored aspect of the climate change regime, the single project rule constitutes an interesting element for two main reasons. Firstly, the position of Iceland in the climate regime is unique as the country is the only developed state listed in the Annex I of the Convention that has managed to negotiate special treatment under the Convention. The decision 14/CP.7 demonstrates the possibility for the international climate regime to accommodate national specificities that have a minor impact from a global perspective, but have important implications at the national level. Secondly, this rule integrates a new environmental policy approach within the climate regime. Command-and-control regulations and market-based approaches constitute two of the main policy instruments available for states when addressing environmental problems.<sup>206</sup> While the regime established by the Kyoto Protocol relies heavily on the latter approach, the Icelandic exception, as it relies on the requirement for Best Available Technology/Best Environmental Practices, integrates the Common-and-Control approach to the implementation of the regime to a limited extent.

The unique nature of the exception was highlighted in a procedure for non-compliance related to a third country.<sup>207</sup> Facing a particularly challenging situation in

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Industry on Iceland’s international obligations” (2006), Report for the Iceland Nature Conservation Association.

<sup>205</sup> Aðalheiður Jóhannsdóttir, “Country Report: Iceland”, in Geir Ulfstein and Jacob Werksman, *Yearbook of International Environmental Law*, Vol. 13 (2002): 491.

<sup>206</sup> Daniel Bodansky (2010), *supra* note 112, at 71 and following.

<sup>207</sup>, Meinhard Doelle “Experience with the facilitative and enforcement branches of the Kyoto compliance system”, Jutta Brunnée, Meinhard Doelle and Lavanya Rajamani (eds),

the context of the disintegration of Yugoslavia, Croatia attempted to increase unilaterally the amount of its emission allowance. The Expert Review Team tasked to review the national report of the country raised a question of implementation related to this unilateral decision to the Executive Branch of the UNFCCC Compliance Committee. In its argumentation in support of this change of assigned amount, Croatia referred to the Icelandic exception as an example that the situation of individual country had been taken into consideration in the past when defining the emissions.<sup>208</sup> The argument was rejected by the Compliance Committee which considered that the Icelandic decision was of a different nature and that the issue of the equal treatment of parties was outside the scope of its own mandate.<sup>209</sup> While this compliance case has no direct relation to the implementation of the convention in Iceland, the invocation of the decision 14/CP.7 in a compliance proceedings related to a third country does highlight the importance of the exception provided to Iceland.

### ***The Icelandic exception in the second commitment period of the Kyoto Protocol***

The wording of the decision 14/CP.7 stipulated that the exception is applicable only for the first commitment period. Hence the ongoing negotiations over the adoption of second commitment for some of the Annex I parties raised the question of the form of the Icelandic target post 2012. During the negotiations related to the adoption of a second commitment period to the protocol, the position of Iceland was stand strongly framed by its participation in the European Emissions Trading Scheme, even though the country continues to negotiate on an individual basis.

This context was reflected in Iceland's original position with regard to a national target in the future legal framework for mitigation action. Among the four various options proposed by the country for its own future target, two main approaches are offered. The country favoured the setting of a new target for Iceland in joint effort with other members of the European Union, thus allowing for flexibility within a burden sharing agreement. However, if an independent national target is to be set for the country, the Icelandic governments indicated that it would then expect the continuation of the current rules related to the impact of single projects and

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*Promoting Compliance in an Evolving Climate Regime* (Cambridge: Cambridge University Press, 2012) at 115-116

<sup>208</sup> Letter from Croatia to the Compliance Committee, dated 13 November 2009, CC-2009-1-7/Croatia/EB, available at [http://unfccc.int/files/kyoto\\_protocol/compliance/enforcement\\_branch/application/pdf/cc-2009-1-7\\_croatia\\_eb\\_further\\_written\\_submission.pdf](http://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-7_croatia_eb_further_written_submission.pdf)

<sup>209</sup> Final Decision of the Compliance Committee in relation to Croatia, CC-2009-1-8/Croatia/EB, para 3(e). [http://unfccc.int/files/kyoto\\_protocol/compliance/enforcement\\_branch/application/pdf/cc-2009-1-8\\_croatia\\_eb\\_final\\_decision.pdf](http://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-8_croatia_eb_final_decision.pdf)

submitted in 2009 a draft COP decision for this purpose.<sup>210</sup> In its submission on the second commitment period of the Kyoto Protocol, the EU clarified its own position and highlighted its interest to jointly fulfil its commitment with all 27 member states as well as with Croatia (which became an EU member on 1<sup>st</sup> of July 2013) and Iceland.<sup>211</sup>

The Doha amendment to the Kyoto Protocol acknowledges the preference of Iceland.<sup>212</sup> While an individual target of a 20% of emission reduction compared to 1990 levels is allocated to the country, the amendment explicitly recognizes that the country will fulfil its commitment jointly with the EU.

*The QELRC [Quantified Emission Limitation and Reduction Commitment] for Iceland for a second commitment period under the Kyoto Protocol is based on the understanding that it will be fulfilled jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol.*<sup>213</sup>

Consequently, no reference was made to the exception 14/CP.7. The absence of any explicit modification of the provisions contained in the decision resulted in the expiring of the Icelandic exception on the 31<sup>st</sup> of December 2012. The target defined in the Doha amendment for Iceland constitutes the most ambitious emission reduction expected from any parties during the period covered by the second commitment period only, with a difference of 30% between the targets defined for the first and second commitment periods. The country will however be able to meet this target by making a full use of emission credits generated through the EU-ETS according to article 4 of the protocol.

#### **4.2.2. The Status of Greenland**

The position of Greenland in relation to the European Union is relevant to the international climate regime as the EU now has a wide range of competences in climate policy areas. Greenland is indeed the only territory that has withdrawn from the EU so far. In 1973, Greenland, as a Danish territory, became part of the European Communities.<sup>214</sup> As the Home Rule was introduced in Greenland in 1979, the island obtained the right to determine whether it would retain this status or withdraw from

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<sup>210</sup> See Icelandic submission on “Further elaboration of the options, elements and issues contained in annex IV to document FCCC/KP/AWG/2008/3 [sic]”, FCCC/KP/AWG/2009/MISC.5at 40.

<sup>211</sup> Submission by Denmark and the EU Commission on behalf of the EU and its member states, 19 April 2012, “Information on the quantified emission limitation or reduction objectives (QELROs)” at 5, available at [http://unfccc.int/files/meetings/ad\\_hoc\\_working\\_groups/kp/application/pdf/awgkp\\_eu\\_19042012.pdf](http://unfccc.int/files/meetings/ad_hoc_working_groups/kp/application/pdf/awgkp_eu_19042012.pdf).

<sup>212</sup> Decision 1/CMP.8, supra note 136.

<sup>213</sup> Ibid., footnote 8.

<sup>214</sup> Treaty concerning the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and the European Atomic Energy Community, January 22, 1972.

the European Economic Community (EEC). The Greenlandic government organized a referendum on this question and, as a result, withdrew from the regional organization.<sup>215</sup> Consequently, climate regulations and commitments adopted by the EU are not binding on Greenland.

In terms of Greenland's external relations, the currently applied default policy consists of Denmark negotiating international agreements on behalf of the whole realm. However, both the Faroe Islands and Greenland retain the right to ask for an exception and for an international treaty to be ratified with a geographic exclusion for one/both of the territories. This option was, however, not activated in the case of the ratification of the Convention, both Greenland and Faroe Islands were thus party to the Convention. In the case of the ratification of the Kyoto Protocol, the Faroe Islands explicitly requested Denmark to adopt a geographical exception for the archipelago. Thus, only Denmark and Greenland were included in the ratification of the treaty in 2002. Consequently, Denmark, together with France, is the only country for which the geographic scope of accounting of emissions under the Convention and the Kyoto Protocol is different.<sup>216</sup>

Accordingly, Denmark reports its emissions in different formats depending on the institution that it addresses: while the emissions of Denmark, Greenland and the Faroe Islands are aggregated when reporting to the COP, only those of Greenland and Denmark are combined in the report to the Kyoto Protocol CMP. The scope of national emissions accounting, under the frame of EU regulations, only covers the emissions of Denmark itself.

The particular case of Greenland (and of the Faroe Islands) was once again raised in the context of the commitments submitted by the parties in the aftermath of the Copenhagen Climate Conference. According to the Copenhagen Accord, developed countries were to notify the UNFCCC secretariat of the quantified emissions reduction target to which they were willing to commit, and which were to be included in an annex to the Copenhagen Accords.<sup>217</sup> Until new legally binding targets were adopted under the Kyoto Protocol at the COP-18, these Copenhagen pledges constitute the only mitigation commitment for the period following 2012. The European Union submitted a joint target of a 20% reduction for all of its member states. Considering that Greenland and the Faroe Islands are not member of the EU, the European pledge submitted under the Copenhagen Accords does not apply to these two self-governing territories. The Danish government sent a letter to the UNFCCC secretary in order to clarify this fact and to reaffirm the commitment of the two territories to take mitigation action, despite the fact that the two territories are

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<sup>215</sup> See: Treaty amending, with regard to Greenland, the Treaties establishing the European Communities, Official Journal of the European Communities, No L 29/1m 1. February 1985.

<sup>216</sup> The case of France is rather similar, as overseas territories and New Caledonia are included in the French accounting under the Framework Convention but are covered by a geographical exception under the Protocol.

<sup>217</sup> Decision 2/CP.15, *supra* note 157, para. 4.

not included in the commitments submitted by Denmark under the Copenhagen Accords.<sup>218</sup>

In terms of domestic policy, Greenland faces a similar challenge as Iceland in the reduction of its greenhouse emissions. While most of its electricity is generated from renewable energy (hydropower), the country is expecting the development of energy-intensive projects that would also consume renewable energy, but whose industrial processes are likely to make the national emissions trajectory soar. The domestic climate policy of Greenland, thus, relies on a similar approach as the Icelandic commitment under the Kyoto protocol: while a target is set for economy-wide emissions reduction, the emissions from specific projects are excluded from the pledge submitted in the aftermath of the Copenhagen conference.<sup>219</sup>

### **4.3. Arctic States not Party to the Kyoto Protocol**

Greenland is, however, not the only territory in the Arctic for which the established obligations in the climate regime for developed countries do not apply fully due to the ratification status of the Kyoto Protocol. The third section of this chapter considers the legal position in the climate regime of the North American states due to their lack of ratification of or withdrawal from the Kyoto Protocol.

#### **4.3.1. The United States – Outsider to the Protocol**

##### ***The United States' unique Position in the Climate Regime***

The US was the first major economy to ratify the Convention only a few months after its adoption in Rio. However, the country's position in the climate change regime shifted prior to the adoption of the Kyoto Protocol. Prior to the COP-3 held in Kyoto, the US senate passed the Byrd-Hagel resolution, which defined the conditions under which the Chamber would refuse to ratify any new international agreement on emissions reductions. According to this resolution, the Senate would not ratify any agreement that would:

*(A) Mandate(s) new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse*

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<sup>218</sup> Letter available at [http://unfccc.int/files/meetings/cop\\_15/copenhagen\\_accord/application/pdf/denmarkcpha\\_ccord\\_app1.pdf](http://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/denmarkcpha_ccord_app1.pdf) (accessed June 07 , 2012).

<sup>219</sup> The impact of single industrial projects on the overall national emissions trend is even more acute in Greenland than in Iceland. Indeed, the main energy-intensive industrial project current under development is an aluminium smelter, the emissions of which would amount once in operation to 85% of the total of Greenland current greenhouse emissions. J H Schmidt, M Thrane, *Life cycle assessment of aluminium production in new Alcoa smelter in Greenland*, (Government of Greenland, 2009).

*gas emissions for Developing Country Parties within the same compliance period, or (B) would result in serious harm to the economy of the United States.*<sup>220</sup>

The first condition set by the congress was, already at the time, irreconcilable with the Berlin Mandate fixing the terms of reference for the negotiations toward the new protocol. Indeed, the Berlin Mandate explicitly defines the aim of these negotiations as setting specific targets for countries included in Annex I, while *not introducing new commitment for parties not included in Annex I*.<sup>221</sup> The US delegation nevertheless accepted in Kyoto a commitment for the reductions of domestic emissions, with a national target of seven percents of emissions reduction below 1990 levels. In exchange, it obtained the withdrawal of the European Union's objection to the establishment of market-based mechanisms, enabling countries to fulfil their commitments partly by acquiring credits corresponding to emissions reductions occurring in third countries.

However, the Senate confirmed immediately after the conference that the content of the Kyoto Protocol did not satisfy its conditions as set in the Byrd Hagel resolution and that it would not be in a position to ratify the Protocol.<sup>222</sup> Following the election of G. W. Bush to the White House, the executive branch of the government communicated its intent to not submit the Protocol for ratification by the senate. While the Bush administration did not take the step to formally withdraw the US signature to the protocol,<sup>223</sup> its explicit communication in relation to its position not to proceed with the ratification of the agreement seems to be sufficient to reverse any effect of the US signature of the Protocol. Indeed, according to the Vienna Convention on the Law of Treaty, the only legal consequence flowing from the signature of an agreement by a state consists in the obligation *"to refrain from acts which would defeat the object and purpose of a treaty"*.<sup>224</sup> This obligation is, however, suspended once *"it shall have made its intention clear not to become a party to the treaty"*,<sup>225</sup> a condition that the position of the Bush administration is most likely to have met.<sup>226</sup>

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<sup>220</sup> Senate Resolution 98 [Report No. 105-54], 105<sup>th</sup> Congress (1997).

<sup>221</sup> Decision 1/CP.1, supra note 126, para. 2(a)-(b).

<sup>222</sup> Senate Resolution 86 [Report no 105-170], 105<sup>th</sup> congress (1998).

<sup>223</sup> The US administration justified its absence of formal withdrawal by the fact that it considered the signature as not having any binding consequences for the United States. See "White House Briefing Comments on Kyoto Protocol", quoted in G. Kahn, "The Fate of the Kyoto Protocol Under the Bush Administration", *Berkeley Journal of International Law* Vol. 21 (3) (2003): 555.

<sup>224</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969), art 18.

<sup>225</sup> Ibid, art. 18(a)

<sup>226</sup> See Laurence Boisson de Chazournes, Anne-Marie La Rosa & Makane Moise Mbenguein, "Article 18 (1969)", in Olivier Corten, Pierre Klein (eds), *"The Vienna Conventions on the Law*

## *Obligations of the US under the Convention*

Since the specific mitigation targets set in the Protocol do not bind the US, its only obligation under the climate regime stems from the provisions of the Convention. In relation to mitigation, the text of the Convention notably lacks any concrete obligation, its provision only mentions the long forgotten inspirational objective of stabilizing emissions in 2000 at 1990-levels.<sup>227</sup> It is also required to periodically communicate on the policies and measures that it adopts.<sup>228</sup> Despite the fact that the COP assessed that those obligations were not adequate to meet the objective of the Convention and, therefore, needs to be complemented with new commitments,<sup>229</sup> the decision of the US to not ratify the Protocol implies that the country presently has no legal obligations with regards to mitigation to the climate regime. In January 2010, the country pledged under the Copenhagen Accord to reduce its emissions by 17% in 2020 on the basis of its 2005 emissions.<sup>230</sup> This commitment is only of political nature and does not have any legal standing within the climate change regime as the Copenhagen Accords were only noted by the COP during the COP15.<sup>231</sup>

The issue of the United States' adoption of legal commitment was reintroduced to the negotiations with the adoption of the Bali Action Plan at the COP-13. The Bali Action Plan set a mandate for the negotiations toward a new legal outcome, addressing the following among other elements:

*Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions [...] by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances.*<sup>232</sup>

The United States has also agreed to other general commitments related to financial transfer and mitigation policies that are contained in recent COP decisions. These

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*of Treaties: A Commentary*" (Oxford: Oxford University Press 2011), 393 . for a discussion of the limits rationae temporis of the signature of an international treaty.

<sup>227</sup> UNFCCC, art. 4.2.a.

<sup>228</sup> *Ibid*, art. 4.2.b.

<sup>229</sup> Preamble of the Berlin Mandate, Decision 1/CP.1, supra note 126.

<sup>230</sup> See letter by the US Department of State, Office of the Special Envoy for Climate Change, January 28 ,2010 to the Executive Secretary of the UNFCCC, available at [http://unfccc.int/files/meetings/cop\\_15/copenhagen\\_accord/application/pdf/unitedstatescphaccord\\_app.1.pdf](http://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/unitedstatescphaccord_app.1.pdf) .

<sup>231</sup> UNFCCC secretariat, "Notification to the parties" of 25 January 2010. Available at [http://unfccc.int/files/parties\\_and\\_observers/notifications/application/pdf/100125\\_noti\\_clarification.pdf](http://unfccc.int/files/parties_and_observers/notifications/application/pdf/100125_noti_clarification.pdf)

<sup>232</sup> Decision 1/CP.13, supra note 139, para 1(b)i.

commitments are not legally binding under international law and lack compliance mechanisms.<sup>233</sup>

In relation to institutional arrangements in the climate regime, the fact that the US has not ratified the Kyoto Protocol implies that it does not participate to the work of any body established under the Protocol. Hence, the US can only attend to the CMP under the status of observer,<sup>234</sup> as well as to the sessions of the former AWG-KP. The US is also excluded from the nomination of representatives to the subsidiary bodies established under the Protocol.

### **4.3.2. Canada – Realigning its Negotiating Position with the US**

#### ***Canada's Situation in the Climate Regime***

Based on a business-as-usual trajectory for its emissions, which are relatively comparable to the US, and to the close economic integration between the two countries, Canada decided to tighten its position closer to the United States in the climate regime and in the negotiations of the Kyoto Protocol. Canada negotiated its own target under the Protocol to one percent lower than the targets that the US would sign itself up to. This resulted in a reduction target of 6% of its emissions during the first commitment period.<sup>235</sup> As the US sent clear signals announcing their refusal to ratify the Protocol, the Canadian government announced its decision to move forward with its own ratification process during the World Summit on Sustainable Development and the ratification instruments were deposited before the end of 2002.<sup>236</sup>

Faced with a steep increase in emissions from its energy sector, the Canadian government adopted domestic mitigation measures aiming to achieve only part of its Kyoto commitments, expecting to fulfil a significant proportion of this target through the use of the flexible mechanisms. In 2007, Canadian emissions exceeded its Kyoto target by more than 32%.<sup>237</sup> After 2006, Prime Minister Stephen Harper, who had consistently and vocally opposed the ratification of the Protocol, announced that he did not intend to take any action in order to meet its

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<sup>233</sup> Indeed, the Conference of the Parties only has authority in relation to the functions that the parties have explicitly delegated to it in the provisions of the Framework Convention. These provisions do not include any competence to create binding obligations on the parties to the convention, limiting the authority of the COP to reviewing information and making suggestions and recommendations. See UNFCCC Art. 7 and 4.2.

<sup>234</sup> Kyoto Protocol, art. 13.2.

<sup>235</sup> K. Harrison, "The Road not Taken: Climate Change Policy in Canada and the United States", *Global Environmental Politics*, Vol. 7 (4) (2007): 102.

<sup>236</sup> *Ibid*, at 108, for a description of the role of domestic policies in this ratification process.

<sup>237</sup> Government of Canada, Fifth National Communication on Climate Change to the UNFCCC (2010), 19.

commitment, realigning the Canadian negotiation position with that adopted by the United States at that time.

### ***Canada's Decision to Unilaterally Withdraw from the Kyoto Protocol***

Up to December 2011, Canada was legally bound by its commitment under the Kyoto Protocol, but had unambiguously emphasized that it did not intend to meet the resulting obligations. In the immediate aftermath of the Durban Climate Conference, the national government finally announced its decision to withdraw from the Kyoto Protocol.<sup>238</sup> The protocol includes, as many other international environmental agreements, a provision foreseeing the right of any state to do so through a simple notification to the depositary of the protocol.<sup>239</sup>

If a party notifies its decision to withdraw from the Protocol, a “cooling period” of one year is then applied before the withdrawal is effective.<sup>240</sup> Accordingly, the possibility for a country to withdraw from the Kyoto Protocol is foreseen in the provisions of the Protocol and other actors (COP, third parties, etc) have no possibility to oppose this decision. However, Yamin noted that this relatively simple provision applying to the withdrawal of a party is potentially problematic as it is too vague to address some of the issues that might arise in this case.<sup>241</sup>

### ***Consequences of the Canadian Withdrawal from the Kyoto Protocol***

In order to understand the legal implications of this withdrawal, the timing of the compliance procedures, established under the Kyoto Protocol, must be understood. According to the protocol, the review of the compliance of individual states with their national target only begins at the end of the commitment period.<sup>242</sup> Once all yearly national reports related to a commitment period have been reviewed, the party to the Protocol is given an “additional period for fulfilling commitments”.<sup>243</sup> This period, lasting a hundred days, gives each party opportunity to make use of the flexible mechanisms in order to meet its target. It is only after the expiration of this period, in early 2015, that the compliance committee can make a finding of non-compliance, the consequence of which is to deduce the excess emissions from the

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<sup>238</sup> The government officially notified the depositary of the treaty of its withdrawal on the 15th December 2011.

<sup>239</sup> UNFCCC, art. 27.1. A hypothetical withdrawal from the Convention itself would also lead to the automatic withdrawal from the Protocol. See art. 27.2 and 27.3.

<sup>240</sup> This provision of the Protocol is identical to the one contained in Article 25 of the convention.

<sup>241</sup> Fahrana Yamin and Joanna Depledge, *supra* note 190, 552.

<sup>242</sup> Decision 13/CMP.1, “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.2, Annex para. 14.

<sup>243</sup> Decision 27/CMP.1, “Procedures and mechanisms relating to compliance under the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.3, Annex – section XIII.

national target determined for the second commitment period with a penalty rate of 30%.<sup>244</sup> Consequently, if Canada had decided not to withdraw from the Protocol, but to refuse to accept a new target, its finding of non-compliance by the compliance committee would also have lacked concrete consequences.

