Nordisk Miljörättslig Tidskrift

Nordic Environmental Law Journal

2016:2

www.nordiskmiljoratt.se

Nordisk Miljörättslig Tidskrift/Nordic Environmental Law Journal 2016:2
ISSN: 2000-4273
Redaktör och ansvarig utgivare/Editor and publisher: Gabriel Michanek
Webpage http://www.nordiskmiljoratt.se/omtidskriften.asp (which also includes writing instructions).

The Arctic Council and biodiversity – need for a stronger management framework?

Christian Prip[1]

Abstract

Arctic biodiversity is of global concern, with both the Arctic and the broader international community having a mutual interest in cooperation to ensure its conservation and sustainable use. Biodiversity is one of the focal areas of cooperation under the Arctic Council, addressed mainly under its working group on the Conservation of Arctic Flora and Fauna (CAFF). As the Arctic constitutes several ecosystems transcending borders, threats to these ecosystems must be dealt with by all the states sharing them, through cross-border responses. To what extent does the Arctic Council provide the institutional, policy and regulatory means necessary to meet this challenge? Scientific monitoring and assessments of Arctic biodiversity – the essential feature of Arctic biodiversity cooperation – have shown that action on the ground is needed to reduce Arctic biodiversity loss. However, cooperation mechanisms to translate scientific findings into joint and unified action by the Arctic states are not in place. Decision-making power and instruments are needed, whether in the form of hard or soft law. The recent development of instruments in other thematic areas addressed by the Arctic Council could serve as inspiration.

1. Introduction

As reflected in the opening sentence of the Arctic Biodiversity Assessment (ABA) 2013,[2] attention to the unique biodiversity of the Arctic has increased dramatically in recent years. One reason is the growing understanding of the significant contributions to the physical, chemical and biological balance of our planet provided by the vast Arctic wilderness areas where ecosystem processes continue to function in a largely natural state. Growing demands from outside and within the region for large-scale exploitation of Arctic oil and gas and other mineral resources have led to further awareness of the fragility of Arctic ecosystems. Arctic biodiversity is a matter of global concern, with both the Arctic and the broader international community having a mutual interest in cooperation to ensure its conservation and sustainable use. [3]

Biodiversity is one of the focal areas of cooperation under the Arctic Council (AC),[4] dealt with mainly under its working group on Con-

[1] Christian Prip is a Senior Policy Analyst at the Fridtjof Nansen Institute, Norway

[2] Arctic Biodiversity Assessment, 2013. (ABA) Conservation of Arctic Flora and Fauna (CAFF), Akureyri, Iceland. http://www.arcticbiodiversity.is/the-report.

[3] There exists no official definition of 'the Arctic' in a geographical sense, and different working groups under the Arctic Council use different boundaries. This article, with its biodiversity focus, assumes the boundaries normally used by CAFF: on land, the natural treeline marks the southern boundary; at sea, the Bering Sea and the North Atlantic down to Iceland and the Faroe Islands are included. See map on CAFF website. http://www.caff.is/about-caff.

[4] Arctic Council website. http://www.arctic-council.org/index.php/en/

servation of Arctic Flora and Fauna (CAFF),[5] but also as a concern to be taken into account by other AC working groups. Beyond doubt, work carried out under CAFF has helped to generate new knowledge and awareness of Arctic biodiversity within and beyond the circumpolar region.

Stewardship of Arctic biodiversity is a particular responsibility of the Arctic states.[6] However, in many aspects the Arctic constitutes a range of border-transcending ecosystems with their own distinct features: threats to these ecosystems must be dealt with by all the states sharing them, through cross-border responses. Focusing on the work of CAFF, this article explores how conservation and sustainable use of biodiversity is being addressed by the AC as a pan-Arctic issue. To what extent does the AC provide institutional and legal means for joint action, in a time of increasing threats and global attention to Arctic biodiversity? That is the focus of this article, not the performance of the individual Arctic states in protecting Arctic biodiversity.

Arctic cooperation and governance in general are well covered in the literature. Arctic environmental cooperation has been dealt with to some extent, but there has been only modest coverage of Arctic cooperation specifically related to biodiversity.[7]

This article begins with an overview of how biodiversity has been institutionally addressed in the Arctic context, including an outline of the development and trends in CAFF over the years. Specific attention is paid to cooperation aimed at the creation of a pan-Arctic network of protected areas, which will require political commitment and decision-making across Arctic states to be successful. Multilateral regimes relevant for Arctic biodiversity and AC/CAFF's alignment with these are examined, and a brief comparative review of parallel processes and events outside the biodiversity context is provided.

2. Working group on Conservation of Arctic Flora and Fauna (CAFF)

2.1 Background

The CAFF working group was established in 1991 under the Arctic Environmental Protection Strategy, (AEPS), a precursor to the Arctic Council, and was officially inaugurated in April 1992.[8] Recognizing their shared ecosystems with its unique flora and fauna , the eight Arctic States agreed to 'cooperate for the conservation of Arctic flora and fauna, their diversity and their habitats', and established the CAFF programme as a 'distinct forum for scientists, indigenous peoples and conservation managers … to exchange data and information on issues such as shared species and habitats and to collaborate, as appropriate

[5] CAFF website. http://www.caff.is/.