While the decision to withdraw has a political cost for the country, its main benefit for Canada consists in the suspension of the review of its national reports. Considering the yearlong “cooling period”, the withdrawal of Canada will indeed become effective on 15 December 2012, shortly before the end of the first commitment period. The Protocol emphasises that commitments under its Annex B are not annual but rather *aggregate* over the full commitment period.<sup>245</sup> Thus, by withdrawing before 31 December 2012, a state can walk out from its commitment for the entire commitment period. Among many other criticisms from civil society and foreign governments, the Canadian Inuit Circumpolar Council reacted to the decision expressing its deep concerns about the decision and seeking confirmation by the national government of its commitment to address impacts of climate change in the Arctic.<sup>246</sup>

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<sup>244</sup> *Ibid.*, Annex – section XV.

<sup>245</sup> Kyoto Protocol, art. 3.1 and 3.7.

<sup>246</sup> ICC Canada press release, December 15, 2011, available at <http://inuitcircumpolar.com/index.php?ID=445&Lang=En>.

## **Part III: Representing the Arctic experience in the climate change regime**

## 5. Speaking for the Arctic: the Arctic States and the Arctic Council

The previous chapters have highlighted a dissonance between the eight national Arctic strategies and the outcomes of the climate change regime. On the one hand, all Arctic states mention the importance to address climate impacts in the Arctic – some of them suggesting explicitly that the UNFCCC should address this regional aspect of the global climate crisis. On the other hand, the UN climate regime seems to a large extent blind to the specific circumstances affecting in the High North. The present chapter thus seeks to understand whether the Arctic states have translated their concerns for Arctic climate change (and their expectation that Arctic concerns be considered in the climate) in their national reports and contributions to the UNFCCC.

This chapter thus considers the opportunities available for the Arctic states to raise Arctic concerns or refer to regional aspects of climate governance in the climate change regime. These opportunities are considered both individually, in relation to opportunities provided for each of the eight Arctic state as a party to the UNFCCC, as well as collectively, exploring the status and initiatives of the Arctic Council in relation to the climate regime. The first section explores in details the references to the Arctic and to Arctic-specific characteristics and concerns contained in the interventions of the Arctic states. This analysis considers both the extent to which these eight states identify or position themselves as “Arctic” nations as well as whether these actors have shared information related to the special circumstances of the Arctic and/or advocated or promoted proposals that might address these circumstances specifically.

The second section elaborates firstly on the lack of status for the Arctic Council in the climate change regime, the Council not being considered as an observer to the climate talks. Political and legal aspects of this situation are identified as well as a prospect for a better recognition of the relevance of the Council. The section then highlights the limited opportunities presently offered to the Council and assesses the use made by the Arctic Council of these options to carry an Arctic voice into the climate change regime.

### **5.1. The Arctic states at the Climate Talks: a limited self-identification with the region**

Considering the central role of states in the climate change regime, the extent to which climate impacts in the high North influence the negotiation process mainly depends on the willingness of the Arctic states to refer to this issue. In the following section, we consider quantitatively references to the Arctic occurring in two main types of inputs provided by individual states to the climate regime. According to the obligations provided in the convention, national governments are expected to submit a periodic report – entitled national communications – of their national circumstances and their climate policies. These national communications present comprehensive overview of the country's national circumstance, of its effort to combat climate change, and of policies and measures to address its impacts. Additionally, national communications provide unique insights in governments' selection of national narratives shaping domestic climate response. Up to now, developed countries were required to submit six national communications, the latest reports having been submitted at the end of 2013 or beginning of 2014.<sup>247</sup> The national communications submitted by Arctic states are systematically reviewed in the next sub-section as these documents provide the main opportunity for these countries to emphasize their domestic and regional circumstances.

The negotiating process continuously shaping the development of the norms and cooperation mechanisms remain a key feature of the climate change regime. In this context, other important sources of national input include the contributions by governments to the negotiations. While these inputs take several forms, written submissions are the only formal input made fully available to the public and can therefore be reviewed in the context of this research. Ahead of negotiating sessions, countries are often invited to submit written position paper to elaborate on their proposals and expectations. Governments contribute also greatly to shape the negotiations through their oral interventions throughout the meetings. The reports published after each negotiating sessions (the semi-official Earth Negotiating Bulletin) provide only a summary of the discussions taking place in each public session and therefore do not contain sufficient information to assess systematically the positions and narratives put forward by several countries.<sup>248</sup>

The statements delivered by ministers during the annual climate conference constitute the third source of national input to the climate negotiations, which is recorded publicly. These statements have a dual nature. They are used by ministers both to influence the negotiations with strong emphasis on the key expectations and contributions of their national governments. At the same time, an important objective of these statements is targeted at the domestic (and to a lesser extent international) audience – in particular at the national media. These statements thus

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<sup>247</sup> [http://unfccc.int/national\\_reports/annex\\_i\\_natcom/submitted\\_natcom/items/7742.php](http://unfccc.int/national_reports/annex_i_natcom/submitted_natcom/items/7742.php)

<sup>248</sup> Pamela Chasek, "NGOs and State Capacity in International Environmental Negotiations: The Experience of the Earth Negotiations Bulletin", *Review of European Community and International Environmental Law* 10 (2) (2001), 168-172.

contain rhetorical elements which provide additional insights of a government appreciation of its national circumstances in the context of climate change.

### **5.1.1. Reporting of national circumstances and domestic climate policies**

## **Introduction to national reporting to the UNFCCC**

In the climate change process, the legal basis for the obligation to submit national reports is provided in Article 12 of the Convention. While Article 12 emphasizes that this obligation applies to all parties, it differentiates the mandatory information required from Annex I parties on the one hand and from non-Annex I parties on the other hand. The reporting process consequently differed between the two categories of countries, with different timelines and guidelines being adopted in relation to each category. This differentiation builds on the differentiated obligations of parties according to the Article 4 of the convention. Consequently, this obligation concerns all 9 parties to the UNFCCC with an Arctic presence – the eight Arctic states and the EU, for all of which the guidelines for Annex I countries apply. According to Article 12, each Annex I party shall report on the implementation of the convention, with a frequency for the reporting of every 3-5 years.

The information submitted by the parties is then compiled by the UNFCCC secretariat into a synthesis report presented to the SBI.<sup>249</sup> This synthesis report provides both a tool for the comparison between the emissions profiles and policies adopted by each individual country, as well as a source of aggregated data. This information is subjected to an in-depth review (IDR) accomplish by an expert team under the authority of the UNFCCC Secretariat. This process, which typically involves both a desk study and a country visit, is meant to be “facilitative, non-confrontational, open and transparent”.<sup>250</sup> Its main role is to help the parties to improve the quality of their reporting and to provide an opportunity to build the capacity of experts from various countries, thus facilitating the exchange of best practices.<sup>251</sup> The reports provided by the expert teams are formally considered by the SBI, which does not however discuss in depth the substantive matters of the report.

Besides playing an important role sharing of comprehensive national information, the function of the national communications is also to promote compliance with the

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<sup>249</sup> See for instance the last of such report: Compilation and synthesis of fifth national communications, Executive summary, Note by the secretariat, UN Doc. FCCC/SBI/2011/INF.1.

<sup>250</sup> Decision 2/CP.1, “Review of first communications from the Parties included in Annex 1 to the Convention” (1995), Annex, para. 1, UN Doc. FCCC/CP/1995/7/Add.1.

<sup>251</sup> Farahna Yamin and Joanna Depledge, *supra* note 190, at 340.

objective and obligations provided in the convention. At the time of its adoption, the convention provided for the establishment of a dual approach to promoting compliance. It established a systematic review mechanism based on the submission of the national communications and provided a mandate to establish a “*multilateral consultative process [...] for the resolution of questions regarding the implementation of the Convention*”, a process which was to be defined afterwards through a decision of the Conference Of the Parties.<sup>252</sup> Parties failed however to agree on the composition of this proposed multilateral consultative process.<sup>253</sup> The submission of national communications and their consideration through the review process constituted thus the only form of compliance promotion under the convention up to recently.

The Kyoto Protocol did establish a specific compliance mechanism – considered as one of the most robust of such mechanism existing in relation to international environmental agreements<sup>254</sup> – but its scope was limited both in terms of the countries covered and to the obligations considered. Only developed countries parties to the protocol are subject to this mechanism. Additionally, the Kyoto Protocol compliance mechanism focuses on the review of compliance with the emissions reduction targets of developed countries. In 2010, parties to the UNFCCC agreed to establish a new mechanism to review compliance with countries’ commitments.<sup>255</sup> While this mechanism will cover all countries, its scope is also limited to reviewing progress towards meeting mitigation commitments. In this context, national communications remain particularly important documents to assess comprehensively countries efforts to respond to climate change, through the reduction of emissions but also with the adoption of adaptation policies and through international cooperation.

## **The structure of the national communications**

The initial guidelines for the national communications of developed countries were developed by the Intergovernmental Negotiating Committee prior to the submission of the first national communications by developed countries.<sup>256</sup> These guidelines

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<sup>252</sup> UNFCCC, art. 12 and 13 of the Convention. See also Xueman Wang, “Towards a System of Compliance: Designing a Mechanism for the Climate Change Convention”, 7 *Review of European Community & International Environmental Law* 2 (1998), 176, at 178.

<sup>253</sup> Jacob Werksman, “The Negotiation of a Kyoto Compliance System” in Olav Schram Stokke, Jon Hovi and Geir Ulfstein (eds), *Implementing the Climate Regime: International Compliance*, (London: Earthscan, 2005), 17, at 21.

<sup>254</sup> Farhana Yamin and Joanna Depledge (2004), *supra* note 190, at 386.

<sup>255</sup> Decision 1/CP.16 (2010), *supra* note 142, para 44, 46 and 63.

<sup>256</sup> Intergovernmental Negotiating Committee Decision 9/2, UN Doc. /AC.237/55.

were subsequently endorsed and updated by the COP.<sup>257</sup> They define in precise terms the content that parties were required to include in their communications as well as the structure of the national communications.<sup>258</sup> Decisions adopted under the Kyoto Protocol identified additional information that parties to the protocol should also submit in their national communications in order to report specifically on their implementation of the Protocol.<sup>259</sup> As the obligations contained in the protocol relate largely to mitigation actions, these additional requirements reinforce – for parties to the protocol – the heavy emphasis of the national communication on this aspect of climate policy. Consequently, the requirements applying to national communications of the United States, and the latest communications by Canada following its withdrawal from the protocol, are slightly different than those expected from any other Annex I party. In the context of the preparation of 5<sup>th</sup> national communications in 2010, the secretariat published an annotated version of the guidelines in order to compile in a single document all information that parties should provide pursuant to their obligations under the UNFCCC and the Kyoto Protocol (KP).<sup>260</sup>

The guidelines and their commentary place a heavy emphasis on the level of information required in relation to inventories of greenhouse gases and mitigation policies and measures compared to the information expected in relation to impacts and adaptation policies. This bias reflects the understanding prevailing at the time of the adoption of the guidelines that the main contributions of developed countries to international climate action would relate to mitigation policies, while adaptation of developed countries would remain mainly a domestic matter. Nevertheless, some of the sections of the content expected from national communication do provide entry points for parties wishing to report on the circumstances occurring in the Arctic as well as on their policies related to the region.

According to the guidelines, the national communications shall be structure along the following table of content:

1. Executive Summary
2. *National Circumstances relevant to Greenhouse Gas Emissions and Removals*
3. Greenhouse Gas Inventory Information

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<sup>257</sup> Decision 3/CP.1, “Preparation and submission of national communications from the Parties included in Annex I to the Convention” (1995), UN Doc. FCCC/CP/1995/7/Add.1, at 13.

<sup>258</sup> Decision 4/CP.5, “Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part II: UNFCCC reporting guidelines on national communications”, UN Doc. FCCC/CP/1999/6/Add.1, at 8.

<sup>259</sup> See for instance Decision 15/CMP.1, “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.2.

<sup>260</sup> Annotated Outline for Fifth National Communications of Annex I Parties under the UNFCCC, including Reporting Elements under the Kyoto Protocol, [http://unfccc.int/files/national\\_reports/annex\\_i\\_natcom\\_/application/pdf/nc5outline.pdf](http://unfccc.int/files/national_reports/annex_i_natcom_/application/pdf/nc5outline.pdf)

4. Policies and Measures
5. Projections and the Total Effect of Policies and Measures
6. *Vulnerability Assessment, Climate Change Impacts and Adaptation Measures*
7. Financial Resources and Transfer of Technologies
8. Research and Systematic Observation
9. Education, Training and Public Awareness

The review of the guidelines and of additional sources of guidance indicates that four sections of the national communications might provide particular entry points for Arctic states to make specific references to Arctic circumstances and relevant policies in their national communications (emphasized above).

Under section 2, governments are requested to provide information related to their national circumstances, highlighting how these circumstances influence the emissions of greenhouse gases of the country. Among other elements that countries are suggested to address, the guidelines suggest that parties might refer to their latitude and other geographic factors as well as to their climatic profile.<sup>261</sup> This mentioning of latitude constitutes the closest to an explicit reference to the Arctic in the guidelines.

Under section 6, countries are expected to report on their “Vulnerability Assessment, Climate Change Impacts and Adaptation Measures”, including through a subsection dedicated to “Adaptation measures”. The guidelines recommend that parties make use of the IPCC Technical Guidelines for Assessing Climate Change Impacts and Adaptations and the UNEP Handbook on Methods for Climate Change Impacts Assessment and Adaptation Strategies. The IPCC Guidelines suggest in particular that impacts be considered in relation to “regions, organisms and activities” particularly vulnerable to climate impact. The annotated guidelines produced by the UNFCCC secretariat in 2009 suggest a list of vulnerable areas in relation to which parties might consider to provide information about adaptation measures, thus putting more emphasis on sectoral rather than regional impacts and vulnerability.

Under section 8, countries are requested to provide information related to national activities contributing to research and systematic observation. This information should cover both domestic activities as well as contributions to international research projects.<sup>262</sup> This section could thus also provide an opportunity for Arctic states to report on their participation to research activities undertaken in the context of the Arctic Council.

## References to the Arctic in national communications

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<sup>261</sup> Guidelines, UN Doc. FCCC/CP/1999/7, Part II.

<sup>262</sup> Ibid., para. 58.

In order to assess the references made by Arctic states to any circumstances, impacts, policies or projects related specifically to the Arctic region, a systematic search was conducted in each of the documents in order to identify any occurrence of the keywords “North”, “Polar” and “Arctic”. Occurrences of these words highlighted throughout the national communications were considered and served in the following mapping only if they referred directly to the Arctic or related circumstances, thus removing general references.<sup>263</sup> The results of this search are highlighted in the table below, followed by a qualitative assessment of these references.

The colour of each cell of the table highlights, for each of the sections of the national communications, the number of national communications containing at least one of these terms (thus assigning a number comprised between 0 and 6). Additionally, the cells of this mapping are checked with a cross when a reference was included in the latest national communications submitted prior to – or shortly after – the 1<sup>st</sup> of January 2014.

References to the Arctic in National Communications of the 8 Arctic States <sup>264</sup>								
Chapters	Canada	Denmark	Finland	Iceland	Norway	Russia	Sweden	US
National circumstances	X	X	X	X	X		X	X
Greenhouse gas inventory								
Mitigation Policies	X							X
Projections & impact of policies								
Impacts, vulnerability & adaptation	X	X	X	X	X	X		X
International Cooperation					X			

<sup>263</sup> In particular, reference to the Northern hemisphere and to Antarctic were excluded from the present mapping.

<sup>264</sup> While the EU does possess a presence in the Arctic through two of its member states, the present study address the role of the EU as an non-Arctic actor, thus reflecting the circumstances prevailing at the Arctic Council rather than applying a purely territorial approach. An analysis of the national communication of the EU is thus available below in sub-section 6.2.1. Additionally, the absence of national communication being available online or its formatting preventing a systematic search reduced the number of documents available for Denmark (only 5 most recent national communications), Russia (4 national communications) and the US (also 5 most recent documents only).

Research	X	X	X	X	X		X	X
Education & Awareness Raising	X	X				X		X

Number of occurrences in National Communications					
1	2	3	4	5	6
X indicates a reference in the 6th National Communication					

**Table 5-1: References to the Arctic in the National Communications of the eight Arctic States<sup>265</sup>**

This analysis highlights several trends generally shared among the eight countries. Firstly, the Arctic is referred most frequently in relation to the national circumstances of the countries, to their vulnerability and impacts, and to the research projects implemented. Sections related to international cooperation and research and outreach contained only very few references to the circumpolar context. Finally, very few references to the Arctic could be found across the three sections related to mitigation actions (the quasi absence of references in the inventories and estimated impacts can be explained by the very technical content included in these sections of the reports).

The case of the Danish national communications is particular as the country structured its national communications in a manner highlighting more prominently the circumstances of its Arctic territory. Indeed, since its second national communication, the country has structured its reports so as to reflect not only the circumstances of the Danish mainland but also those occurring in the Faroe Islands and in Greenland. In its final report, all sections of the report contain a distinct subsection treating specifically the case of Greenland, except those related to international cooperation, to research, and to education.<sup>266</sup> Hence information related to Greenland in the context of climate change does not only cover the themes discussed previously, but also more broadly to emissions inventories, and policies and measures. The Danish national communications are thus the most exhaustive among those of the Arctic states in their coverage of the circumstances of the Danish Arctic territories.

<sup>265</sup> As the first national communication submitted by the United States and Denmark are only available in hard copy, only 5 national communications were assessed for each of the countries. Also, two of the Russian national communications were submitted to the UNFCCC only in Russian language and were excluded from the scope of this assessment.

<sup>266</sup> Danish Ministry for Climate and Energy, "Denmark's Fifth National Communication on Climate Change Under the UNFCCC and the Kyoto Protocol" (2009).

## Arctic Identity

The first section of the national communications is particularly interesting in the context of the present research as it enables countries to provide a description of factors shaping their climate policies. Governments often use to this section describe the defining traits composing the identity of the country. The analysis of this section thus highlights which country does identify itself with the Arctic when submitting information in the context of a global governance process. In a previous chapter of this research, the review of the national Arctic strategies had highlighted the central role played in these documents of the *(re)positioning* and *(re)definition* of the Arctic identity of each Arctic states. Consequently the analysis of the content of the first sections of each national communications to the UNFCCC allows to consider whether governments of the Arctic states are coherent when describing their national identity, or whether is *(re)positioning* is only promoted in region-specific policy documents.

In all of their national communications, four Nordic countries (Denmark, Finland, Iceland and Sweden) made explicit references to their location in the Arctic. On the other hand, Russia never mentioned the Arctic when describing its national circumstances. The strongest references to the Arctic identity of countries are however found in other sections of the report. In the introduction to its 6<sup>th</sup> national communication, Canada defined itself as an “Arctic nation”.

*Canada recognizes the importance of climate change and, as an arctic nation, is particularly affected by its impacts.*<sup>267</sup>

Finland uses a similar wording being used in the vulnerability and adaptation section of the most recent Finnish national communication.

*Finland is an Arctic country.*<sup>268</sup>

## Mitigation

Only a very limited number of national communication included references to the Arctic in the section related to their mitigation policies and measures. These references, made by Canada and the US, only occurred in the most recent national communications and related to the benefits that actions aimed at tackling black carbon could have for the Arctic environment.

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<sup>267</sup> Finland’s Sixth National Communication under the UN Framework Convention on Climate Change (2013).

<sup>268</sup> Ibid., at 193. This reference relates to the context of the recent updating of the Finnish Arctic Strategy, see above section 2.1.

*Canada is also demonstrating leadership on addressing short-lived climate pollutants through its chairmanship of the Arctic Council (2013–2015). One of Canada’s priority initiatives in this context is to advance work on addressing black carbon and methane. As part of this effort, the Arctic Council ministers agreed to establish a task force, co-chaired by Canada and Sweden, to work towards actions to reduce emissions of these pollutants.*<sup>269</sup>

*Black carbon, a component of [particulate matter], has been found to both increase atmospheric warming and speed Arctic melting. Removing [particulate matter] may have a significant effect on slowing global warming due to the short-lived nature of black carbon.*<sup>270</sup>

The analysis of the national communications therefore reveals that no Arctic states has highlighted any regional policy aimed at reducing emissions of greenhouse gases specifically in the Arctic. The fact that most domestic mitigation policies are of a national scale partly explains this finding.

## Vulnerability

The reports from Canada Russia and Sweden, and the more recent reports from Norway, Finland and Iceland, also refer to the high North in their section related to vulnerability assessment, climate change impacts and adaptation measures. The following references extracted from the Finnish and Canadian national communication provides a good example of how references found in this section of the national communications emphasize the Arctic as particularly vulnerable both in terms of ecosystems resilience and local communities revenues.

*It is widely thought that the impacts of climate change would be more severe in the Arctic than elsewhere in the world.*<sup>271</sup>

*The impacts are particularly apparent in Canada’s Arctic North, where pronounced temperature increases are already having significant impacts on northern ecosystems and biodiversity, and the northern communities that rely on these resources.*<sup>272</sup>

In their recent reports, both Norway and Denmark included a specific sub-section to address climate impacts in their Arctic territories. The latest two reports submitted

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<sup>269</sup> Fifth National Communication of the United States of America (2010), at 10.

<sup>270</sup> This quote was included in two of the US national communications. Fifth National Communication of the United States of America (2010), at 65; Sixth National Communication of the United States of America (2014), at 100.

<sup>271</sup> Finland’s Fourth National Communication under the UN Framework Convention on Climate Change (2006).

<sup>272</sup> Government of Canada, “Fifth National Communication on Climate Change” (2010), at 67.

by Denmark also highlighted the relevance of the work of the Arctic Council, including ACIA, SWIPA and the activities of the Council related to adaptation.

## **International Cooperation & References to the Arctic Council**

Section 7 of the reports originally aims at presenting the provision of financial support and technological transfers to developing countries to help them reduce emissions and deal with climate impacts. In this context, the Arctic has little relevance to this section of national reporting. However, many countries used this section more broadly to present information related to their contribution to international cooperation. Still, only few of the communications refer to such processes in the sections describing their participation to international cooperation. When considering international climate cooperation, several Arctic states thus seem not to consider the Arctic Council among the most relevant international forums. Only Sweden, Canada and the US mentioned once the role of their participation to the Arctic Council in this context.<sup>273</sup>

This limited amount of references is nuanced by the fact that the Arctic Council is mentioned several times in other sections of the national communications, for instance in sections related to vulnerability, to research and to outreach efforts.

## **Research and Systematic Observation**

The research and systematic observation sections of the national communications contain most references to the Arctic. This finding applies to every of the eight Arctic states. The number of references to the Arctic might be partly explained by the fact that this section of the national communication is defined by separate guidelines, which requires more detailed information to be submitted than some of the other sections.<sup>274</sup> In most of the reports, references to Arctic research relate primarily to studies related to the ocean and to the cryosphere. Additionally, Canada, Finland, Norway and Sweden made explicit references to their contribution to the work of the Arctic Council, with specific mentioning of ACIA and AMAP.

## **Outreach and Education**

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<sup>273</sup> Swedish Ministry of Sustainable Development, "Sweden's fourth national communication on climate change" (2005), Government of Canada, "Fifth National Communication on Climate Change" (2010).

<sup>274</sup> For the guidelines related to reporting of the research and systematic observation activities, see Decision 5/CP.5. "Research and systematic observation" (1999), UN Doc. FCCC/CP/1999/7.

Finally, few references were made to the Arctic in the section of the reports dedicated to education, training and awareness raising. Few communications submitted by the eight governments provide examples of communication and educational initiatives based on the Arctic experience of these countries. The vulnerability and the value of the region for climate research have thus not translated significantly in concrete opportunities for public awareness and educational campaigns that the government would consider worth of reporting internationally. The US is the only country to mention in its latest two reports several education and awareness raising projects that utilize the theme of Arctic climate change – activities aligned with the priorities proposed by the US for its upcoming chairpersonship of the Arctic Council.<sup>275</sup>

This analysis thus highlights that the majority of references to the Arctic contained in national communications relate to the general narrative of the Arctic as a bellwether. Arctic countries referred most often to the Arctic as a region particularly vulnerable to the impacts of climate change and as a focus area for research in order to better understand the global climate system. On the other hand, the Arctic states have provided very limited references to regional policies and measures to mitigate climate change. Finally, and despite their repeated emphasis on the importance of the Arctic Council as the main forum to address Arctic-specific issues, several of the eight Arctic states do not mention this institution when describing international and multilateral processes to which they take part in their efforts to tackle climate change.

### **5.1.2. The Arctic in written submissions to the UNFCCC**

One of the most important opportunities for governments to influence the development of the climate change regime is through the submission of written views to the various bodies established under the convention. These written submissions are provided in response to calls for input issue by these bodies decides on a regular basis. Up to recently, these views were compiled in an official document distributed to all parties prior to the meeting that they addressed. Currently, these written submissions are uploaded on an online portal, accessible to all.<sup>276</sup> The submission of written views enables parties to advocate for specific proposals ahead of negotiating sessions.

In order to identify references to the Arctic contained in the submissions recently prepared by the Arctic states, a systematic search for the three selected keywords (“Arctic”, “North” and “polar”) was applied to all available submissions. All

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<sup>275</sup> See the presentation entitled “US Chairmanship 2015-2017; One Arctic: Shared Opportunities, Challenges and Responsibilities”, delivered by the US at the 2014 SAO meeting in Yellowknife. On file with the author.

<sup>276</sup> Available online at <http://www4.unfccc.int/submissions/SitePages/sessions.aspx>

submissions available on the webpage of the secretariat and submitted after 2010 were reviewed for occurrences of these keywords.<sup>277</sup>

**Table 5-2: References to the Arctic in written contributions submitted by Arctic states since 2010**

References to the Arctic in written submissions to the UNFCCC authored by observer organizations				
Year	Author	Recipient	Call for submission	Content
2012	Norway	SBSTA	Submission on Specific Research Themes	Calls for SBSTA Research Dialogue to consider role of cryosphere in the climate system, highlighting that the Arctic and Antarctica are indicators on the "health" of the global climate system
	Russia	SBSTA	Submission on Specific Research Themes	Calls for research dialogue to focus on carbon balance of tundra; highlights research by Institute of Global Climate and Ecology, Arctic and Antarctic
2014	Russia	SBSTA	Submission on Specific Research Themes	Calls for a mandate to IPCC to consider preparing of the special report on methane hydrates, permafrost and tundra soil; provides update on Russia findings related to these issues
	Canada, Norway, US, Japan New Zealand		Content for the 2013-2015 Review	Consider observed and projected changes, including regional variability in the polar systems when reviewing the adequacy of the long term global goal
	US	ADP	raising short term ambition	Attached a report by the International Energy Agency referring to Arctic hydrocarbons and disruptive impact of climate change on their extraction
	Canada	ADP	raising short term ambition	Refers to Arctic benefit of actions reducing SLCPs

Submission by:	
	Members of the Arctic Council
	Observer of the Arctic Council
Context of the reference to the Arctic:	
	General background / call for action
	Call for a mandate to consider Arctic research
	Call for mitigation policy in the Arctic

<sup>277</sup> The submissions were available online as followed: for the COP, the CMP and the ADP, between 2012 and 2014; for the SBI and SBSTA between 2011 and 2014; for the AWG-LCA and AWG-KP, between 2010 and 2012.

In the written submissions prepared during the past four years, the Arctic states made only four references to the Arctic. All of the references were made when submitting views to the SBSTA, confirming the strong emphasis of the Arctic as a key to global physical climate processes. Norway and Russia used the opportunity offered to all countries to suggest specific research themes and called for a focus on different aspects of the cryosphere. Canada, Norway and the US also invoked the Arctic in a submission addressing potential content for the 2013-2015 review of the adequacy of the long-term global goal.<sup>278</sup> In a joint submission with Japan and New Zealand, the three countries indicated that observed and projected impacts in the Polar Regions might be particularly relevant elements informing the review of the long-term global goal. Finally, Canada and US both included references to the Arctic in the documents which they submitted to the Workstream 2 of the ADP which focuses on the ongoing negotiations related to pre-2020 mitigation ambition. Strikingly, the Arctic states never referred to the Arctic in any of their written submissions to the more political processes established under the UNFCCC. The theme addressed by the four submissions presented previously thus confirm the perception of the Arctic as being primarily a region relevant to climate change research.

### **5.1.3. The Arctic in ministerial statements at the COPs**

The most visible opportunity for individual states to provide input to the negotiations process consists in the delivery of a short statement during the high-level ministerial segment of each COP. This ritual has however only a very limited impact on the negotiations but rather merely consists in ministers reading “a prepared statement of a highly predictable and rhetorical nature”.<sup>279</sup> The limited amount of time assigned for each statement has obvious consequences for the number of issues that each minister has the opportunity to mention. It provides however ministers with the opportunity to make an intervention broadcasted online and without any opportunity for third actors to react directly to the intervention. Additionally, countries have the opportunity to provide the written version of their intervention, which is then uploaded on the website of the UNFCCC and made available to the public. The lack of interaction has resulted in the practice of few delegations actually delegating a representatives to the high level segment besides the slot allocated to its own intervention, ministers consequently delivering their intervention to a room almost empty. Statements thus often target national media and audiences at least as much as fellow ministers and negotiators.

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<sup>278</sup> See above sub-section 3.4.2. for a short introduction to the 2013-2015 review and its potential relevance in the context of Arctic climate changes.

<sup>279</sup> Jakob Werksman, *Procedural and institutional aspects of the emerging climate change regime: Do improvised procedures lead to impoverish rules* (London: Foundation for International Environmental Law and Development, 1999), at 12.

Over the past five annual conferences, the ministers from Russia and the United States made no reference to the Arctic in any of their statements. Ministers from Iceland and Denmark on the other hand have made the most regular reference to Arctic climate changes. The two countries repeatedly made use of the opportunity offered by the ministerial statement to invoke Arctic impacts and call for more urgent actions.

*Perhaps nowhere are the impacts of climate change more visible than in the High North. The past 6 years are the warmest such period on record in the Arctic. Sea ice is retreating and thinning faster than was predicted [...]. The Arctic Ocean, frozen for millenia, could become ice-free in summer before 2050. [...] The message from [glaciers] and the Arctic is clear: We need to halt the retreat and step up our collective effort.*<sup>280</sup>

*[Greenlanders] told us about the rapidly receding sea ice and its impact on their lives.[...] As a barometer the Arctic changes warn us of a climate in distress, screaming for a comprehensive global response. [...]*<sup>281</sup>

In 2014, the Finnish minister also made a reference to the Arctic, referring to the latest science on Arctic climate change and to the location of the country.

*The IPCC showed in its fifth assessment report that the Arctic region is especially vulnerable to the effects of climate change. My country has a quarter of its area extending north of the Arctic Circle and the Arctic is thereby of utmost importance to us.*<sup>282</sup>

Finland also highlighted in 2014 the interrelation between climate change in the Arctic and impacts in other regions of the world.

*The degree of global sea level rise will largely depend on the extent these [Arctic] changes can be prevented. Mr President Protection of the Arctic region and minimization of global sea level rise calls for agreeing on an ambitious 2015 agreement in Paris.*<sup>283</sup>

The Swedish minister referred to his quality as chairperson of the Arctic Council during the 2012 Doha Conference, a reference also included in the 2012, 2013 and 2014 statements by the Canadian minister. In 2013, Canadian minister Leona Aglukkaq referred to her own background to invoke indigenous knowledge:

*As an Inuk from Canada's North, I come from a culture whose relationship with the land and water is an important part of our identity and everyday lives. We understand how essential it is to safeguard the quality of our air,*

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<sup>280</sup> Statement by Iceland at the high-level segment of the COP17 (2011), see also references in the ministerial statements delivered by Iceland at COP16 (2010), COP18 (2012) and COP19 (2013).

<sup>281</sup> Statement by Denmark at the high-level segment of the COP19 (2013), see also references in the ministerial statements delivered by Denmark at COP17 (2011) and COP18 (2012).

<sup>282</sup> Statement by Finland at the high-level segment of the COP20 (2014).

<sup>283</sup> Ibid.

*water and natural environment. And we know that economic growth and environmental stewardship must go hand in hand.*<sup>284</sup>

The work of the Arctic Council was mentioned twice among the forty ministerial statements reviewed. Iceland highlighted the conclusions of the ACIA and the Arctic Ocean Acidification Assessment to emphasize the concrete threats caused by climate change to Arctic ecosystems.<sup>285</sup> Canada referred in 2013 to its role as co-chair of two activities undertaken under the Arctic Council: its role as co-lead of the TFBM and its leadership with the US on the development of an online information portal related to adaptation in the Arctic.<sup>286</sup>

Canada is also the only country having, in one of its ministerial statements, explicitly referred to the importance of mitigation action targeted more specifically at preventing Arctic climate change:

*[Action on black carbon and methane] is a priority to Canada as scientists have predicted that action to reduce short-lived climate pollutants can help avoid a significant portion of projected warming in the Arctic over the next four decades.*<sup>287</sup>

This review of ministerial statements highlights that the theme of Arctic change has been included repeatedly in the speeches of only some of the ministers representing the Arctic states during the high level segment of the climate conferences. Ministers use references to Arctic in the context of the Arctic as a bellwether: the particular vulnerability of the region emphasizes the need for urgent and concerted action. To some extent, referring to the climate impacts witnessed domestically in their Arctic region also allow the Arctic states to present themselves as impacted by climate change, rather than as among the main contributors of emissions of GHGs.

## **5.2. Role of the Arctic Council in the Climate Process**

Considering the relative lack of emphasis by Arctic states on the special circumstances occurring in the region, the following sub-section considers whether this emphasis has been better represented further by the Arctic Council, as the main forum for circumpolar cooperation. Due to the political, rather than legal, nature of the Arctic Council, its status at the UNFCCC must first be discussed before describing its part interactions with the climate change regime.

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<sup>284</sup> Statement by Canada at the high-level segment of the COP19 (2013).

<sup>285</sup> Statement by Iceland at the high-level segment of the COP19 (2013).

<sup>286</sup> Statement by Canada at the high-level segment of the COP19 (2013).

<sup>287</sup> Statement by Canada at the high-level segment of the COP20 (2014).

### 5.2.1. Status of the Arctic Council in the UN Climate regime

Opportunities for the direct participation of the Arctic Council to the proceedings of the UNFCCC have been greatly limited by the legal nature of the Council. In this context, the issue of the legal personality of the Council must be introduced before its status at the UNFCCC can be further discussed.

The issue of the international legal personality of the Arctic Council had already been considered prior to the establishment of the Council. In the process leading to the Ottawa Declaration establishing the Arctic Council, the US was particularly opposed to granting the status of international organization to the new forum. The US obtained that the PAME Working Group explicitly highlight the absence of an immediate need to negotiate a new international legal instrument for protecting the Arctic Marine Environment.<sup>288</sup> The members of the Arctic Council built on this recommendation and did not grant explicit international legal personality to the Arctic Council when the council was originally established in 1996. Instead, the Ottawa Declaration emphasized the nature of the Council as a high level intergovernmental forum.<sup>289</sup> Nevertheless the legal nature of the Arctic Council and its institutions evolved in 2013 with the establishment of the Arctic Council Permanent Secretariat (ACS) in Tromsø. In order to ensure that the ACS will be in a position to perform its duties adequately, the Arctic Council Task Force on Institutional Issues was tasked to address matters related to the legal framework applying to the Secretariat. According to the terms of the Host Country Agreement signed in January 2013, the ACS received domestic legal personality under Norwegian law.<sup>290</sup> Consequently, while the Arctic Council currently lacks international legal personality, its secretariat possesses legal personality in the Norwegian domestic legal order.

This background has been used by some of the Arctic States to oppose the institutionalization of the relations linking the Council with other intergovernmental processes. In particular, the United States refused explicitly that the Council applies for the observer status under the UNFCCC on the ground that it was not a legal

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<sup>288</sup> PAME Working Group on the Protection of the Arctic Marine Environment: report of the Third Ministerial Conference on the Protection of the Arctic Environment, 20-21 March 1996, at 15.

<sup>289</sup> Declaration on the Establishment of the Arctic Council, *supra* note 38, para.1.

<sup>290</sup> The terms of references of the Permanent Secretariat provide: “the Secretariat has legal personality and capacity to perform its functions in Norway. It has, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal proceedings.” Terms of References of the Permanent Secretariat of the Arctic Council (2012), Arctic Council doc. DMM02-15 May2012-Stockholm, para 5.1. See also the Host Country Agreement Between the Government of the Kingdom of Norway and the Arctic Council Secretariat (2012), Arctic Council Doc. ACSAO-SE02 Stockholm, article 2.

body.<sup>291</sup> In 2003, the Icelandic chair of the Council also warned that, while the council could cooperate with the European Space Agency on a consensual basis, it would not be able to enter into formal agreements due to the absence of legal personality.<sup>292</sup>

According to the provisions of the Convention, “any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention” might be accepted as an observer to the climate change regime.<sup>293</sup> This provision further mandates the COP to define admissibility criteria for observer. This mandate has however been fulfilled only in very general terms in the draft rules of procedures as the wording of the rules of procedures reflect the wording of the convention.<sup>294</sup>

The secretariat of the Convention has thus been responsible for the definition of the admissibility criteria and for the admission procedure for observer organizations. Building on the practices established in other UN forums, the climate secretariat requires that all applicant organizations submit a statement of competence in Convention matters, the confirmation of independent juridical personality as well as the confirmation of non-profit and/or tax-exempt status. The climate secretariat reported in 2004 on this admissibility procedure.<sup>295</sup> In its report, it underscored that the application of such criteria would result, among other consequences, to the exclusion from eligibility of “multilateral agreements that do not establish an independent juridical entity”.<sup>296</sup> Most of this report was endorsed by parties through the Subsidiary Body for Implementation.<sup>297</sup> The secretariat refined its requirement for eligibility to the observer status, with nine documents being currently required from intergovernmental organizations applying for the status of observer. For intergovernmental organizations, the secretariat requires currently the submission of:

*A copy of the document(s), such as a treaty, charter, statute or constitution, that:*

*a. establish the organization with independent juridical personality and are signed by more than one State Member of the United Nations;*<sup>298</sup>

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<sup>291</sup> Meeting of Senior Arctic Officials, 28-29 April 2010, Ilulissat, Final Report report, Arctic Council Doc. AC-SAO-APR10-FINAL\_REPORT, at 5.

<sup>292</sup> Meeting of Senior Arctic Officials, 23-24 October 2004, Svartsengi, Final Report, at 13.

<sup>293</sup> UNFCCC, art. 7.6

<sup>294</sup> See the Draft rules of procedure being applied, UN Doc. FCCC/CP/1996/2, rule 7.1

<sup>295</sup> “Promoting effective participation in the Convention process”, Note by the secretariat, UN Doc. FCCC/SBI/2004/5, para 8.

<sup>296</sup> Ibid., para. 10.

<sup>297</sup> Report of the SBI, 20<sup>th</sup> Session, FCCC/SBI/2004/10, para 97 ff.

<sup>298</sup> Standard admission process for intergovernmental organizations (IGOs), available at [http://unfccc.int/files/parties\\_and\\_observers/igo/application/pdf/standard\\_admission\\_process\\_igo\\_english.pdf](http://unfccc.int/files/parties_and_observers/igo/application/pdf/standard_admission_process_igo_english.pdf).

While this requirement would have prevented in the past the Arctic Council to become an observer in the climate change process, the decision provided in the 2011 Nuuk Declaration to establish a secretariat for the Council as a standing body could possibly fulfil this requirement in relation to the latter institution. Additionally, the Terms of References for the ACS endorsed by the eight Arctic States in their Kiruna Declaration provide explicitly for the domestic legal personality of the secretariat.

The case of the secretariat of the Alpine Convention provides a relevant precedent to the issue of the observer status of the permanent secretariat of the Arctic Council. The Alpine Convention is a regional agreement adopted by the eight states located on the mountain range as well as the EU and aimed at the protecting the local environment while promoting the development of the Alps.<sup>299</sup> The original provisions of the Alpine Convention did not established any permanent secretariat but suggested that the Alpine Conference (the biannual conference of the parties to the Alpine Convention) might take the decision to establish one.<sup>300</sup> At the seventh Alpine Conference in 2002, the parties to the convention adopted a decision to establish such an institution.<sup>301</sup> In 2013, the secretariat of the Alpine Convention submitted an application for observer status in the climate change process. This application was approved by the UNFCCC secretariat, a decision endorsed by the parties to the climate convention at the Warsaw COP-19 in November 2013.

### **5.2.2. Direct input provided by the Arctic Council to the UN climate regime**

The current absence of observer status for the Arctic Council has important consequences on the ability of the Council to be directly represented in the process and to provide direct input. The Council cannot host side events or an exhibit booth on its own, two opportunities that could contribute to raising the prominence and visibility of its work.<sup>302</sup> Additionally, the Council is not invited to provide a statement to the high-level segment of each annual conference, statement that could otherwise constitute an important input for external actors observing the process and seeking declarations to illustrate its relevance and assess its outcomes.

Having provided an assessment of the status of the Arctic Council in the climate change regime, the following sub-section analyzes the various entry points for the Council to provide input to the climate change negotiations despite its lack of

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<sup>299</sup> Convention on the Protection of the Alps (Alpine Convention) ILM 31 (1991), 767.

<sup>300</sup> Ibid., Article 9.

<sup>301</sup> Alpine Conference, Decision VII/2, “Decision of the Alpine Convention on the Permanent Secretariat of the Convention on the Protection of the Alps” (2002).

<sup>302</sup> In practice, the ongoing chair of the Council could however submit an application on behalf of the Council.

observer status. This sub-section considers all potential opportunities for the Council to engage with the climate regime, including attendance of the UN climate Conferences of the Parties, submission of written views on the negotiating process and the implementation of the convention, delivery of statements during the COPs, and cooperation with the UNFCCC secretariat.

## **Presence at the negotiating sessions**

The presence of actors at the COP provides the opportunity for passive engagement through observation and informal contacts. Due to its lack of observer status in the climate change process, neither Arctic Council nor its secretariat is in the capacity to nominate delegates to attend the conferences of the parties to the UNFCCC. Over the past years, several officials with a mandate specifically related to the work of the Arctic Council have attended the COPs through other governmental or observer delegations. In five instances such officials have attended the conference having affiliated themselves explicitly with the work of the Council.

The review of the list of participants to the annual climate conferences highlights that five participants to the COP were directly affiliated with the work of the Arctic Council. Most instances of such practice have occurred during the COPs taking place in one of the Arctic states. CICERO, a Norwegian research organization, nominated in the past two officials of the Arctic Council among its delegation to the COPs: the chair of ACIA during the Montreal conference in 2005 and the AMAP executive secretary to the Copenhagen conference in 2009. Members of the AC indigenous peoples secretariat were also invited to join the ICC delegation to the Copenhagen conference.<sup>303</sup> Additionally, both Russia and Canada have highlighted in the past the Arctic credentials of one of the member of their delegations. Russia mentioned the participation to the Montreal conference of its Senior Arctic Official while Canada highlighted the presence in their delegation of minister Leona Aglukkaq as chairperson of the Arctic Council during the recent Warsaw and Lima climate conference.<sup>304</sup>

Additionally, participants to a conference have the possibility to host parallel events in the venue of the negotiations. These parallel events include the semi-official side events facilitated through the secretariat, which are listed in the program of the conference. Any parties to the convention or organization with observer status have the possibility to submit an application to host such an event, which is then promoted as part of the program of side events. The absence of observer status for the Arctic Council means that it cannot host an event itself. However, countries chairing the Council have in the past hosted side events on behalf of the Council in

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<sup>303</sup> List of participants to the 15<sup>th</sup> Conference of the Parties (2009), UN Doc. FCCC/CP/2009/INF.1.

<sup>304</sup> List of participants to the 11<sup>th</sup> Conference of the Parties (2005), UN Doc. FCCC/CP/2005/INF.2; List of participants to the 19<sup>th</sup> Conference of the Parties (2013), UN Doc. FCCC/CP/2013/INF.4.

order to share information about its work with the participants to the climate conference. Any proactive role of one of the Arctic states in communicating on behalf of the Arctic Council is framed by the AC rules of procedures:

*“The Host Country, an Arctic State, or any subsidiary bodies may undertake communications on Arctic Council matters with other international fora as may be agreed to in advance by the Arctic States.”<sup>305</sup>*

Such side events were hosted under the Icelandic chairmanship in 2004 to present the results of ACIA and under the Swedish chairmanship in 2011 to highlight the work of AMAP. In 2012, the Swedish chairperson also hosted an informal side event on behalf of the Arctic Council in the “EU Pavilion” (an area of the conference venue rented on a commercial basis by the European Union – the events organized in this venue being excluded from the official program of side events). No side event related to the Arctic, were organized under the Canadian chairpersonship of the Arctic Council at the Warsaw and Lima conferences.

## **Statements at the annual UN Climate Conference**

Only intergovernmental organizations with observer status are provided with the opportunity to deliver such an individual statement, which thus exclude the Arctic Council. Another option consists in delivering the statement in place of or in complement to the national statement delivered by one of the members of the Arctic Council. This practice is well established as it constitutes the only opportunity for informal negotiating groups or regional groupings to provide high-level collective input into the process. During the COP-20 in December 2014, seven countries (Chile, Costa Rica, Mexico, Nauru, Nepal, Panama and Tanzania) made use of their own intervention during the high level segment in order to deliver a statement on behalf of a wide range of coalitions or regional groupings (statements respectively delivered respectively on behalf of: AILAC - Association of Latin America and the Caribbean, ECLAC – UN Economic Commission for Latin America and the Caribbean, EIG- Environmental Integrity Group, AOSIS – Alliance of Small Islands States, LDCs – Least Developed Countries, the Coalition of Rainforest Nations and the African Group).<sup>306</sup> Additionally, two countries (Bolivia and Myanmar) allocated half of their intervention to deliver a joint message (respectively on behalf of the Group of 77 and China, and of ASEAN - Association of Southeast Asian Nations), delivering a shorter national statement during the remaining of the time allocated to the country.

Making use of this opportunity for the chairman of the Arctic Council to speak on behalf of the Arctic Council would be in line with the Arctic Council Communication

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<sup>305</sup> Rules of Procedure of the Arctic Council, as revised by the Arctic Council at the

8<sup>th</sup> Arctic Council Ministerial Meeting, Kiruna, May 15, 2013, para. 11.

<sup>306</sup> See the national statement delivered during the high level segment of the COP-20, available at [http://unfccc.int/meetings/lima\\_dec\\_2014/statements/items/8733.php](http://unfccc.int/meetings/lima_dec_2014/statements/items/8733.php)

and Outreach Guidelines, as they identify the role of the chairman to be speaking on behalf of the Council.<sup>307</sup> Over the recent years, the countries holding the chairmanship of the council have however refrained from using this opportunity to deliver a message on behalf of the Arctic Council.

The Arctic Council has nevertheless prepared ministerial declarations to the climate conferences to communicate the key elements of the Council's ministerial declaration to the participants of the conferences. Since these declarations could not be delivered formally in the context of the intergovernmental process, the chair of the Council opted for the alternative approach to deliver these statements during the side events introduced previously. This approach however reduces considerably the weight of the statement as its content fail to be reflected in the proceedings of the conference and the audience of this intervention is much more limited. While other ministerial statements play an important role in reaching out, through their webcasts, to domestic media and audiences, the Arctic Council ministerial declaration have little impact outside of the conference venue given the absence of a webcast at the side event or the lack of availability of the statement on the webpage of the UNFCCC.

In 2013, the Canadian minister and chairperson of the Arctic Council Leona Aglukkaq issued a ministerial statement on behalf of the Arctic Council. In the absence of any specific events being organized by Canada on the issue, the statement was however only released online rather than being read in person.<sup>308</sup> This extremely limited outreach – with participants to the COP-19 having virtually no opportunity to access the statement – highlights the purely symbolic nature of some of these statements. In 2014 in Lima, the Canadian chairpersonship did not release any such statement.

Interestingly, the scope of the signatories of the statements has varied over time. When Russia intervened at the COP-11 in 2005 to deliver a statement on behalf of the Arctic Council, the statement was formally delivered on behalf of the member states to the Council as well as of the observer states. Between 2010 and 2012, three additional statements were delivered to the UNFCCC under the Norwegian and Swedish chairmanship of the Council. These three statements have been delivered however only on behalf of eight Arctic states.<sup>309</sup> The most recent statement

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<sup>307</sup> Arctic Council Communications and Outreach Guidelines, as revised on 21<sup>st</sup> of March 2011, para. 4 – which also defines the condition within which the chairman can communicate.

<sup>308</sup> See the written statement prepared in parallel to the COP-19, accessible online at: <http://www.arctic-council.org/index.php/en/resources/news-and-press/news-archive/818-statement-to-the-unfccc-cop-xix>.

<sup>309</sup> For the statement delivered at the COP16 (2010), see <http://www.gwichin.org/Arctic%20Council%20statement%20to%20the%20CoP16.pdf>; For the statement delivered at the COP17 (2011), see: <http://www.arctic-council.org/index.php/en/document-archive/category/407-statements?download=1513:arctic-states-statement-for-unfccc-cop-17-held-in-durban-28-november-9-december-2011>; For the statement delivered at the COP18 (2012), see:

delivered during the COP-19 was delivered on behalf of both the eight Arctic states as well as of the six permanent participants to the Council.<sup>310</sup> The more recent messages thus omit to refer to any endorsement by states with observer status at the Arctic Council. This limited scope of the recent statements can possibly be explained by the difficulties of the Arctic states to define the scope and role of observers at the Council, especially in the context of an increased number of applicants to the status. This limitation on the countries endorsing the Arctic Council statements to the UNFCCC is however at odd with the emphasis contained in the Nuuk criteria for the observers to the Council, requiring the latter to “bring Arctic concerns to global decision-making bodies in partnerships with member states and Permanent Participants”.<sup>311</sup> This element highlights the lack of consistency of the Arctic states with regards to their expectations regarding the role of observers.

## Written Submissions

While calls for submissions issued by the UNFCCC bodies are generally directed either to parties only or to parties and observer organizations, in practice the UNFCCC secretariat compile all the submissions received – including those submitted by organizations lacking observer status – on its website, thus making these submissions available to the negotiators and to the public. This opportunity is therefore the only formal option for organizations lacking observer status to provide direct input to the climate change regime. In this context, the Arctic Council could possibly make use of written submissions in order to inform the climate negotiations whenever relevant calls for submissions are issued.

In 2011, the Arctic Monitoring and Assessment Programme (AMAP) submitted information to the SBSTA, responding to a call for submissions related to “Updates on developments in research activities relevant to the needs of the Convention”. The AMAP submission introduced the findings of the Snow, Water, Ice and Permafrost in the Arctic (SWIPA) assessment.<sup>312</sup> While this experience suggests that the Arctic Council can engage with the climate change process through the submission of written views, the isolated character of this experience also highlights that the Council has made very limited use of this opportunity.

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<http://www.arctic-council.org/index.php/en/document-archive/category/407-statements?download=1512:arctic-states-statement-for-unfccc-cop-18-held-in-doha-26-november-7-december-2012>

<sup>310</sup> Supra, note 308.

<sup>311</sup> Amended Arctic Council Rules of Procedure as adopted in Nuuk 2011, Annex 2: Accreditation and review of Observers, para 6(g).

<sup>312</sup> The document is available on the webpage of the UNFCCC, see: <http://unfccc.int/resource/docs/2011/smsn/ngo/303.pdf>.

## Other forms of cooperation with the UNFCCC

The lack of formal cooperation between the UNFCCC and the Arctic Council is also highlighted in the UNFCCC secretariat's annual report on cooperation with United Nations entities and intergovernmental organizations. Since 2009, the secretariat has been requested to provide a written update to summarize relevant cooperative activities with international organizations in order to further the implementation of the convention.<sup>313</sup> None of the past five reports make reference to cooperation between the UNFCCC and the Arctic Council. The Arctic Council secretariat is however a partner organization of the Nairobi Work Programme on impacts, vulnerability and adaptation to climate change (NWP), under the category of "international organization".<sup>314</sup> While the participation under this category might demonstrate that there are only limited procedural obstacles to the granting of observer status to the Arctic Council secretariat, the status indicated in relation to the participation to the NWP carries no formal legal implications.

### 5.2.3. Appraisal of the involvement of the Arctic Council in the Climate Change Regime

Despite the fact that the argument put forward by the US to oppose the request for observer status might no longer be justified from a legal point of view with the establishment of the ACS, such development does not prevent any member of the Council to oppose closer links between the Council and the UNFCCC, the Arctic Council reaching decisions on the basis of consensus. This evolution however highlights that the issue of the representation of the Arctic Council in the climate regime is more of a political than of a legal nature.

Global political dynamics have for a long time influenced the capacity of the Arctic Council to take an active role in relation to climate change. During the political process related to the preparation of ACIA, some countries for instance delegated climate negotiators familiar with the UNFCCC process to become involved in this Arctic-focused scientific assessment.<sup>315</sup> The willingness of some countries to use the Arctic Council in order to move beyond the current stale mate in the global climate regime was however opposed by several Arctic countries, the US playing an active role to prevent that the Arctic Council would adopt policy prescriptive conclusions on the basis of ACIA.<sup>316</sup>

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<sup>313</sup> Report of the SBSTA, 30<sup>th</sup> Session (2009), UN Doc. FCCC/SBSTA/2009/3, at 128.

<sup>314</sup> See the repertory of partner organizations to the Nairobi Work Programme on impacts, vulnerability and adaptation to climate change, available at <https://www3.unfccc.int/pls/apex/f?p=333:20:1706022681632719::NO::>

<sup>315</sup> Annika Nilsson, *supra* note 41, at 142.

<sup>316</sup> *Ibid.*, at 142.

The upcoming US chairpersonship of the Arctic Council starting in spring 2015 might provide an opportunity for the country to change its stand on this issue. Indeed, the US has already announced that climate change will be among the three thematic areas identified as priority for the chairmanship.<sup>317</sup> Additionally, the US also described the international visibility of the Arctic as one of the three overarching goals assigned for the chairmanship. The US might thus reconsider its opposition to the Council participating more directly to the climate negotiations and support, rather than oppose as it had done in the past, opportunities for the Arctic Council to become more visible in the climate negotiations.

The current lack of observer status to the UNFCCC, combined with a relative limited use of informal channel for participations appears at odd with the renewed willingness of the members of the Arctic Council to increase the visibility of the Arctic Council as an “active, relevant and credible” actor with regards to all matters related to Arctic governance. In order to “strengthen the Arctic Council”, its members requested at the Nuuk ministerial meeting the establishment of a more proactive and coordinated communication and outreach strategy. The strategy prepared by the secretariat and adopted at the 2012 meeting of the Arctic deputy ministers identifies international decision-makers as a key target group for the communication and outreach of the Arctic Council.<sup>318</sup>

Additionally, the communication and outreach strategy identified as follows the most relevant venue at which the presence and expertise of the Arctic Council should be made visible, with the chair being responsible for the dissemination of information and for any public intervention in order to raise the profile of the Arctic Council.<sup>319</sup>

Finally, Finland has recently emphasized its willingness to reconsider the issue of the legal nature of the Arctic Council, highlighting that the country would “support the continuation of this development and the recognition of the Arctic Council as a treaty-based international organisation”.<sup>320</sup> Finland has thus been the first among the eight Arctic states to adopt such a position in favour for an institutionalization of the Council. Such a position might gain particular weight as the country readies to take responsibility of the chairmanship of the Arctic Council after the upcoming US

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<sup>317</sup> See the presentation entitled “US Chairmanship 2015-2017; One Arctic: Shared Opportunities, Challenges and Responsibilities”, delivered by the US at the 2014 SAO meeting in Yellowknife. On file with the author.

<sup>318</sup> See the Communication strategy for the Arctic Council, Adopted by the Deputy Ministers’ Meeting 15 may 2012, at 5. The strategy states: “Political decision-makers who may take decisions that affect developments in the Arctic region are an important target group. They should be aware of the Arctic Council and the processes taking place in the Arctic region. Decision-makers can be found on three different levels:[...] International: in relevant international organisations and processes.

<sup>319</sup> Ibid., at 10.

<sup>320</sup> Arctic Strategy of Finland (2013), *supra* note 7, at 14.

term. Upgrading the status of the Council as a treaty-based organization would remove any impediment to its participation as an observer to the climate change process.

Oran Young described a decade ago the relative successes of the Council to bring regionally important issues to the forefront of the global environmental agenda (as well as its failure in relation to the 2002 World Summit on Sustainable Development).<sup>321</sup> Consequently, he argued for enhancing the role of the Arctic Council in global issue-specific regimes as an alternative to plans for the launch of a process towards a regional legally binding agreement.<sup>322</sup> His proposal for a *tripartite 'governance complex'* included the conscious recognition by the Arctic states of the role of the Council, as a high level forum, to raise global awareness about the particular vulnerability of the region and its communities, in particular in relation to climate change.<sup>323</sup>

When considering the lessons that the Arctic Council could provide to other regional forums for ocean governance, VanderZwaag and Dang described the capacity to promoting common regional interests in international forums as one of these positive experiences.<sup>324</sup> The authors pointed at the Arctic Marine Strategic Plan as an example of good practice in promoting regional voices in international forums and suggested specific opportunities for the Arctic Council to continue playing this role.<sup>325</sup> In their recent study of participants' perception of the effectiveness of the Arctic Council, Paula Kankaanpää and Oran Young reported that actors involved with the work of the Council judged its capacity to influence international agreements, treaties and conventions as average.<sup>326</sup> While respondents highlighted in this study the successes of the Council to shape the global agenda with regards to POPs, the need was also emphasized for the Council to better integrate its work and the proceedings of global agreement.<sup>327</sup>

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<sup>321</sup> Oran R Young, "Governing the Arctic: From Cold War Theater to Mosaic of Cooperation", *Global Governance: A Review of Multilateralism and International Organizations*, 11 (1) (2005), at 13.

<sup>322</sup> Oran R Young, "Whither the Arctic? Conflict and Cooperation in the Circumpolar North", *Polar Record* 45 (1) (2009), at 79.

<sup>323</sup> *Ibid.*, at 80.

<sup>324</sup> David VanderZwaag and Hai Dang Vu, "Regional Cooperation in the South China Sea and the Arctic: Lessons to be Learned?", in Aldo Chircop, Norman Letalik, Ted. L. McDorman and Susan J. Rolston (eds), *The Regulation of International Shipping: International and Comparative Perspectives* (Leiden: Martinus Nijhoff Publishers, 2013), at 201.

<sup>325</sup> *Ibid.*

<sup>326</sup> Paula Kankaanpää & Oran R. Young, "The effectiveness of the Arctic Council", *Polar Research* 31 (2012), at 3.

<sup>327</sup> at 12.

## 6. External Actors and the Arctic Message

The previous chapters have considered the importance of climate change in the national Arctic strategy of each Arctic state, the commitments adopted by these eight actors under the UNFCCC and the extent to which Arctic governments emphasize the region in their contributions to the climate change regime. The present research now turns to the role played by non-Arctic actors in this process. The first section sets the stage by defining the sources of the responsibility for non-Arctic states with observer status at the Arctic Council to promote the “Arctic voice” in global climate governance. The second section reviews references to the High North in the contributions made by these non-Arctic governments to the UNFCCC. Consequently, these two sections offer an assessment to the extent to which non-Arctic states have worked to fulfil the requirement included in the new criteria related to the observer status to the Arctic Council. Additionally, and for those states having adopted a national policy framework on the Arctic, these sections also provide an assessment of internal policy coherence comparing the positions of these governments in the Arctic arena and in the global climate talks. The final section concluding this review considers whether and how the Arctic is mentioned in contributions by provided another category of non-Arctic actors with potential interest in the region: Non-Governmental Organizations.

### ***6.1. Responsibility of external actors to promote Arctic concerns in global forums***

The responsibility of non-Arctic states to promote Arctic messages and concerns in international forums of environmental governance might include both an external and an internal component. The first sub-section below considers to what extent non-Arctic states with observer status at the Arctic Council have the duty to support the eight Arctic states and the Permanent Participants in bringing Arctic concerns to global governance forums. This commitment is now implied by their status as observers to the Council. Similarly as have been done in the previous chapter for the Arctic states, the second sub-section reviews the national Arctic strategies adopted by observers to the Council and assess to what extent climate change, and in particular international climate governance, is mentioned explicitly as a policy objective or commitment of these non-Arctic actors. While most non-Arctic States have refrained so far from preparing a national policy framework that could be compared to the Arctic strategies of the eight Arctic states, Germany, the UK and the EU have adopted such documents.

#### **6.1.1. A duty imposed from above: the Nuuk Criteria**

Non-Arctic States have participated to the proceedings of the Arctic Council and previously to the AEPS since the very beginning of Arctic Cooperation. The preamble of the AEPS indeed recorded the contribution made to the preparation of the Strategy by the Federal Republic of Germany, Poland and the United Kingdom.<sup>328</sup> The rules of the procedures for the Arctic Council, adopted at the first ministerial meeting, defined condition for the granting of observer status to non-Arctic states, intergovernmental organizations and non-governmental organizations.<sup>329</sup> The rules of procedure set a rather limited role for observers, mainly restricted to attendance at meetings, submission of relevant documents, and passive participation during the sessions other than ministerial meetings, at the discretion of the chair.<sup>330</sup>

Studies considering the effectiveness of the Arctic Council have also repeatedly pointed at the fact that the status of observers was ill defined and failed to harness the benefits of the interest expressed by external actors to support regional governance. In 2001, a report commissioned by the chair of the SAOs concluded unequivocally:

*[Observers'] participation could make substantial input to the Arctic activities. However their role in the Arctic Council has not been defined, and so the observer capacity is not fully used. Therefore the role of the Observers should be clarified.*<sup>331</sup>

With the thawing of the summer sea ice and the surge of interest for the multiple economic activities predicted by some analysts to boom in the region, the number and regional diversity of aspirant observers increased rapidly after 2007 with up to five Asian and two European applicants awaiting the consideration of their application. This increasing interest by non-Arctic states to participate to the proceedings of the Arctic Council highlighted the need to better clarify the terms of references defining the modalities for the participation of observers. This new level of interest also created some discomfort among several of the Arctic states and Permanent Participants about the risks perceived as being associated with the opening of the Council to a larger set of non-Arctic participants. Some of the AC observer states also found it increasingly difficult to accept the restrictions imposed on their participation to the activities of the Arctic Council. These frustrations culminated with the infuriated comments delivered to the media by the French ambassador for the Polar Regions during the aftermath of the Nuuk ministerial meeting and his letter to the Danish minister of Foreign Affairs.<sup>332</sup>

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<sup>328</sup> Arctic Environmental Protection Strategy (AEPS), *supra* note 34, at 4.

<sup>329</sup> Arctic Council Rules of Procedures, as adopted by the Arctic Council at the first AC meeting (1998), SAO report (Iqaluit): Annex 1.

<sup>330</sup> *Ibid.*, Rules 37 and 38.

<sup>331</sup> Pekka Haavisto, *Review of the Arctic Council Structures*, (Helsinki: Finnish Institute of International Affairs, 2001).

<sup>332</sup> Michel Rocard, Letter to Lene Espersen, President of the Arctic Council, 8 May 2011,

Pressured by an increase of the number of applications and by a growing sense of frustration among existing observer states, the Arctic states agreed in 2009 to launch a review the status of observers. An Arctic Council Observer Manual for Subsidiary Bodies was subsequently developed and adopted by the SAOs ahead of the Kiruna ministerial meeting.<sup>333</sup> The manual describes logistical arrangements to accommodate the presence of observers and defines their role in relation to the subsidiary bodies of the Arctic Council. The new guidelines provide that, “while the primary role of observers is to observe the work of the Arctic Council, observers should continue [...] their engagement in the Arctic Council primarily at the level of working groups.”<sup>334</sup>

The reform however was not limited to clarifying the role of the observers and the conditions for the recognition of new observers. The new rules applicable to observers indeed also include criteria for the admission of observers, which might have wide implications for the role of the Arctic Council in the future.<sup>335</sup> In particular, Graczyk and Koivurova highlighted the explicit need for non-state actors to endorse the Arctic Council’s perspective on a number of jurisdictional and legal issues, as well as on the external dimension of the role of observers. The latter dimension is emphasized in the expectations that applicants to the observer status must:

*ha[ve] demonstrated a concrete interest and ability to support the work of the Arctic Council, including through partnerships with member states and Permanent Participants bringing Arctic concerns to global decision-making bodies.*<sup>336</sup>

While the first part of this wording reiterates a well-established criteria applied since 1996 to the consideration of applications to the observer status, the external dimension of this criteria constitute a novelty.<sup>337</sup> This criteria builds on recommendations provided with regards to the strengthening of the Arctic Council. Promotion of the Council’s goals and programs on the global plane was identified as one of the key contributions that non-Arctic states could make to strengthen the Council.<sup>338</sup> Such an approach – if promoted and implemented seriously by both Arctic and non-Arctic states – could delegate a concrete responsibility to the AC

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<sup>333</sup> Arctic Council Observer Manual for Subsidiary Bodies, Senior Arctic Officials Report to Ministers (Kiruna, Sweden, May 12, 2011), 90–96.

<sup>334</sup> Ibid.

<sup>335</sup> Piotr Graczyk and Timo Koivurova, “A new era in the Arctic Council’s external relations? Broader consequences of the Nuuk observer rules for Arctic governance”, *Polar Record* 49 (2013), at 9.

<sup>336</sup> Arctic Council Rules of Procedures, supra note 311, Annex II, criteria (g)

<sup>337</sup> Piotr Graczyk and Timo Koivurova (2013), supra note 335, at 9.

<sup>338</sup> Piotr Graczyk, “The Arctic Council Inclusive of Non-Arctic Perspectives: Seeking a new balance”, in Thomas S. Axworthy, Timo Koivurova and Waliul Hasanat (eds.), *The Arctic Council: its place in the future of Arctic Governance* (Toronto: The Walter and Duncan Gordon Foundation, 2012), at 22 and recommendation 7.

observers while harvesting the added-value of the interests of these states for Arctic governance.<sup>339</sup>

### **6.1.2. A national priority: the UN Climate Talks in Arctic strategies of the observers**

Having introduced the new expectations on observers of the Arctic Council to convey the “Arctic voice” to relevant international forums, this section considers to what extent non-Arctic states might have fulfilled this role in relation to the climate change process. This section also considers the potential role of the European Union as the organization has applied for observer status at the Arctic Council since 2008. The new formulation of the criteria for admission of observers indeed makes clear that applicants are expected to have already contributing to strengthening the Arctic message in global forums prior to its admission as an observer.

This assessment aims at responding to the following three questions. Have non-Arctic states with AC observer status included “speaking for the Arctic” as one of the dimensions of their national policy on the Arctic? Does the Arctic figure in their reporting of domestic climate action? And finally, have the observer states actively referred to the Arctic in their engagement in the climate change regime?

Among the Arctic Council observers, only two countries have published comprehensive policy statements on their perspectives and priorities for Arctic governance: Germany and the UK. Additionally, the EU institutions have adopted a number of Arctic policy statements considered in the second part of the present assessment.

The UK Policy towards the Arctic provide a clear recognition of the role played by the country in supporting the international leadership of Arctic actors in relation to issues affecting the region, particularly in relation to climate change policy. The UK policy emphasizes that “leadership for Arctic stewardship rests with the eight Arctic States and the[ir] peoples”. The document continues however by highlighting that, as the region is impacted heavily by climate change, the UK leadership in this field makes the country a leader in “the fight on tackling the underlying causes of the rapid changes facing the Arctic”.<sup>340</sup>

This statement appears to be tailored to demonstrates the country’s commitment to the admission criteria related to the external representation of Arctic perspective by observers. The UK Climate Policy emphasizes the adhesion of the country to the long term global goal agreed under the UNFCCC of limiting average temperature rise by

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<sup>339</sup> Olav Schram Stokke, “Environmental security in the Arctic: The case for multilevel governance”, *International Journal* (2011), at 848.

<sup>340</sup> Adapting To Change: UK policy towards the Arctic, UK Polar Regions Department Foreign and Commonwealth Office (2013), at 8.

2°C and notes the relevance of this target in the Arctic context. Having set this objective in the context of Arctic changes, the policy further reiterates the commitment of the UK to *“play a leading role in diplomatic efforts to avoid dangerous climate change, including through the negotiation of a legally binding global climate change agreement to be agreed in 2015”*.<sup>341</sup>

The “Guidelines of the Germany Arctic policy” on the other hand build on a more narrow perspective of the role and interests of Germany in the region.<sup>342</sup> The document focuses primarily on identifying how Germany can seize economic opportunities in the context of the economic development of the region while contributing to reducing associated risks. While the Guidelines make extensive references to Germany as an international actor, they only refer to forums related more directly to the exploitation and protection of the marine environment and fail to mention the role that the country could play in other relevant international environmental forums.

Due to its institutional structure, the European Union does not have one unified Arctic strategy. Instead, each of its institutions have adopted since 2008 at least one document providing a comprehensive overview of EU policies and priorities suggested for the Arctic. Since the inception of this regional policy, the EU has repeatedly emphasized the importance of its own environmental and social impact on the region, as a key consumer of the goods and resources produced regionally, as a contributor to some of the pollution affecting the region or as a global player shaping the regimes governing issues relevant to the region.<sup>343</sup> The EU commissioned in 2010 a report assessing its environmental and social footprint on the Arctic,<sup>344</sup> which it has highlighted as an example of good practice to inform policy and identify contributions that the Union could make to reduce its impact – including in relation to climate change.<sup>345</sup> Building on this perspective, the EU Commission’s 2012 Arctic Communication highlighted the EU’s commitment to meet its target under the Kyoto Protocol as a measure to lower the impact of the Union on the region.<sup>346</sup>

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<sup>341</sup> Ibid, at 17.

<sup>342</sup> Germany’s Arctic policy guidelines: Assume responsibility, seize opportunities, Federal Foreign Office, November 2013, at 7.

<sup>343</sup> See for instance the affirmation in the 2008 communication that “Activities in EU Member States — as most other countries — leave an environmental footprint in the Arctic”. Communication from the EU Commission to the European Parliament and the Council of the European Union: The European Union and the Arctic Region, Brussels, 20.11.2008, COM(2008) 763 final

<sup>344</sup> See Sandra Cavalieri et al, *EU Arctic Footprint and Policy Assessment – Final Report* (Berlin: Ecologic Institute, 2010)

<sup>345</sup> Joint Communication to the European Parliament and to the Council: Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps, Brussels, 26.6.2012 JOIN(2012) 19 final, at 7.

<sup>346</sup> Ibid, at 13.

Beyond the footprint of its domestic activities, the institutions of the EU have also pointed at the importance of the contribution by the EU and its member states to the multilateral agreements relevant to the Arctic.<sup>347</sup> In its 2012 Communication highlighting recent initiatives and policies of the EU relevant to the Arctic, the Commission highlighted the leadership of the Union during the Durban Conference of the Parties.<sup>348</sup> In addition to the recognition of the general relevance for Arctic governance of the UNFCCC and of its own role in the negotiation process, the EU institutions have also expressed their support for consideration of Arctic climate impacts in this international regime. The Council called in 2009 for a “increased attention” to climate impacts in the Arctic in the context of the climate regime.<sup>349</sup> The European Parliament supported this statement the following year with the adoption of its own resolution.<sup>350</sup>

## ***6.2. Non-Arctic States and the promotion of Arctic Concerns in Global Forums***

Having considered the external and internal sources of commitments for non-Arctic states to raise regional concerns in international forums, this section turns to the role that non-Arctic actors have played in the climate change regime in order to fulfil this commitment. The first two sub-sections address specifically the role of non-Arctic states, and in particular that of those having obtained observer status at the Arctic Council. Firstly, this section reviews the references to the Arctic contained in the national communications submitted since the adoption of the UNFCCC by the non-Arctic states with observer status at the Arctic Council. These documents provide an opportunity for non-Arctic states both to highlight the implementation of policies and projects benefiting the Arctic. Additionally, but perhaps to a lower extent than for the Arctic states themselves, these communications could also provide a possibility for the Council’s observers to highlight the specific concerns and the unique circumstances of the region. Secondly, relevant references are mapped throughout the various opportunities offered to non-Arctic states to provide contributions to the ongoing process: ministerial statements and written submissions.

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<sup>347</sup> Communication from the EU Commission to the European Parliament and the Council of the European Union: The European Union and the Arctic Region, Brussels, 20.11.2008, COM(2008) 763 final, at 4 and 10; European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North (2009/2214(INI)), at 12. and EU Parliament Resolution on the EU strategy for the Arctic, (2013/2595(RSP)), at 5.

<sup>348</sup> Joint Communication to the European Parliament and to the Council: Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps, Brussels, 26.6.2012 JOIN(2012) 19 final, at 13.

<sup>349</sup> Council conclusions on Arctic issues, 2985th foreign affairs Council meeting Brussels, 8 December 2009, at 2

<sup>350</sup> European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North (2009/2214(INI)), at 8

### 6.2.1. National Communications submitted by Non-Arctic States

Similarly to the review accomplished in relation to the Arctic states in a previous section of this research, two sets of documents were analyzed in order to assess how non-Arctic states with AC observer status perceive the relevance of the Arctic for the climate change regime. Firstly, we analyzed the content of the national communications submitted by these countries to the UNFCCC to consider to what extent the AC observers identified the Arctic as a dimension of their own experience of climate change and of their domestic climate policies. Secondly, we reviewed the Arctic strategies of the three non-Arctic actors having published such documents in order to assess whether these actors had expressed their commitment to carrying the Arctic message in international forums.

Depending on their status under the Annex I of the Convention, the AC observer states have been subject to different requirements regarding the timing of the submission of their national communications as well as the level of details contained in these documents.

Observers included in the Annex I (EU, France, Germany, Italy, Japan, Netherlands, Poland, Spain and United Kingdom) have been subject to the same requirements as the eight Arctic States.<sup>351</sup> The mapping of references to the Arctic in the national communications submitted by these nine parties highlights that these non-Arctic states have generally only considered the Arctic to be relevant to their climate policies and measures in relation to the scientific research performed by their institutions.

References to the Arctic in National Communications of non-Arctic States									
Chapters	EU	France	DE	Italy	Japan	NE	Poland	Spain	UK
National circumstances									
Greenhouse gas inventory									
Mitigation Policies									
Projections & impact of policies									
Impacts, vulnerability & adaptation	X								X

<sup>351</sup> See above, sub-section 5.1.1.

International Cooperation									
Research	X	X	X	X			X		X
Education & Awareness Raising									

Number of occurrences in National Communications					
1	2	3	4	5	6
X indicates a reference in the 6th National Communication					

**Table 6-1: References to the Arctic in the National Communications of Annex I parties to the UNFCCC with observer status to the Arctic Council<sup>352</sup>**

All of these AC observers have mentioned research activities related to Arctic climate change in at least one of their national communications, with EU, France, Italy and Poland mentioning such research in four of their national communications.

When describing its national circumstances, Japan highlighted in four of its national communications the occurrence of a sub-arctic climate over part of its territory.<sup>353</sup> The country also highlighted the particular vulnerability of the sub-arctic ecosystems associated to this climatic zone.<sup>354</sup> Germany and the United Kingdom both noted in one of their national communication that the impact of the melting of the Arctic sea ice might impact the countries due to the opening of new shipping routes. Germany referred to this development as a positive development for the shipping industry, emphasizing the need to develop adequate rules to manage these new shipping routes adequately.<sup>355</sup> The most recent communication of the UK also refers to this aspect of Arctic climate change but in a more nuanced manner. While the country emphasized the economic opportunity resulting from these new shipping routes, the country highlighted also environmental implications related to the migration of animals.<sup>356</sup>

<sup>352</sup> For the EU, Netherlands, Spain, and the UK, only 5 national communications were assessed, the first national communication of these parties being only available in hard copy format.

<sup>353</sup> See for instance Japan's Fifth National Communication Under the United Nations Framework Convention on Climate Change (2010), at 8.

<sup>354</sup> Ibid., at 284.

<sup>355</sup> Fifth National Report of the Government of the Federal Republic of Germany (2010), at 197.

<sup>356</sup> The UK's Sixth National Communication and First Biennial Report under the UNFCCC (2013), at 177 and 178.

Finally, the European Union has also made a substantial reference to the impacts of changes occurring in the Arctic on the Union through the positive feedbacks that these changes will have on the increase of mean temperatures. contributions to increasing the rate of temperatures increase.<sup>357</sup> Such a statement – as well as to a more limited those mentioned previously from the UK and German national communications – is notable as it highlights that the Union does not perceive the Arctic only as a vulnerable region or a field of research to better understand climate change but also notes the impacts that changes in the high North would have on non-Arctic nations. It is remarkable however that the EU has never highlighted referred to the Arctic when describing its own national circumstances despite three of its member states possessing significant territories above the Arctic Circle. The absence of such reference is at odds with the repeated emphasis on these territories in every political document adopted from the institutions of the EU regarding the Arctic.<sup>358</sup>

Observers not included in the Annex I of the UNFCCC (China, India, Korea and Singapore) have only been required to submit their first national communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources. According to article 12.1 and 12.2 of the Convention, these communications are provided a more limited content than those from Annex I parties, which was reflected in specific guidelines adopted in 1996 in 2002.<sup>359</sup> The fact that the scope of these submissions is more limited compared to that of Annex I countries and focuses more heavily on the particular needs of developing countries – combined with the greater distance separating most of the non-Annex I observers to the Arctic circle – might explain the fact that none of their national communications makes any reference to the Arctic context.

### **6.2.2. Non-Arctic states speaking for the Arctic**

Having considered how non-Arctic states reported on national policies and actions, the present sub-section considers input provided by non-Arctic states into the climate change regime. This sub-section addresses the two channels available to parties in order to provide input into the climate change regime for which records of the intervention are publicly available: written submissions and ministerial interventions during the high level segments. Thus, the interventions of negotiators

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<sup>357</sup> Fifth National Communication from the European Community under the UN Framework Convention on Climate Change (2009), at 237.

<sup>358</sup> See for instance European Parliament resolution on the EU strategy for the Arctic (2013/2595(RSP)), preamble, para E; Joint Communication to the European Parliament and to the Council: Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps, Brussels, 26.6.2012 JOIN(2012) 19 final, at 3.

<sup>359</sup> Decision 10/CP.2, “Guidelines for the preparation of initial national communications from non-Annex I Parties” (1996), UN Doc. CCC/CP/1996/15/Add.1; Decision 17/CP.8, “Guidelines for the preparation of national communications from Parties not included in Annex I to the Convention” (2002), UN Doc. FCCC/CP/2002/7/Add.2.

in the sessions of the bodies established under the convention are not included in the scope of this sub-section. While these statements by negotiators throughout the process are crucial in shaping the outcomes of the negotiations, the two sources of inputs considered in this sub-section, due to their availability online, are those possessing most capacity to reach out to external audiences and shape public narrative.

## Written submissions

**Table 6-2: References to the Arctic in written contributions submitted by non-Arctic states since 2010**

References to the Arctic in written submissions to the UNFCCC authored by non-Arctic states				
Year	Author	Recipient	Call for submission	Content
2010	Grenada	KP	Workshop on Annex I emission reductions	Refers to Arctic sea and glaciers to highlight urgency, includes long list of academic literature
	Bolivia	LCA	Additional views to facilitate negotiations	Submits World People's Conference on Climate Change and the Rights of Mother Earth's declaration: melting of polar ice caps mentioned in introduction
	Micronesia	LCA	Preparation of an outcome at the COP-16	Proposes a science review, with step 1 science review, including information by the Arctic Council
2011	Bolivia	LCA	Views on non-market-based mechanisms	Calls for suspension of petroleum exploration in zones which are particularly important for the climate system (e.g. Polar Regions)
2012	Malaysia	ADP	Options for increasing the level of ambition	Refers to methane release from warming permafrost and from the Arctic continental shelf as a tipping point that could undermine climate policies
	Nauru for AOSIS	KP	Consideration of further Annex I commitments	Quotes WMO's preliminary findings on dramatic sea ice decline in the Arctic
	Nauru for AOSIS	SBI	Recommendations on loss and damage	Refers to Arctic sea ice as example that climate change is occurring faster than expected
	Gambia for LDCs	SBSTA	Submission on Specific Research Themes	Mentions AMAP as one of relevant source of information and research
2013	EU	SBI	Approaches to address loss and damage	Quotes IPCC on continuous shrinking of Arctic sea ice cover

EU	SBSTA	Submission on Specific Research Themes	Calls for focus on Polar science at the SBSTA40 Research Dialogue and highlights the regional and global impacts of Arctic warming
Canada, Norway, US, Japan New Zealand	SBSTA	Content for the 2013-2015 Review	Consider observed and projected changes, including regional variability in the polar systems when reviewing the adequacy of the long term global goal

<b>Submission by:</b>	
	Members of the Arctic Council
	Observer of the Arctic Council
<b>Context of the reference to the Arctic:</b>	
	General background / call for action
	Call for a mandate to consider Arctic research
	Call for mitigation policy in the Arctic

In their written submissions to the UNFCCC, several non-Arctic states mentioned the Arctic in several contexts over the past four years, including two observers to the Arctic Council: the EU and Japan. Most of these references occurred in the context of a call for urgent action or an emphasis on the urgency of the climate crisis. The Arctic was referred to as a bellwether in six written submissions since 2010. The majority of these references were included in the submissions of vulnerable countries.

Additionally, several states (Micronesia, Gambia, EU and Japan) highlighted the importance of Arctic related research for climate governance and suggested that the UNFCCC considers Arctic climate change as a theme for a science review. These mentions thus invoke the Arctic in a similar context that those contained in the submissions of the Arctic states.<sup>360</sup> Micronesia and Gambia mentioned explicitly the relevance of Arctic Council research outcomes in this context.

Finally, the Arctic was mentioned once in relation to mitigation action. In a submission to the AWG-LCA negotiations, Bolivia called in 2011 for suspension of petroleum exploration in zones which are particularly important for the climate system, highlighting the Polar regions as an example of such important zones.

## Interventions

Since 2010 none of the current observers to the Arctic Council have mentioned the Arctic in their high-level ministerial statement.<sup>361</sup> Despite the freedom for each government to structure its ministerial intervention according to its own priorities,

<sup>360</sup> See above, sub-section 5.1.2.

<sup>361</sup> This assessment was made based on all statements available in English on the webpage of the UNFCCC secretariat (55 statements for the five COPs), with ten statements being either available in another language or not being available.

many statements follow a similar approach. This includes the following three components: a call for action or emphasis on the urgency to adopt an agreement, an exposé of the domestic measures being adopted or of national leadership, and an expression of solidarity with some of the countries or communities affected. References to climate vulnerability are often included in ministerial statements in relation to developing countries particularly vulnerable such as African countries or small island states, but not to the communities of the Arctic. The choice of the region mentioned in these references might be explained in the context of the need to build alliances with other negotiating parties during the conferences. This practice could possibly explain the absence of references to the Arctic in the interventions by observers to the Arctic Council.

Additionally, host countries of the COPs have a potential role to play in highlighting specific issues or in shaping the narratives surrounding the conference. During the April 2008 meeting of the Senior Arctic Official, Poland offered its assistance in its quality as host of the 2008 annual climate conference and announced its intent to contribute to highlight Arctic issues during the conference.<sup>362</sup> This offer did however not lead in any particular concrete outcomes during the COP-14.

### **6.3. Non-Governmental Organizations**

Non-governmental organizations, as well as non-UN intergovernmental bodies, interested in taking part to the negotiating process may submit an application to the secretariat in order to be admitted as an observer organization. In order to be admitted, organizations must demonstrate that they are “qualified in matters covered by the Convention.”<sup>363</sup> Among the eleven non-governmental organizations with observer status at the Arctic Council, only four also have observer status in the climate change process.<sup>364</sup> In 2013, the Arctic Council did not consider the applications of new observer organizations – both intergovernmental and non-governmental – during the Kiruna ministerial meeting.<sup>365</sup> Consequently, relevant organizations with an important capacity to mobilize the public – such as

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<sup>362</sup> See Arctic Council Doc. AC-SAO-APR08-Final\_Report, at 13.

<sup>363</sup> UNFCCC, Art. 7.6 and Draft Rules of Procedure of the COP and its Subsidiary Bodies, applied provisionally, UN Doc. FCCC/CP/1996/2, 22 May 1996, Rule 7(1). The same rule applies also to the meetings taking place under the Kyoto Protocol. Decision 36/CMP.1, “Arrangements for the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol at its First Session” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.4, 30 March 2006, para. 2. (c).

<sup>364</sup> These four organizations are the Circumpolar Conservation Union (CCU) COP-11, FCCC/CP/2005/2, the International Work Group for Indigenous Affairs (IWGIA) COP-15, FCCC/CP/2009/8/Rev.1, the Northern Forum (NF) and the World Wide Fund for Nature (WWF), see Report of the COP at its first session (1995), UN Doc. UNFCCC/CP/1995/3.

<sup>365</sup> Philip E. Steinberg and Klaus Dodds, “The Arctic Council after Kiruna”, *Polar Record* 48 (2013)

Greenpeace – will not be admitted as observers until at least the 2015 ministerial meeting. This oversight thus reduces the capacity of the Council to leverage from observer organizations support for the Arctic voice in international forums as highlighted in the new criteria for observer status.

### **6.3.1. Statements by various constituencies during the COP's High-Level Segment**

The UNFCCC draft rules of procedures being applied provide that “observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object”.<sup>366</sup> In practice, this provision has been implemented by inviting representatives from the major groups of civil society to make brief oral interventions during the annual climate conferences and intersessional meetings.

Most of the statements delivered by representatives from civil society are invited during the session of the Subsidiary Bodies and of Ad-Hoc Working Groups. In these bodies, chairs may invite general statements or requests the stakeholders to more specifically address one of the discussed agenda items.<sup>367</sup> The latter format enables organizations to provide relevant input to the negotiations. In 2010, the Subsidiary Body for Implementation invited presiding officers to “seek opportunities” for such interventions when time allows.<sup>368</sup> In order to channel the perspectives of all stakeholder groups, while limiting the number of interventions, one intervention is traditionally invited from each constituency that is recognized by the secretariat.<sup>369</sup>

Additionally, interventions by representatives from civil society are scheduled during the high-level segment of each COP, once all ministers have been offered the opportunity to deliver their own statements. Copies of these statements are uploaded to the webpage of the UNFCCC as well as available as webcasts. They thus provide valuable resources for external actors such as journalists seeking alternative perspectives to provide an assessment of the state of play of the negotiations. Thus statements delivered during the high-level segment tend to provide a more general narrative on the ongoing conference than to focus on a particular technical dimension of it.

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<sup>366</sup> See Rules of Procedures, *supra*, note 294, rule 7(2).

<sup>367</sup> In the past, observers were requested to submit their interventions in advance to facilitate interpretation. Taking into account concerns expressed about the difficulties to address most recent issues on the agenda due to this rule, this practice was suspended in 2011. In more limited cases, civil society delegates are sometimes invited to contribute directly to the discussions of contact groups.

<sup>368</sup> Report of the SBI, 34<sup>th</sup> Session (2011), UN Doc. FCCC/SBI/2011/7, para. 178(a)ii.

<sup>369</sup> See below section 7.2 for a discussion of the status of constituency in the climate change process.

Among the constituencies' statements delivered since 2010 and made available on the webpage of the UNFCCC, only the one delivered by Environmental NGOs in 2010 referred briefly to the changes that occurred in the Arctic since the agreement by the international community to negotiate a global climate instrument.<sup>370</sup> The limited amount of references in these interventions to the region can appear surprising given the high prominence of the Arctic in public narrative related to climate change.

### **6.3.2. References in written submissions to the UNFCCC**

While the calls for written contributions usually address only parties, observer organizations – including intergovernmental and non-governmental organizations – have also responded to these calls by providing their views and reports. In 2004, the SBI agreed that the calls for submission would be extended to stakeholders “where appropriate and on the understanding that such submissions would not be issued as official documents, but would be made available on the secretariat web site.”<sup>371</sup> Given the limited opportunities for non-state actors to intervene into the negotiations, the possibility to provide written information in advance of the meetings is a valuable opportunity for them to contribute to inform and to shape the process. In particular, written submissions provide the possibility to provide detailed and complex views and information whereas the time limit on the oral interventions greatly reduces the amount of information that can be provided in the latter. In its response to a survey conducted by the UNECE on the promotion of public participation in international forums, the UNFCCC Secretariat highlighted the submission of written input as one of the main channels ensuring participation of non-state actors.<sup>372</sup>

In 2011, the SBI requested that the secretariat, when feasible, “post submissions from observer organizations on the UNFCCC website in a way that makes them accessible to Parties.”<sup>373</sup> In some instances, the UNFCCC secretariat provides a synthesis of the content of submissions in order to provide an overview of the diversity of views submitted to it. Depending on the mandate provided by the parties, the secretariat summarizes either all submissions received or only those of governments, thus not always promoting the dissemination of contributions by non-state actors and governments at the same level.

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<sup>370</sup> See the intervention delivered by Ms. Sandra Guzmán, Mexican Centre of Environmental Law, intervention on behalf of Climate Action Network, 10 December 2010





<sup>371</sup> Report of the SBI, 12<sup>th</sup> Session (2004), UN Doc. FCCC/SBI/2004/10, 31 August 2004, para. 104.

<sup>372</sup> Letter from the UNFCCC Executive Secretary to the chair of the meeting of the parties to the Aarhus Convention. 28 December 2006, Ref: YdB/BB/dtd, page 3.

<sup>373</sup> Report of the SBI, *supra*, note 368, para. 178(d).i.

References to the Arctic in observer organization's written submissions to the UNFCCC				
Year	Author	Recipient	Call for submission	Content
2010				
2011	International Geosphere-Biosphere Programme	SBSTA	update on relevant research activities	Reports on recent research related to the Arctic: coastal environment
	Arctic Council's AMAP	SBSTA	update on relevant research activities	report on recent research related to the Arctic: Snow, Water, Ice and Permafrost
2012	WWF	ADP	raising short term ambition	Refers to benefit in the Arctic of reducing black carbon emissions
	CAN	SBSTA	raising short term ambition	Refers to benefit in the Arctic of reducing black carbon emissions
	Earth System Science Partnership	SBSTA	update on relevant research activities	Reports on recent research related to the Arctic: permafrost
	International Geosphere-Biosphere Programme	ADP	update on relevant research activities	Reports on recent research related to the Arctic: coastal erosion, Emissions by methane hydrates, Arctic Ocean as a sink
	CAN	ADP	general submission on the work of the ADP	Refers to benefit in the Arctic of reducing black carbon emissions
2013	CAN	ADP	raising short term ambition	Refers to benefit in the Arctic of reducing black carbon emissions
	Greenpeace	ADP	raising short term ambition	Highlights need to leave Arctic oil untouched in order to promote renewables
	CAN	ADP	raising short term ambition	Refers to benefit in the Arctic of reducing black carbon emissions
2014	Environmental Investigation Agency	ADP	raising short term ambition	Refers to the Arctic Council Kiruna Declaration's paragraph calling for countries to tackle HFCs
	International Cryosphere Climate Initiative	ADP	raising short term ambition	Calls for measure targetting black carbon and methane, with many references to Arctic context
	UNEP	ADP	raising short term ambition	Highlights benefits for the Arctic of measures tackling SLCFs
	WMO	SBSTA	research and systemic observation	Mentions implementation of a project

International Geosphere-Biosphere Programme	SBSTA	research and systematic observation	Mentions on recent research related to Arctic methane emissions
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<b>Submission by:</b>	
	Body established by the AC
	Organization with AC observer status
<b>Context of the reference to the Arctic:</b>	
	Update on scientific findings
	Call for mitigation policy in the Arctic

**Table 6-3: References to the Arctic in written contributions submitted by IGOs and NGOs since 2010**

Over the past four years, references to the Arctic were mentioned in 15 submissions provided by non-governmental and intergovernmental organization to the UNFCCC, out of a total of 534 written contributions having been submitted over the period. Among the documents studied for this essay, no reference to the Arctic was found in support of prescriptive contributions before 2012. In those 15 submissions, references to the Arctic are associated to four different themes. Firstly, some submissions provided an update on the status of scientific research conducted in the Arctic and highlighted relevant outcomes. Secondly, several submissions focused on opportunities to increase short term mitigation ambition highlighted in similar terms the important benefits in the Arctic of actions tackling the emissions of short-term climate forcers, emphasizing that such actions might lower increase of temperature in the Arctic by 0.7°C by mid-century. One submission highlighted the necessity to prevent the exploitation of Arctic hydrocarbon resources in order to promote a transition to energy production primarily based on renewable energy.

Among all contributions reviewed, the Environmental Investigation Agency (EIA) submission contains the only explicit reference to the work of the Arctic Council. The document submitted in March 2014 by the EIA quotes the Kiruna Declaration as an example of “*growing international support for global action on hydrofluorocarbons (HFCs)*”.<sup>374</sup> Finally, the 2014 contribution by the International Cryosphere Climate Initiative (ICCI) details a list of sectoral measures reducing emissions of short-lived climate forcers pollutants and benefiting the cryosphere in the short-term.<sup>375</sup> It is the only submission containing extensive references to the Arctic and that can be described as focusing primarily on this regional context.

<sup>374</sup> Environmental Investigation Agency (EIA) submission to the fourth part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, 6 March 2014, page 4, <http://unfccc.int/resource/docs/2014/smsn/ngo/403.pdf>.

<sup>375</sup> The Cryosphere and Need for Enhanced Pre-2020 Ambition: Submission to UNFCCC ADP Workstream 2 by the International Cryosphere Climate Initiative (ICCI), 30 March 2014, <http://unfccc.int/resource/docs/2014/smsn/ngo/414.pdf>

While the contributions considered for this research were submitted to seven bodies established under the convention (COP, CMP, SBI, SBSTA, ADP – since 2012, AWG-KP and AWG-LCA – both up to 2012), all references found to the Arctic were included in submissions to the SBSTA and to the ADP. Given the mandate of these two bodies, this concentration illustrates that such references were primarily made either in order to provide an update on the outcome of research projects (similarly to the references contained in submissions provided by parties) or in relation to the negotiations towards a new climate change regime.

### **6.3.3. Organization of side events during the Conference of the Parties**

In addition to the provision of formal input to the process, either orally or in written form, observer organizations are offered the opportunity to introduce their views on a particular matter relevant to the negotiating process in side events. Although side events only make informal contributions to the process as they do not feed directly into the main negotiations, the participants to the process have highlighted the importance of these events to discuss new issues and to enable more open discussions than can take place in the political process.<sup>376</sup>

Side events applications might be submitted by any party or observer organizations in advance of every climate change conference and major intersessional sessions. The UNFCCC secretariat reviews the applications and proceeds with the selection of the side event confirmed for the session on the basis of the relevance of the theme addressed, the balance between the coverage of different thematic and the number of joint-organizers. As the hosting of a side event has been identified as one of the main opportunity for observers to provide relevant input to the negotiating process, the secretariat guarantees that the majority of side events are allocated to non-governmental organizations.

In their study of the role of side events in the climate regime, Hjerpe and Linnér identify five main functions for these events.<sup>377</sup> At least three of those could play a role in relation to the Arctic context. Firstly, the authors note the importance of side events in sharing information. Considering the fact that the Arctic is often invoked in the climate change regime in relation to scientific updates, one can expect this objective to play a strong factor in motivating many organizers of Arctic-related side events. Secondly, side events are identified as an opportunity to interconnect people around issues of common interest. Thirdly, the authors note that side events provide a forum for actors engaged in other levels of governance to present their own practical experience.

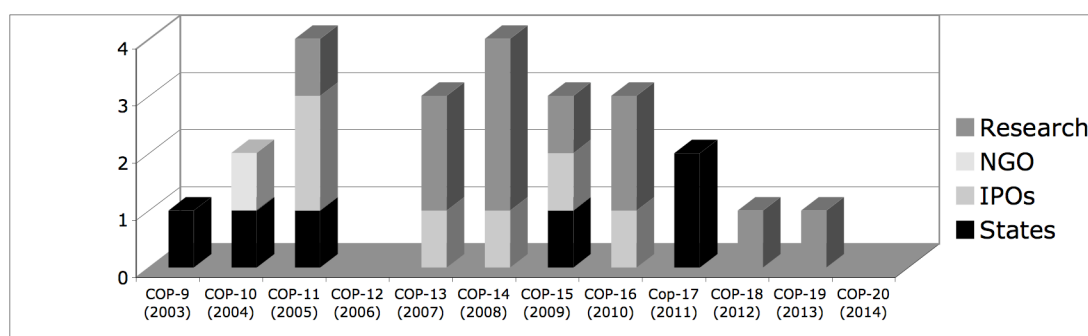
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<sup>376</sup> Joanna Depledge, *The Organization of Global Negotiations: Constructing the Climate Change Regime*, London: Earthscan (2005), at 228.

<sup>377</sup> M. Hjerpe and B. Linnér, “Functions of COP side-events in climate-change governance”, *Climate Policy* 10 (2010), 167-180.

Recent years have witnessed a multiplication of the alternative venues for the organization of informal side events within the perimeter of the conferences. These events take place in national “pavillons” which consists of small areas of the conference centre which are renting on a commercial basis and managed by some of the largest governmental delegations. In the largest of these areas, governments host their own parallel events on a format very similar to that of side events. The EU Pavillon and the US Centre are the most prominent examples of this practice. However, these events have been excluded from the scope of this study as they are not promoted through the official channels of the conference and are not handled through the same procedures than for the official side events.

The following chart shows the number of side event focused on Arctic climate change starting from 2003, with a breakout, by category of organizers.<sup>378</sup>



**Figure 6-1: Organization of Arctic-related side events during COPs since 2003**

This overview highlights the fact that the thematic of Arctic climate change has almost systematically been on the informal agenda of the climate conferences. The high number of side events dedicated to Arctic related issues in 2005 and 2009 can arguably be explained by the hosting of these conferences in an Arctic state (respectively in Montreal and Copenhagen). Indeed, each conference traditionally features an increased number of event dedicated to issues particularly relevant to the host country. Additionally, the larger amount of Arctic events hosted by research institutions in 2008 coincides with the end of the third International Polar Year during which international cooperation on Arctic and Antarctic research culminated.

All organizers considered, a very notable trend consists in the diminishing of side events organized with a focus on Arctic or Polar affairs over the past three years. During the Lima conference in December 2014, not a single side event addressed these themes among the three hundreds included in the program published by the UNFCCC.<sup>379</sup>

<sup>378</sup> The data presented in the table is based on the side events schedules, available on <http://regserver.unfccc.int/seors/reports/archive.html>.

<sup>379</sup> See [https://seors.unfccc.int/seors/reports/events\\_list.html?session\\_id=COP20](https://seors.unfccc.int/seors/reports/events_list.html?session_id=COP20)

Two main groups of stakeholders have played a particular role in organizing Arctic-related side events during the COPs. With over a third of all relevant side events, research institutions have contributed the most regularly to holding such events.<sup>380</sup>

Additionally, one quarter of Arctic-related side events were organized by Indigenous Peoples' Organizations. Over the last decade, half of the Arctic states have also organized a side event focused on the regional dimension of climate change.<sup>381</sup> Perhaps most surprising is the extremely limited amount of side events focused on the Arctic and organized by NGOs. During the eleven past years, The Centre for International Environmental Law (CIEL) organized the only occurrence of such an event in 2004. The event was organized in the context of the Inuit petition to the Inter-American Commission on Human Rights and thus focused on the human rights dimension of climate change.

The overall number of side events dedicated to Arctic issues remain however limited compared to the overall number of side events organized in the climate conferences. The study of the role of side events by Schroeder and Lovell might provide an interesting element of explanation for this assessment. They noted that most side events organized by non-state actors are addressing one specific element on the agenda of the negotiations, thus being mainly used to influence issues already under discussions rather than aiming at reshaping the scope of the negotiations.<sup>382</sup> Other sub-sections of this paper have highlighted the fact that the Arctic is very often invoked in the climate change negotiations in order to strengthen calls for urgent climate action or to illustrate the scale of climate impacts and the benefits of measures. Such a function would thus explain these findings, the Arctic being likely referred to in the context of side events focused primarily on concrete global policy aspects.

#### **6.3.4. References to the Arctic in NGOs narratives**

As stakeholders have only very limited opportunities to provide input into the negotiations, the publication of the ECO newsletter provide the NGOs with an important tool for its "corridor lobbying" as it is considered as a source of valuable information by many governmental delegates.<sup>383</sup> While ECO has become most

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<sup>380</sup> These organizations are: Center for International Climate and Environmental Research (CICERO), University of Guelph, International Cryosphere Climate Initiative, Clean Air Task Force, and the Climate Policy Centre.

<sup>381</sup> These countries are: Canada (2003 and 2005), Iceland (2004), Sweden (2011), Denmark (2009 and 2011).

<sup>382</sup> Heike, Schroeder and Heather Lovel, "The role of non-nation-state actors and side events in the international climate negotiations", *Climate Policy*, Vol. 12 (1) (2012), 23-37.

<sup>383</sup> Peter Newell, *Climate for Change. Non-State Actors and the Global Politics of the Greenhouse* (Cambridge: Cambridge University Press, 2000); Kal Raustiala, "States, NGOs,

notorious for its value at the climate change negotiations, this tool was originally developed by civil society during the Stockholm Environment Conference in 1972. Since then, a similar format has been reproduced in many major environmental conferences such as the Johannesburg Summit on Sustainable Development and negotiations towards the adoption of the UN Convention on Combating Desertification (UNCCD).

At the climate negotiations, the Climate Action Network has assumed the responsibility to publish the ECO newsletter to all negotiating sessions since the adoption of the convention. Climate Action Network (CAN) is the largest network of NGOs working on climate change issues and aims to empower its member organizations to influence the design and development of an effective global climate response.<sup>384</sup> The newsletter combines both a useful source of updates on the negotiations for delegates to stay up to date with the progress made in the negotiations as well as a channel to further advocate for the positions supported by CAN.<sup>385</sup> Determining the content of each issue constitutes an important component of the daily meetings of environmental NGOs.<sup>386</sup>

The value of the ECO newsletter is also recognized by the UNFCCC secretariat who had in the past allowed for its distribution on the official document counter, together with the quasi-official *Earth Negotiating Bulletin* (ENB) reports produced by the International Institute for Sustainable Development.<sup>387</sup> Other written resources from observer organizations may only be distributed at organizations' exhibits the distribution of any other written material being officially prohibited.<sup>388</sup>

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and International Environmental Institutions", *International Studies Quarterly* 41 (1997), at 730.

<sup>384</sup> CAN mission statement (2012), available at <http://climatenetwork.org/about/about-can>.

<sup>385</sup> Michelle Bestill, "Environmental NGOs Meet the Sovereign State: The Kyoto Protocol Negotiations on Global Climate Change", 13 *Colorado Journal of International Environmental Law and Policy* 13 (49) (2002), at 53.

<sup>386</sup> Michael Lisowski, "How NGOs Use Their Facilitative Negotiating Power and Bargaining Assets To Affect International Environmental Negotiations", *Diplomacy & Statecraft* 16 (2) (2005), 361-383

<sup>387</sup> See the webpage of the Earth Negotiation Bulletin, dedicated to its coverage of multilateral processes related to the protection of the climate, [http://www.iisd.ca/process/climate\\_atm.htm#climate](http://www.iisd.ca/process/climate_atm.htm#climate).

<sup>388</sup> UNFCCC, "UN Security Guidelines related to Media Actions, Distribution of Publicity Materials, and Use of UN Emblem at the UNFCCC Conferences", available at: [http://unfccc.int/files/parties\\_and\\_observers/ngo/application/pdf/un\\_security\\_guidelines.pdf](http://unfccc.int/files/parties_and_observers/ngo/application/pdf/un_security_guidelines.pdf), at 1.

The charter of CAN defines the process and responsibility for the publication of ECO in order to ensure that the content of the newsletter reflects adequately the priorities and positions of its members.<sup>389</sup>

References to the Arctic in ECO newsletters since 2010				
Year	Session	Number of ECO newsletters	Number of references to the Arctic	Theme(s)
2010	April	3	0	
	June	11	0	
	August	5	1	full article on Arctic Sea Ice Volume - Bellwether
	December	11	2	Sea ice as threshold, Canada: Arctic oil exploration
2011	April	4	0	
	June	11	0	
	October	7	0	
	December	11	0	
2012	June	11	1	Canada: vulnerability
	August	7	4	3x sea ice as bellwether, 1x regional benefit of action on black carbon
	November	11	1	Canada: pledging Adaptation finance
2013	April	5	1	Sea Ice as bellwether
	June	11	1	Sea Ice as bellwether
	November	11	1	Arctic oil
2014	March	5	0	
	June	11	0	
	October	6	0	
	December	11	1	tipping point (1.5C vs. 2C) and regional impacts

**Table 6-4: References since 2010 to the Arctic in the ECO newsletter produced by the Climate Action Network during each session of the negotiations**

Only 13 ECO newsletters included one article referring to the Arctic over the 152 newsletters published over the past four years of climate negotiations. More strikingly, only one issue of the newsletter contained an article fully dedicated to the Arctic. In terms of themes, the majority of the references to the high North relate to the Arctic as an example of dramatic changes already occurring, often in relation to highlighting the inadequacy of mitigation actions by countries. Three references were made in the context of commentaries on the policies of one of the Arctic state (Canada) highlighting the country's own vulnerability, denouncing its offshore

<sup>389</sup> Charter of the Climate Action Network (2012), para. 81(e), available at <http://climatenetwork.org/sites/default/files/cancharter-adopteddec2012.pdf>

hydrocarbon exploration and summarizing the destination of finance for adaptation pledge by the country.<sup>390</sup> Finally, two additional references relate to mitigation policies in the region, the first relating to the local benefits of action curbing emissions of black carbon<sup>391</sup> and the second referring to the incompatibility of Arctic oil and gas exploitation with the findings contained in the assessment report prepared by the first working group of the IPCC.<sup>392</sup>

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<sup>390</sup> “Northern Lights?” in Climate Action Network’s COP-16 ECO newsletter (2010), issue 6; “Canada: nothing to fear but itself” in Climate Action Network’s May 2012 Climate Negotiations ECO newsletter (2012), issue 2; “Notes from Finance (Work in Progress)” in Climate Action Network’s COP-18 ECO newsletter (2012), issue 1.

<sup>391</sup> “Decision 1/CP.18: Close the Ambition Gap!!”, in Climate Action Network’s Bangkok Climate Negotiations ECO newsletter (2012), issue 2.

<sup>392</sup> “Farewell to Fossil Fuels”, in Climate Action Network’s COP-19 ECO newsletter (2012), issue 4.

## 7. Participation of Arctic Indigenous Peoples to the Climate Negotiations

The role that Arctic indigenous peoples could play in contributing to the UN climate change regime should not be underestimated. Not only Arctic indigenous peoples possess a unique legitimacy to describe the climate impacts in the region – as well as to provide indigenous knowledge – but they also benefit from a specific recognition in regional governance. Their representatives possess indeed a strong status at the Arctic Council, where six organizations representing Arctic indigenous peoples have been recognized as Permanent Participants to the Council, a status that enable them to play a more active role than the non-Arctic states relegated to the status of observer. This experience at the Arctic Council has also shaped the demands that the Arctic indigenous organizations have put forward with regards to their participation in the climate regime.<sup>393</sup>

The first section of this chapter thus provides a short overview of the role of indigenous peoples under the Arctic Council. The second section describes the status of indigenous peoples in the climate change regime and the various opportunities that this status offer to intervene and provide inputs into the negotiations. Finally, the section considers whether and how Arctic indigenous peoples have been able to exploit these opportunities.

### 7.1. Background: the Unique Status of Indigenous Peoples at the Arctic Council<sup>394</sup>

During the first years of Arctic cooperation under the AEPS, the importance of the participation of indigenous peoples was progressively emphasized, particularly in the context of the adoption of the Rio Declaration in 1992 and its Principle 22 recognizing the importance of the participation of indigenous people in environmental management. The process leading to the creation of the Arctic Council offered an opportunity to review their status and to formalize the stronger role played by indigenous peoples' organizations in Arctic cooperation.<sup>395</sup> An Indigenous Peoples' Secretariat was created in 1994 in order to support the participation of IPOs in Arctic governance. Negotiations leading to the establishment

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<sup>393</sup> Leena Heinämäki, "The protection of the environmental integrity of indigenous peoples in human rights law", *Finnish Yearbook of International Law* 17 (2006), at 250-251.

<sup>394</sup> The content of this section is adapted from Sébastien Duyck, "Polar Environmental Governance and non-state actors", in Saleem H. Ali and Rebecca Pincus (eds.), *Polar Diplomacy: Energy, the Environment, and Emergent Cooperation in the Arctic and Antarctica*, (New Haven: Yale University Press, 2015)

<sup>395</sup> See Timo Koivurova, "The Status and Role of Indigenous Peoples in Arctic International Governance," *The Yearbook of Polar Law* 3 (2011).

of the Arctic Council considered the opportunity for equal participation of both IPOs and states, including, for instance, the former as cosignatories to the Ottawa Declaration.

Due to the lack of support of the United States, however, the status of IPOs in Arctic cooperation was only elevated to an intermediary level with the adoption of the Ottawa Declaration on the Establishment of the Arctic Council.<sup>396</sup> The declaration created the category of “Permanent Participants” for the three IPOs already recognized as observers under the Arctic Environmental Protection Strategy.<sup>397</sup> A procedure was also created for the recognition of additional IPOs as Permanent Participants.<sup>398</sup> The objective of the creation of this specific status was to “provide for active participation and full consultation with the Arctic indigenous representatives within the Arctic Council,” the rules of procedure further providing that this principle should apply “to all meetings and activities of the Arctic Council.”<sup>399</sup> The Ottawa Declaration also provided for the continuation of the Indigenous Peoples’ Secretariat.<sup>400</sup> The newly established Permanent Secretariat of the Arctic Council is also mandated to “provide services” to the Permanent Participants.<sup>401</sup> The establishment of the Permanent Secretariat is expected to benefit the Permanent Participants.<sup>402</sup>

According to the rules of procedure, Permanent Participants have participatory rights almost equal to those of the member states to the Council, except for the right to vote; Koivurova and Heinämäki described this status as “close to a de facto power of veto should they all reject a particular proposal.”<sup>403</sup> The rights of Permanent Participants listed in the rules of procedure allow them to play a role both prior to the meetings in agenda setting as well as during all meetings themselves. Permanent

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<sup>396</sup> David Scrivener, “Arctic Environmental Cooperation in Transition,” *Polar Record* 35(192) (1999), at 54.

<sup>397</sup> Declaration on the Establishment of the Arctic Council (1996), *supra* note 38, para. 2.

<sup>398</sup> The Ottawa Declaration stipulates organizations representing the interests of several indigenous peoples in the same country or representing a single indigenous people residing in several countries. Besides the Inuit Circumpolar Council (ICC), the Russian Association of the Indigenous Peoples of the North (RAIPON), and the Saami Council recognized as Permanent Participants in 1996, the Aleut International Association (AIA), the Arctic Athabaskan Council, and the Gwich’in Council International have also obtained this status.

<sup>399</sup> Rules of Procedure of the Arctic Council (2013), *supra* note 305, Rule 5.

<sup>400</sup> Declaration on the Establishment of the Arctic Council (1996), *supra* note 38, para. 8.

<sup>401</sup> Terms of References of the Permanent Secretariat of the Arctic Council (2012), *supra* note 290, para. 2.2.

<sup>402</sup> Nikolas Sellheim, “The Establishment of a Permanent Arctic Council Secretariat: Challenges and Opportunities,” in Thomas Axworthy, Timo Koivurova, and Waliul Hasanat (eds.), *The Arctic Council: Its Place in the Future of Arctic Governance* (Toronto: Walter and Duncan Gordon Foundation, 2012), 76.

<sup>403</sup> Timo Koivurova and Leena Heinämäki, “The Participation of Indigenous Peoples in International Norm-Making in the Arctic,” *Polar Record* 42 (221) (2006), at 104.

Participants have also been heavily involved in the activities of each of the six working groups established under the Arctic Council, and contributed to other ad hoc initiatives. The Arctic Marine Shipping Assessment (AMSA) and the report on Best Practices in Ecosystem-Based Oceans Management in the Arctic both contain, besides national sections, a specific section dedicated to indigenous knowledge and experience.<sup>404</sup> In this context, the recognition of the status of Permanent Participants at the Arctic Council constitutes an example of best practices in relation to the participation of indigenous peoples in environmental governance.<sup>405</sup>

## **7.2. Status of Indigenous Peoples in the climate change regime<sup>406</sup>**

Participation of indigenous peoples representatives in the climate change regime builds on the procedures and practices allowing the attendance and participation of observer organizations.<sup>407</sup> The status of indigenous peoples as rights-holders rather than stakeholders is thus not acknowledged under the climate convention, in contrary to the Arctic Council in which permanent participants have a higher status than observer states.<sup>408</sup> While the UNFCCC and the Kyoto Protocol do not contain explicit references to indigenous peoples, decisions by the bodies established under these agreements have consistently emphasized the importance of indigenous knowledge, practices and rights.<sup>409</sup>

Indigenous peoples representatives have delivered statements at every COP since the 2000 conference<sup>410</sup> The International Forum of Indigenous Peoples on Climate Change (IFIPCC) was established in 2000 as the caucus of indigenous peoples at the

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<sup>404</sup> Arctic Marine Shipping Assessment, particularly section 5 “Scenarios, Futures and Regional Futures” to 2020; section 6 on “Human Dimensions”; and “Best Practices in Ecosystem-Based Oceans Management,” 11–18.

<sup>405</sup> Leena Heinämäki, “Towards an Equal Partnership between Indigenous Peoples and States: Learning from Arctic Experiences?” *The Yearbook of Polar Law* 3 (2009), at 209.

<sup>406</sup> This sub-section is an updated and adapted version of a contribution by the author to Tahnee Prior, Sebastien Duyck, Dr. Leena Heinämäki, Adam Stepien, Dr. Timo Koivurova, “Addressing Climate Vulnerability: Promoting the Participatory Rights of Indigenous Peoples and Women through Finnish Foreign Policy”, *Juridica Lapponica* 37 (2013)

<sup>407</sup> See above section 6.3.

<sup>408</sup> See Timo Koivurova, “Sovereign States and Self-Determining Peoples: Carving Out a Place for Transnational Indigenous Peoples in a World of Sovereign States”, in *International Community Law Review* 12 (2010), at 204.

<sup>409</sup> Up to the January 2014, COP and CMP decisions included 47 references to indigenous peoples or indigenous knowledge and the reports of the subsidiary bodies (up to the 40<sup>th</sup> session of these bodies in June 2014) contained 77 such occurrences.

<sup>410</sup> See table 14.1 in Joanna Depledge (2005), *supra* note 376.

UNFCCC.<sup>411</sup> Indigenous Peoples Organizations were recognized as a civil society constituency at the COP-7 the following year.<sup>412</sup>

Since the early years of the negotiations, the UNFCCC Secretariat has used civil society “constituencies” to structure the participation of the large amount of NGOs intending to participate to the process. In a 1997 note on mechanisms for consultations with non-governmental organizations, the UNFCCC secretariat noted that the recognition of constituencies of NGOs was “an important tool in the management of NGO participation, also dating back to INC I”.<sup>413</sup> At the time of this first formal discussions in the UNFCCC process related to the structuring of civil society participation, only three constituencies were recognized: Environmental NGOs, business and industry, and local authorities. In subsequent sessions, the parties noted that this grouping was not satisfactorily and concluded that a better set of constituencies could be developed, for instance on the basis of the recognition of nine major groups in section three of Agenda 21. The Subsidiary Body on Implementation also “requested the secretariat to continue consultations with representatives of different non-governmental organizations to arrive at an improved set of constituencies”.<sup>414</sup>

The UNFCCC secretariat defined the criteria for the recognition of a group of stakeholders as a constituency as follows:

*a critical mass of member organizations; creation of an operative channel (focal point) for communication with the secretariat; distribution of information to members; provision of consolidated/coordinated inputs on issues; and regular participation of the member organizations at sessions.*<sup>415</sup>

The recognition of the constituency status to a major group allows the group to benefit from additional logistical support from the UNFCCC secretariat, from additional participation rights including invitation to thematic workshops and interventions in negotiating sessions as well as facilitated interactions with the negotiations officials.

The first meeting of the IFIPCC took place in parallel to the meeting of the subsidiary bodies and resulted in a declaration focusing both on the substance of the

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<sup>411</sup> For a short historical overview of indigenous peoples’ presence at the climate talks, see for instance Amity A. Doolittle, “The Politics of Indigeneity: Indigenous Strategies for Inclusion in Climate Change Negotiations”, *Conservation and Society* 8(4) (2010), at 288. See also Emily Gerrard, “Climate Change and Human Rights” Issues and Opportunities for Indigenous Peoples”, *UNSW Law Journal* Volume 31(3) (2008), 941-943.

<sup>412</sup> Promoting effective participation in the Convention process, note by the secretariat (2004), UN Doc. FCCC/SBI/2004/5, para. 21.

<sup>413</sup> Mechanisms for consultations with non-governmental organizations (1997), note by Executive Secretary, FCCC/SBI/1997/14/Add.1

<sup>414</sup> Report of the SBI, 8<sup>th</sup> Session (1998), UN Doc. FCCC/SBI/1998/6, para 81.

<sup>415</sup> Promoting effective participation in the Convention process (2004), Note by the secretariat, UN Doc. FCCC/SBI/2004/5, para. 20

negotiations as well as on the adoption of special procedures in order to enable indigenous representatives to take active part to the global climate regime. Among its procedural proposals, the IFIPCC called the COP to acknowledge the special status of indigenous peoples in the process and to provide material support for their participation.<sup>416</sup> The requests of the IFIPCC received in 2003 the endorsement of the report of the Permanent Forum on Indigenous Issues. The Permanent Forum was established in 2000 as an advisory body to the UN Economic and Social Council (ECOSOC) by a resolution of the Commission on Human Rights. At its second session, the Forum adopted a series of 13 recommendations on the “environment” thematic area, two of which addressed directly the UN climate negotiations.<sup>417</sup> Recommendation 2 called for the establishment of an ad hoc open-ended intersessional working group on indigenous peoples and local communities and climate change, as well as supported the call for funding being provided to support the participation of indigenous representatives.<sup>418</sup> Recommendation 12 appealed to ECOSOC to guarantee the effective participation of indigenous peoples in international process, such as the UNFCCC.<sup>419</sup> The secretariat of the Permanent Forum on Indigenous Issues communicated these recommendations to the secretariat of the UNFCCC.

The UNFCCC secretariat raised the issue of the response to give to these recommendations in 2004 when mandated to provide to the SBI a report of efforts to facilitate effective participation in the process and promote transparency.<sup>420</sup> In its report, the secretariat dedicated a specific section to the issue of the participation of indigenous peoples, communicating to parties the recommendations from the Permanent Forum as well as other requests submitted by indigenous representatives to convention officials, as well as assessed their feasibility.<sup>421</sup> In its assessment, the secretariat evaluated the additional costs that would arise from the implementation of various proposals, highlighted the fact that indigenous peoples enjoyed the same rights than other non-governmental actors.

Building on the policy of the UNFCCC secretariat to provide all civil society constituencies with the same opportunities, the secretariat raised concerns about “equitable treatment with other constituencies” in case funding was provided specifically to support the participation of indigenous representatives. In response to the report, the SBI noted the existing means of participation opened for indigenous

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<sup>416</sup> Declaration of the First International Forum of Indigenous Peoples on Climate Change, Lyon, France, September 4-6, 2000, available at: [http://www.treatycouncil.org/new\\_page\\_5211.htm](http://www.treatycouncil.org/new_page_5211.htm).

<sup>417</sup> Report of the second session of the Permanent Forum on Indigenous Issues held in New York on 12–23 May 2003 (E/2003/43, E/C.19/2003/22).

<sup>418</sup> Ibid, para. 47

<sup>419</sup> Ibid. para. 61

<sup>420</sup> Report of the SBI, 18<sup>th</sup> session (2003), UN Doc. FCCC/SBI/2003/8, para. 46(c)

<sup>421</sup> Promoting effective participation in the Convention process (2004), Note by the secretariat, UN Doc. FCCC/SBI/2004/5, para 39-47.

peoples on a similar basis than other non-governmental organizations and concluded that *“opportunities exist for fostering a full and effective participation by indigenous peoples organizations in the Convention process.”*<sup>422</sup>

The issue of the provision of specific support for the representation of indigenous peoples emerged once again in the aftermath of the challenges faced by civil society at the Copenhagen Climate summit. The report commissioned by the secretariat to consider opportunities to enhance the participation of observers suggested to establish a participation fund to which organisations can apply to help support participation in UNFCCC meetings”. The report recommended that the fund be used in priority for “smaller and under-resourced constituencies” among which the indigenous peoples caucus.<sup>423</sup> The subsequent report by the secretariat on ways to enhance the engagement of observer noted the best practice of the CBD secretariat in *“maintain[ing] a general voluntary trust fund to support the work of indigenous peoples and local communities to facilitate their participation in CBD conferences.”*<sup>424</sup> The CBD voluntary trust fund was established in 2004 and has been functioning since then.<sup>425</sup> In 2011, a similar report by the secretariat noted that the CBD has also *“developed mechanisms to enable the participation of indigenous and local communities in formal and informal meetings, and their representation on an Advisory Committee.”*<sup>426</sup>

In order to promote the participation of indigenous peoples in the process, Mexico – as host country of the COP-16 – hosted a workshop in September 2010 involving representatives of indigenous networks from various regions. The workshop concluded with the adoption of a consensual document highlighting three proposals for the strengthening of this participation.<sup>427</sup> The declaration recommends the formal representation at the COP of UN bodies established to address the rights of indigenous peoples. It also recommended the creation of an “Indigenous Peoples Advisory Group” to provide input into the negotiations, and called for increased speaking rights during negotiating sessions. These proposals were however not

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<sup>422</sup> Report of the SBI, 20<sup>th</sup> (2004), UN Doc. FCCC/SBI/2004/10, para 109.

<sup>423</sup> Stakeholder Forum for a Sustainable Future, *Enhancing the substantive function performed by side activities and enhancing the Conference of the Parties as a venue for climate related exhibits/exhibitions* (June 2010), at 14.

<sup>424</sup> Arrangements for intergovernmental meetings (2011), Note by the Executive Secretary, UN Doc. FCCC/SBI/2011/6, para. 40(c)

<sup>425</sup> CBD Decision VII/16G, UNEP/CBD/COP/DEC/VII/16, para. 10. See also the webpage of the trust fund for more information <http://www.cbd.int/traditional/fund.shtml>

<sup>426</sup> Arrangements for intergovernmental meetings (2011). Note by the Executive Secretary, UN Doc. FCCC/SBI/2011/6, para. 46.

<sup>427</sup> Resolution in support of Indigenous Peoples’ formal and effective participation in the UNFCCC process in preparation for COP 16, adopted in Xcaret, September 29, 2010, available at [http://www.indigenousclimate.org/index.php?option=com\\_docman&task=doc\\_download&gid=68&Itemid=&lang=en](http://www.indigenousclimate.org/index.php?option=com_docman&task=doc_download&gid=68&Itemid=&lang=en).

further integrated to the formal outcomes of the COP-16, the refusal to create a special process or body to consider the relevance of indigenous peoples and traditional knowledge highlighting for instance the challenge to ensure that these issues are addressed adequately in multilateral environmental forums.<sup>428</sup>

The Peruvian presidency of the COP-20 also made use of its discretion as the host of the conference to highlight the importance of considering the concerns of indigenous peoples. A thematic day was organized at the COP-20 during which many parallel events were organized on related themes. The visibility of the indigenous issues during the COP-20 is also highlighted by the fact that many organizations representing the interest of indigenous peoples in the country obtained observer status with the UNFCCC shortly before the conference. Today, 14 organizations, out of the 46 organizations with UNFCCC observer status formally composing the indigenous peoples constituency at the UNFCCC, are based in Peru, thus highlighting the momentum provided for these issues by the COP-20.<sup>429</sup>

### ***7.3. Participation of Arctic Indigenous Peoples to the process***

#### **7.3.1. Arctic-related concerns and the broader priorities of the Indigenous Peoples Constituency**

The structure of the civil constituencies in the climate negotiations has created a constraint for Arctic indigenous peoples representatives to have their voice heard in the process. Indeed, some of the opportunities to provide input in the process – such as the possibility to make oral interventions – are allocated to the whole of the constituency. In this context, it might be difficult for a regional perspective to be put forward above other concerns and perspectives from indigenous groups based in other regions. Out of the 46 organizations with observer status that compose the indigenous peoples constituency, only 4 have a specific focus on the Arctic.<sup>430</sup> While some other organizations have a global focus and aim at strengthening the voice of indigenous peoples in general, the majority of the organizations represent indigenous peoples living in the Global South.

Additionally, since the COP-13 in Bali, the issue of Reducing Emissions from Deforestation and land Degradation (REDD) has captured a lot of attention from the indigenous representatives in the climate negotiations.<sup>431</sup> At the COP-16, countries agreed to establish a REDD scheme under the UNFCCC in order for developed countries to provide financial incentives to support developing countries in reducing

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<sup>428</sup> Terry Fenge and Bernard W. Funston, “Arctic Governance: Traditional Knowledge of Arctic Indigenous Peoples from an International Policy Perspective”, Paper prepared for the Arctic Governance Project (2009), at 16.

<sup>429</sup> Data obtained from <http://maindb.unfccc.int/public/ngo.pl>

<sup>430</sup> Ibid.

<sup>431</sup> Amy Doolittle (2010), supra note 411, 288-290.

the rate of deforestation.<sup>432</sup> As many REDD projects are expected to take place in forested areas populated with indigenous peoples, those might create conflicts with the land rights of indigenous peoples.<sup>433</sup> Consequently, the voices of indigenous peoples at the climate talks have been particularly focused on opposing the scheme, raising concerns and requesting adequate safeguards. This strong focus on REDD – an issue not directly relevant to the Arctic indigenous peoples as the scheme is focused on forests located in developing countries – has contributed to make the priorities of the Arctic indigenous peoples less visible among the main advocacy points of the indigenous caucus. To a smaller extent, opposition to other forms of carbon markets – such as the Clean Development Mechanism (CDM) and Joint Implementation (JI) projects promoted under the Kyoto Protocol – had provided a point of convergence for the indigenous groups involved in the climate process.<sup>434</sup> The emphasis on the opposition to REDD and other forms of carbon markets is for instance particularly highlighted in the interventions delivered on behalf of the Indigenous Peoples Constituency during the High Level Segment of recent COPs.<sup>435</sup>

### 7.3.2. Arctic Indigenous Presence at the Conferences

Among the six permanent participants at the Arctic Council, three organizations have secured observer status at the UNFCCC and have thus been able to take part to the climate negotiations, most notably in nominating delegates to attend the negotiating sessions. The Arctic Athabaskan Council (AAC) was the first among the permanent participants to secure this status ahead of the 2002 COP.<sup>436</sup> This precedent was

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<sup>432</sup> Decision 1/CP.16, supra note 142, Section III.C.

<sup>433</sup> See for instance the case of a World Bank funded REDD project in the Cherangani hills in Kenya had violated the World Bank's own safeguards and had resulted in the eviction of local indigenous communities. See for instance the concerns expressed by the UN Special Rapporteur on the Rights of Indigenous Peoples, 13 January 2014, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14163&>.

<sup>434</sup> See the analysis of the statements delivered by indigenous peoples to the COPs between 1998 and 2004 provided by Heather Smith. Smith highlights that seven out of the eight statements considered in her study focused on opposition to the CDMs and JI. Heather Smith, "Disrupting the Global Discourse of Climate Change: the Case of Indigenous Voices", in Mary E. Pettenge (ed.), *The Social Construction of Climate Change: Power, Knowledge, Norms, Discourses* (Farnham: Ashgate Publishing, 2007), 204-208.

<sup>435</sup> Only two out of the six most recent statements delivered at the High Level Segment of the COPs are available. Both of them emphasize the opposition to REDD and to carbon markets. See intervention at COP-16, delivered on December 10, 2010, available at [http://unfccc.int/files/meetings/cop\\_16/statements/application/pdf/101210\\_cop16\\_hls\\_iipf\\_cc.pdf](http://unfccc.int/files/meetings/cop_16/statements/application/pdf/101210_cop16_hls_iipf_cc.pdf) and intervention delivered at COP-17, delivered on December 09, 2011, available at [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111209\\_cop17\\_hls\\_christian\\_aid.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111209_cop17_hls_christian_aid.pdf).

<sup>436</sup> "Organizational matters. Admission of organizations as observers. Admission of observers: intergovernmental and non-governmental organizations" (2002), note by the secretariat, UN Doc. FCCC/CP/2002/5.

followed by the Aleut International Association (AIA) and the Inuit Circumpolar Council (ICC) in 2004, one year prior to the Montreal Conference / COP-11.<sup>437</sup> As the table below highlights, these three organizations have however used their status to a different extent, the AAC and the ICC having participated to the conferences almost systematically for a few years after having secured the status. The three other permanent participants have not yet secured the status of observers have thus cannot intervene or participate directly in the climate change process without cooperating with at least one organization with observer status. A fourth organization representing Arctic indigenous peoples – the Inuit Tapiriit Kanatami (ITK) – has also secured observer status at the UNFCCC in 2005.<sup>438</sup> The ITK was particularly active during the 2005 conference as the COP was then organized in the host country of the organization. The ITK has however not sent delegates to any conference since the COP-15 in 2009.

The review of the participation lists made available for each conference also highlights the cooperation occurring between the permanent participants. Indeed, the AAC and, to a smaller extent, the ICC have been instrumental in ensuring the presence of other permanent participants at the conferences by providing accreditation to the conference for their delegates.

Participation of Arctic Actors to the COPs															
COP:	5	8	9	10	11	12	13	14	15	16	17	18	19	20	
Permanent Participants															
Arctic Athabaskan Council (AAC)		OD	OD	OD	OD										
Aleut International Association (AIA)															
Inuit Circumpolar Conference	OD	OD	O.D.	OD	OD										
Gwitch'in International Council					AAC				AAC						
Russian Association of Indigenous Peoples of the North (RAIPON)					AAC										
Saami Council					AAC				ICC						

**Table 7-1: Participation to the COPs of delegates representing the Permanent Participants of the Arctic Council**

<sup>437</sup> “Organizations applying for admission as observers” (2004). Note by the secretariat., UN Doc. FCCC/CP/2004/3.

<sup>438</sup> “Organizations applying for admission as observers” (2005), Note by the secretariat, UN Doc. FCCC/CP/2005/2.

<b>Legend</b>	
OD	Participation of a representative of the organization in the official delegation of the country
Blue	Conference of the Parties taking place in one of the Arctic states
Orange	Recognition of observer status at the UNFCCC to the organization
Yellow	Presence of a delegation from the organization
Green	Presence of a representative of the organization on the delegation of another organization
AAC/ICC	Name of the organization having provided accreditation to the representatives of the delegation identified

The table above highlights that participation of representatives of Arctic indigenous peoples is stronger at the COPs when the conferences take place in one of the Arctic states. Indeed, the Montreal COP-11 was the only COP during which all six organizations were represented, the Copenhagen COP-15 being the second most attended with four out of six organizations represented at the conference. The review of the list of participants to the annual COPs also highlights a striking element: while at least one of the organization with permanent participant status at the Arctic Council had attended each COP during the period 2002-2012, the two most recent conferences were the first ones without the presence of any of the six organizations.

Finally, Canada and Norway have repeatedly invited representatives from Arctic indigenous peoples as delegates included in its official delegation to the COPs, a practice followed by Finland once since 2009. This status of being a civil society official delegate provides additional benefits, including a stronger access to the governmental negotiators and the possibility to attend meetings otherwise closed to delegates nominated by civil society organizations. The Canadian government invited as official delegates representatives from organizations identified as Permanent Participants, such as the ACC and the ICC. It discontinued this practice after the COP-15 in 2009. Up to 2012, the Norwegian delegation to the COPs used to include between two and five representatives from the Sami Parliament of Norway. The Finnish government also invited a representative of the Finnish Saami Parliament as an official delegate in 2009.

### **7.3.3. Key activities and messages shared by Arctic Indigenous Peoples**

As highlighted in the figure 6-1 above, Arctic indigenous organizations have played a important role in sharing an Arctic perspective and the concerns of the Arctic communities during the conferences through the organizing of side events. Together the AAC, the ICC and the ITK have indeed organized one fourth of all side events related to the Arctic and organized at the COPs during the period 2003-2014. The issues of traditional knowledge, of the social impacts of Arctic changes and of the experience of Arctic communities with adaptation measures were the main themes

discussed in these side events, with two or more events organized by Arctic indigenous peoples addressing each of these themes.

Arctic indigenous peoples organizations have also been involved in other projects or advocacy campaigns targeting the UNFCCC. The International Institute for Sustainable Development (IISD) and the Hunters and Trappers Committee of Sachs Harbour, Northwest Territories, led a project in 1999 which aimed at gathering evidence of Arctic climate change. The video produced as a result of this project was presented to the UNFCCC delegates during the COP-6 in Milan.<sup>439</sup>

The Arctic indigenous peoples played a role in communicating Arctic concerns to the international community – for instance at some of the COPs – by highlighting the findings of ACIA. This proactive role was made possible by the ownership that the permanent participants had over ACIA, having contributed actively to the assessment with the provision of case studies based on traditional knowledge.<sup>440</sup> During the ACIA process, the Permanent Participants had clearly expressed their willingness to see the Arctic Council play an active role in relation to the UNFCCC, a position opposed in particular by the US.<sup>441</sup>

In particular, the ICC has sent delegations to the UNFCCC in order to communicate the outcomes of ACIA and to highlight the human rights implications of climate change.<sup>442</sup> In 2003, the ICC Executive Council adopted a resolution instructing the ICC to work in partnerships with Arctic and non-Arctic governments, as well as relevant NGOs, in order to promote global responses to climate change.<sup>443</sup> Additionally, it directed the chair of the ICC to develop political, legal and media strategies to ensure that Inuit concerns are brought to the attention of relevant decision makers in order to strengthen international action on climate change. The chair was also requested to work with relevant decision-makers in order to position the Inuits in the climate regime so as to influence the negotiations related to the future of the regime after the first commitment period of the Kyoto Protocol.<sup>444</sup>

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<sup>439</sup> Marybeth Long Martello, “Arctic Indigenous Peoples as Representations and Representatives of Climate Change”, *Social Studies of Science* 38(3) (2008), at 359.

<sup>440</sup> Terry Fenge and Bernard W. Funston (2009), *supra* note 428, at 14.

<sup>441</sup> Annika Nilsson (2007), *supra* note 41, at 163. On the opposition of the US, see above in sub-section 5.2.1.

<sup>442</sup> Sheila Watt-Cloutier, “Bringing Inuit and Arctic perspectives to the global stage: Lessons and opportunities”, *Proceedings of the 14th Inuit Studies Conference*, 11-15 August 2004, at 305.

<sup>443</sup> ICC Executive Council Resolution 2003-O1, “Climate Change and Inuit Human Rights”, available at <http://inuit.org/en/climate-change/icc-executive-council-resolution-2003-o1.html>

<sup>444</sup> Leena Heinämäki, “Rethinking the Status of Indigenous Peoples In International Environmental Decision-Making: Pondering the Role of Arctic Indigenous Peoples and the Challenge of Climate Change”, in Timo Koivurova, E. C. H. Kesitalo and Nigel Banks (eds.), *Climate Governance in the Arctic* (Heidelberg: Springer, 2009), at 220.

Since then, the ICC advocated for the adoption of an amendment to the text of the framework convention in order to add one paragraph in the preamble that would include an explicit reference to the situation prevailing in the Arctic, building on the provision contained in other MEAs such as the Stockholm Convention.<sup>445</sup>

During the COP-10 in 2004, the chairperson of the ICC intervened during the high level segment of the COP to deliver a statement on behalf of her organization.<sup>446</sup> Sheila Watt-Cloutier mentioned the findings of the ACIA and urged the parties to the UNFCCC to consider the relevance of the Arctic to the global climate talks, proposing five concrete suggestions for the COP. Firstly, she called for the COP to discuss the human rights implications of climate change.<sup>447</sup> Human rights were mentioned explicitly in the climate regime for the first time in 2010 as the parties noted the recent resolution of the Human Rights Council,<sup>448</sup> which “recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights”.<sup>449</sup> In 2010, parties also emphasized that they “should, in all climate change related actions, fully respect human rights”.<sup>450</sup> Secondly and building on the strategy already put forward in 2003, she urged the parties to amend the Framework Convention in order to reflect the findings contained in ACIA. Thirdly, she emphasized the need for deeper emissions cuts. Fourthly, she called for the facilitation of the expression of the concerns of the most vulnerable, in particular Arctic indigenous peoples and low-lying islands. The “Many Strong Voices” program supported by UNEP has since then aimed at supporting the cooperation called by Sheila Watt-Cloutier.<sup>451</sup> Fifthly, she called for the Arctic to act as a “barometer or “early warning system” to inform the UNFCCC process of the dangerousness and pace of climate change. This final claim echoes to some extent some of the recent interventions of governmental delegates during the Structured Expert Dialogue related to the review of the adequacy of the 2°C target as ultimate objective for the UNFCCC.<sup>452</sup>

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<sup>445</sup> Ibid., at 306.

<sup>446</sup> See intervention of Sheila Watt-Cloutier to the COP plenary, available at <http://unfccc.int/resource/docs/2004/cop10/stmt/ngo/005.pdf>

<sup>447</sup> A year after this statement at the COP, Sheila Watt-Cloutier acted as the main communicant in a communication submitted to the Inter-American Commission of Human Rights requesting the Commission to assess the responsibility of the United States – then the largest emitter of greenhouse gases – for the implications that climate change had on the human rights of Arctic Communities.

<sup>448</sup> Human Rights Council, Resolution 10/4, “Human rights and climate change” (2009), UN Doc. A/HRC/RES/10/4.

<sup>449</sup> Decision 1/CP.16, *supra* note 142, preamble.

<sup>450</sup> Ibid., para 8.

<sup>451</sup> See for more information on the Many Strong Voices programme: <http://www.manystrongvoices.org/>.

<sup>452</sup> See above, section 3.4.

## 8. Conclusion

For over a decade, polar bears standing on diminishing icebergs have played the role of the most popular poster child for the impacts of climate change. More recently, “Save the Arctic” has become one of the main rallying slogans for climate activists calling all over the planet for stronger climate policies and restrictions to the extraction of fossil fuels. Beyond the strong symbolic value of the region, the present thesis intends to assess whether the implications of climate change in the Arctic have informed international and regional cooperation. This research thus reviews the interactions between, on the one hand, the Arctic Council and its main actors and, on the other hand, the climate change regime established under the UN Framework Convention on Climate Change, focusing in particular on the contributions made by several of the key actors involved in climate governance.

First of all, we identify to what extent climate change is mentioned as a factor shaping the national Arctic policies of the eight members of the Arctic Council. Climate change, and environmental concerns more generally, do constitute a core element of these national strategies. These Arctic policies highlight both the importance of adapting to the consequences of climate change in the region as well as, in some cases, the opportunity for the country to take an active role in international cooperation aimed at addressing climate change. Several Arctic states also identify as a component of their Arctic strategies the need to highlight regional concerns in relevant international forums.

At the regional level, climate change has certainly also been on the agenda of the Arctic Council, even if none of its formal working group is mandated to focus on related issues. The Arctic Council has approached the issue through three main strategies. Firstly, the Council has supported the consolidation of information on regional implications of climate change, integrating both scientific sources and traditional knowledge. Its 2004 landmark report, the Arctic Climate Impact Assessment, remains to this day the most ambitious regional analysis of climate processes and impacts.<sup>453</sup> While the Arctic states have decided not to produce

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<sup>453</sup> The importance of this assessment is for instance highlighted by the reference included in the Plan of Implementation adopted during the World Summit on Sustainable Development (2002) singling out the ACIA as an example of best practice in climate impact assessment. “Report of the World Summit on Sustainable Development” (2002), UN Doc. A/CONF.199/20, para. 38(i).

updated versions of the report and to turn this experience into a periodic exercise, the Arctic Council has released additional studies dedicated to more specific aspects of regional climate changes. These more recent documents have contributed usefully in filling gaps in the understanding of mechanisms affecting the global climate system. Secondly, the Arctic Council has progressively considered the issue of the reduction of emissions of short-lived climate forcers, debating on how a regional initiative on this matter would contribute to global efforts to mitigate climate change. Thirdly, the Arctic Council ministerial conferences have repeatedly called the international community to take adequate action in order to limit climate change.

While the scientific contribution made by the Council to the global endeavour to better understand the climate system provides a remarkable good practice for other regional cooperation forums, the impact of the two other approaches remains disputed. In relation to mitigation measures, the absence of any projects related to the reduction of emissions of greenhouse gases can certainly disappoint considering the stewardship claimed by the Arctic states on the regional environment. Also, and while promising in the long term, the initiative focused on short-lived climate forcers has proceeded at a slower pace than could be considered warranted considering the urgency of the climate crisis. Finally, the Arctic states have refrained from using their regional experience with climate change to leverage additional cooperation at the global level. In a study on the climate policies of the Arctic regional cooperation forums, French and Scott concluded that, “whilst recognising the importance of establishing sound scientific baselines relating to climate change, there is too much emphasis on science and too little attention paid to legal and policy initiatives”.<sup>454</sup> The analysis of the Arctic Council’s climate change activities by Koivurova and Hasanat nevertheless provides a more nuanced perspective.<sup>455</sup> The authors noted that these activities took place in the context of a lack of strong political commitment by the eight Arctic states for stronger governance in the Arctic region. Despite these limits, they noted the framing role played by the Arctic Council through its scientific outputs.

*A good argument can be made that the Council has been able – through the ACIA process – to influence even the global climate change regime since it is fairly uncontested that the increase and progress in knowledge of climate change and its consequences puts pressure on the politico-legal machinery to strengthen the climate regime.*<sup>456</sup>

While the review of the activities of the Arctic Council on climate change suggests, at best, a mixed legacy, the international climate change process has been almost completely “blind” to the ongoing impacts of climate change in the circumpolar

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<sup>454</sup> Duncan French and Karen Scott, “International Legal Implications of Climate Change for the Polar Regions: too much, too little, too late?” *Melbourne Journal of International Law*, Vol. 10 (2009), at 636, emphasis in the original.

<sup>455</sup> Timo Koivurova and Waliul Hasanat (2009), *supra* note 40, at 70

<sup>456</sup> *Ibid.*, at 71.

world. Despite the role that the region plays in the public discourse as the “canary in the coal mine” or as a “global barometer”<sup>457</sup>, neither the Framework Convention nor the Kyoto Protocol nor any of the decisions adopted by the main bodies established in the climate regime contain any significant reference to the particular circumstances affecting the circumpolar world. Given the global nature of the phenomenon, the Arctic environment would certainly benefit from mitigation initiatives adopted at the global level. Nevertheless, the absence of references to the region undermines the capacity of the regime to learn from the information provided by this “global thermometer” and fails to provide an explicit mandate or incentive for the states of the region to bolster cooperation on this matter. French and Scott proposed to explain this lack of regional references in the outcomes of the global climate regime based on the reticence to overlap over existing zones of jurisdictions, leaving the *responsibility* to address regional aspects of climate change to these local processes.<sup>458</sup> Yet, one process established under the UNFCCC could offer a timely opportunity to enable the Arctic experience to inform the decisions of the actors of the climate change regime. Since 2013, a formal review process is indeed ongoing to consider what degree of global warming should be considered as “dangerous” in the sense of the ultimate objective of the Convention. Whether lessons from the Arctic are adequately considered through this process will be determined in the second half of 2015 by the positions adopted by the main actors of the negotiations.

Both the lack of any explicit acknowledgement of the regional specificities and the absence of a coordinated regional approach to climate mitigation explain the great diversity in the implementation of the Convention and associated obligations among the eight Arctic States. Indeed, there is possibly no other region on the planet where the climate regime positions of local states diverge as much as in the circumpolar context. From Russia’s position as country “undergoing the process of transition to a market economy” to the refusal of the United States to ratify the Kyoto Protocol or Canada’s more recent decision to unilaterally withdraw, the status of the Arctic states in the climate change regime diverge widely. Additionally, Greenland and Iceland differentiated themselves in the implementation of the protocol due to their particular statuses. The example of the “Icelandic exception” applied between 2008 and 2012 is particularly telling as it is the only specific decision adopted in order to adjust the implementation of the Protocol to the national circumstances of one of its parties.

The review conducted in this thesis of the inputs provided by the Arctic states to the UN climate change regime reveals that the eight countries have only seldom made explicit references to the circumpolar world. The review of the periodic national communications, the several-hundred page long documents expected to reflect a broad range of aspects related to domestic climate policies, offers a good image of

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<sup>457</sup> This term is used consistently by the Arctic Marine Assessment Programme, see for instance the report of AMAP activities, SAO Report to the 2011 Arctic Council Ministerial Meeting (2011), at 11.

<sup>458</sup> Duncan French and Karen Scott (2009), *supra* note 454, at 640.

the perception by the Arctic states of the relevance of their polar experience to global climate governance. Most of the references to the Arctic contained in these comprehensive reports relate to the chapters dedicated to national circumstances, to vulnerability and to research. Most of these national communications do not contain any reference to the Arctic in the more policy-relevant chapters dedicated to greenhouse gases inventories, mitigation measures or international cooperation. Additionally, while some of the Arctic ministers tend to refer frequently to the Arctic implications of climate change in their annual speeches delivered at the COP (in particular those from Denmark and Iceland), others fall short from mentioning explicitly the region (most notably in the case of the two regional heavy weight: Russia and the United States). This relatively low level of communication and identification with the Arctic can be partly explained by the fact that, in most Arctic states, national policy-making and reporting takes place in national capitals located far South from the Arctic circle.<sup>459</sup>

Finally, up to now the Arctic Council has refrained to play a proactive role in the climate change regime. The status of the Council, as an intergovernmental forum rather than an international organization, limits to some extent its formal opportunities to inform and contribute to the climate change regime. Nevertheless, the Council could have established, even in its current format, a more dynamic relation towards the bodies established under the UNFCCC.

Despite the interest demonstrated or indicated by many external actors – governmental and non-governmental alike – for Arctic affairs, regional aspect of climate change and climate governance are rarely invoked in the interventions of these actors in the climate change process. The national communications submitted by states with observer status to the Arctic Council often refer to research activities conducted by the country in the High North. Other sections of these national reports contain virtually no reference to the Arctic. The speeches delivered at recent COPs by the ministers of these non-Arctic states also fail to include any reference to the Arctic.

Perhaps more surprising, NGOs involved in the climate negotiations process refer rather rarely to the region in their interventions. To some extent, this might be explained by the fact that other regions of the world provide more compelling examples of the impacts of climate change, for instance relating to local communities located in states having contributed – contrary to the Arctic states – to an insignificant extent to the emissions of greenhouse gases.

According to the decision adopted by the Arctic Council at its 2011 ministerial meeting, observers to the Council are expected to “support the work of the Arctic Council, including [...] bringing Arctic concerns to global decision-making bodies”. The present review thus tends to indicate that the observer states and organizations have so far contributed very little towards this objective.

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<sup>459</sup> Meinhard Doelle (2009), *supra* note 131, at 48.

Finally, the Arctic Indigenous Peoples have also been relatively unsuccessful at sharing their experience and highlighting their concerns in the international climate change process. The role that the Arctic Indigenous Peoples could play in international governance should not be underestimated. Their representative organizations have indeed acted as influential actors contributing to shape global discourses related specific environmental issues with high impacts for the region, for instance in relation to the pollution of the oceans by Persistent Organic Pollutants. Also, the ICC petition to the Inter-American Commission on Human Rights, which denounced the lack of climate policy in the United States, played a critical role in raising awareness on the human rights implications of climate change.

The highly politicized nature of the international climate change regime has however resulted in a very low degree of responsiveness to the testimonies delivered by Arctic indigenous peoples.<sup>460</sup> Additionally, in this process Arctic indigenous representatives have to compete to some extent with representatives from other indigenous peoples for opportunities to raise their concerns formally into the process. Finally, the emphasis of public discourses on climate change leads to a disempowering impact on the agency of indigenous peoples in the Arctic. The shift from a focus on the sustainable development of the North towards the strengthening of climate resilience transforms Arctic indigenous peoples from sovereign nations and right holders into marginalized victims impacted by processes of a global nature.<sup>461</sup>

Overall, the various sections of this thesis have thus highlighted a gap existing between the important role played by the Arctic in global public climate discourses and the considerations of its regional implications by two of the most relevant intergovernmental processes: the international climate change regime and the Arctic Council.

In particular in the case of the climate change regime, the absence of explicit references to the Arctic in any of the significant outcomes resulting from two decades of climate negotiations is particularly striking. This result is the consequence of the fact that no actor involved in Arctic governance has played a proactive and continuous role to raise the “Arctic voice” at the climate change negotiations. The reluctance of some of the Arctic states to provide a stronger status to the Arctic Council and to facilitate its interactions with other intergovernmental bodies has also contributed to limiting the capacity of this forum not only to shape the climate negotiations but even to inform its deliberations.

In relation to the UN climate change process, this assessment raises the question of the ability of this global process to remain informed by, and to take into consideration regional specificities. The gradual shift ongoing under the UNFCCC

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<sup>460</sup> Sheila Watt-Cloutier, *The Right to Be Cold: One Woman's Story of Protecting Her Culture, the Arctic and the Whole*, (London: Allen Lane, 2015).

<sup>461</sup> Jessica Shadian, *The Politics of Arctic Sovereignty: Oil, Ice and Inuit Governance*, (Oxon: Routledge, 2014), at 165.

towards “bottom-up” nationally driven approaches to climate policy could potentially offer an opportunity to foster regional initiatives linked with the climate change regime. Such initiatives could, during the implementation of the agreement expected as a result of the 2015 Paris climate conference, exploit synergies between global and regional approaches; not only in the Arctic but also in other regions sharing common features related to climate impacts, such as the Caribbean, the Middle East or the Himalayas.

Additionally, the present assessment could inform ongoing developments related to the Arctic Council. We have highlighted for instance some of the downsides of the lack of the absence of a formal status for the Arctic Council, a status quo that some actors are intending to address through proposals related to a further institutionalization of the Council. The passive role played at the UNFCCC by observers to the Arctic Council is also at odd with one of the criteria defining the requirements upon which the observer status can be granted. As the Arctic states still ponder about the potential contributions of observer states, a better use of their presence in international forums could be one of the options to ensure that the circumpolar world better benefits from the interest of distant nations.

After over two decades of climate negotiations and of circumpolar cooperation, the international community appears to have addressed comprehensively Arctic aspects of climate governance neither through the work of the Arctic Council nor under the UNFCCC. The former has only addressed some of the relevant aspects while the latter has avoided considering regional specificities up to now. The coming months could however offer new opportunities for states to acknowledge the relevance of the Arctic for the global climate regime and to foster circumpolar cooperation on policies aimed at tackling climate change. In the Arctic, the upcoming US Arctic Council chairmanship, having climate change as one of its main priority, could provide a new momentum to strengthen regional initiatives related to mitigation, adaptation and awareness-raising. Under the UNFCCC, the review of the adequacy of the 2°C target this year offers a timely chance for the climate negotiations to consider regional implications of the decisions of the COP. Also the conclusion of the negotiation cycle related to the 2015 climate agreement could also offer the opportunity for the climate change regime to consider innovative approaches to foster intergovernmental cooperation at all relevant levels of governance.

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## **List of Decisions**

### **Conference of the Parties to the UNFCCC**

Decision 1/CP.1, “The Berlin Mandate: Review of the adequacy of Article 4, paragraph 2 (a) and (b), of the Convention, including proposals related to a protocol and decisions on follow-up” (1997), UN Doc. FCCC/CP/1995/7/Add.1

Decision 2/CP.1, “Review of first communications from the Parties included in Annex 1 to the Convention” (1995), Annex, para. 1, FCCC/CP/1995/7/Add.1.

Decision 3/CP.1, “Preparation and submission of national communications from the Parties included in Annex I to the Convention” (1995), FCCC/CP/1995/7/Add.1

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Decision 1/CP.3, “Adoption of the Kyoto Protocol to the United Nations Framework Convention on Climate Change” (1997), UN Doc. FCCC/CP/1997/7/Add

Decision 4/CP.5, “Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part II: UNFCCC reporting guidelines on national communications”, UN Doc. FCCC/CP/1999/6/Add.1

Decision 5/CP.5. “Research and systematic observation” (1999), UN Doc. FCCC/CP/1999/7

Decision 14/CP.7, “Impact of single projects on emissions in the commitment period” (2001), FCCC/CP/2001/13/Add.1

Decision 17/CP.8, “Guidelines for the preparation of national communications from Parties not included in Annex I to the Convention” (2002), UN Doc. FCCC/CP/2002/7/Add.2.

Decision 2/CP.11, “Five-year programme of work of the Subsidiary Body for Scientific and, Technological Advice on impacts, vulnerability and adaptation to climate change” (2005), UN doc. FCCC/CP/2005/5/Add.1.

Decision 1/CP.13, Bali Action Plan (2007), UN Doc. FCCC/CP/2007/6/Add.1

Decision 11/CP.13, “Revised UNFCCC reporting guidelines on global climate change observing systems” (2007), UN Doc. FCCC/CP/2007/6/Add.2

Decision 2/CP.15, “Copenhagen Accord” (2009), UN Doc. FCCC/CP/2009/11/Add.1

Decision 3/CP.15, “Amendment to Annex I to the Convention” (2009), UN Doc. FCCC/CP/2009/11/Add.1

Decision 1/CP.16, “The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention” (2010), UN Doc. FCCC/CP/2010/7/Add.1

Decision 1/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action (2011), UN Doc. FCCC/CP/2011/9/Add.1

Decision 2/CP.17, “Outcome of the work of the AWG-LCA” (2011), UN Doc. FCCC/CP/2011/9/Add.1

Decision 1/CP.18, “Agreed outcome pursuant to the Bali Action Plan” (2012) UN Doc. FCCC/CP/2012/8/Add.1

Decision 1/CP.19, “Further advancing the Durban Platform” (2013), UN Doc. FCCC/CP/2013/10/Add.1

Decision 1/CP.20, “Lima Call for Climate Action” (2014), UN Doc. FCCC/CP/2014/10/Add.1

## **Conference of the Parties acting as Meeting of the Parties to the Kyoto Protocol**

Decision 1/CMP.1, “Consideration of commitments for subsequent periods for Parties included in Annex I to the Convention under Article 3, paragraph 9, of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.1.

Decision 13/CMP.1, “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.2

Decision 15/CMP.1, “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.2

Decision 27/CMP.1, “Procedures and mechanisms relating to compliance under the Kyoto Protocol” (2005), UN Doc. FCCC/KP/CMP/2005/8/Add.3

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Decision 1/CMP.8, “Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9 (the Doha Amendment) (2012), UN Doc. FCCC/KP/CMP/2012/13/Add.1.