[6] The Arctic states are here defined as Canada, Denmark with the Faroe Islands and Greenland, Iceland, Norway, Finland, Sweden, the Russian Federation and the United States of America.

[7] On Arctic governance in general and Arctic environmental governance, see O.R. Young, 1998, *Creating Regimes: Arctic Accords and International Governance*, Ithaca, NY: Cornell University Press; O.S. Stokke and G. Hønneland, 2007 (eds), *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building*, London: Routledge; O.S. Stokke, 2011, Interplay management, niche selection, and Arctic environmental governance, in: S. Oberthür and O.S. Stokke (eds), *Managing Institutional Complexity: Regime Interplay and Global Environmental Change*, Cambridge, MA: MIT Press; T. Koivurova, 2010, Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance, *Polar Record,46 (2):* 146–156, http://journals.cambridge.org/download.php?file=%2FPOL%2FPOL46_02%2FS0032247409008365a.pdf&code=e60dffbb5f97b1238eb4aa14d4bda045; P. Kankaanpää and O.R. Young, 2012, The effectiveness of the Arctic Council, *Polar Research*, *31*, http://dx.doi.org/10.3402/polar.v31i0.17176. On biodiversity governance, see T. Koivurova 2009, Governance of protected areas in the Arctic, *Utrecht Law Review, 5* (1), Special issue on Protected Areas in Environmental Law.

[8] Programme for the Conservation of Arctic Flora and Fauna Framework Document http://www.caff.is/administrative-series/view_document/137-caff-framework-document.

for more effective research, sustainable utilization and conservation'.[9]

CAFF objectives are:

- to collaborate for more effective research, sustainable utilization and conservation;
- to cooperate to conserve Arctic flora and fauna, their diversity and their habitats;
- to protect the Arctic ecosystem from human-caused threats;
- to seek to develop more effective laws, regulations and practices for flora, fauna and habitat management, utilization and conservation;
- to work in cooperation with the Indigenous Peoples of the Arctic;
- to consult and cooperate with appropriate international organizations and seek to develop other forms of cooperation;
- to regularly compile and disseminate information on Arctic conservation; and
- to contribute to environmental impact assessments of proposed activities.[10]

CAFF predated the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 and thereby also the adoption of Agenda 21 and the Convention on Biological Diversity (CBD). However, the first CAFF work programme was established in 1993 after the UNCED and reflected this important development in international environmental governance by including as one of its objectives to provide 'a mechanism to develop common responses on issues of importance for the Arctic ecosystem such as development and economic pressures, conservation opportunities and political commitments (e.g. to international Conventions, the Rio Declaration and Agenda 21, the World Charter for Nature)'. [11]

When the Arctic Council was established in 1996, CAFF became one of its working groups. Soon afterwards, CAFF started to work on a thematic basis supported by expert sub-groups and a lead-country approach – an approach followed throughout CAFF's history. Themes include flora, seabirds, protected areas, stressors of biodiversity and integration of indigenous peoples and their knowledge.

In the ensuing years, various strategic documents were released with an international focus and responding to the CBD, which had recently entered into force.[12]

2.2 Arctic Council with CAFF as a forum for scientific cooperation on biodiversity

The *Arctic Climate Impact Assessment* (ACIA) 2005,[13] prepared by CAFF, the Arctic Monitoring and Assessment Programme (AMAP) and the International Arctic Science Committee (IASC), provided important guidance for subsequent biodiversity activities. In addition to focusing on the serious effects of climate change on biodiversity and ecosystems at a time when there was little global attention to this relationship, the ACIA highlighted the lack of knowledge about Arctic ecosystems, and made a range of recommendations. As a result, CAFF changed its focus, from a largely species- and habitat-centred approach to an *ecosystem-based approach* consistent with the

[9] Ibid.
[10] Ibid.
[11] Ibid.

[12] These are: *Cooperative Strategy for the Conservation of Biological Diversity in the Arctic Region*, 1997, (http://www.caff.is/publications/view_document/52-cooperative-strategy-for-the-conservation-of-biological-diversity), *Strategic Plan for the Conservation of Arctic Biological Diversity*, 1998, (http://www.caff.is/strategies-series/view_document/62-strategic-plan-for-the-conservation-of-Arctic-biological-diversity) and *Arctic Flora and Fauna Recommendations for Conservation*, 2002 (http://www.caff.is/assessment-series/view_document/38-Arctic-flora-and-fauna-status-and-trends-recommendations-for-conservation).

[13] http://www.amap.no/Arctic-climate-impact-assessment-acia

launch of the global Millennium Ecosystem Assessment in 2005 and the growing international attention to ecosystems and the services they provide.[14]

ACIA also marked a gradual shift in CAFF's focus from cooperation on administrative and political issues to scientific cooperation through monitoring and assessment activities.[15] ACIA recommendations contributed to the development of CAFF's Circumpolar Biodiversity Monitoring Programme (CBMP), an international network of scientists, government agencies, indigenous organizations and conservation groups working together to improve the detection, understanding and reporting of Arctic biodiversity status and trends.[16] The CBMP focuses on the major ecosystems of the Arctic – freshwater, coastal, marine and terrestrial.

The culmination of CAFF as a forum for scientific cooperation and knowledge generation came with the release of the Arctic Biodiversity Assessment (ABA) at the May 2013 Arctic Council Ministerial Meeting in Kiruna, Sweden.[17] ABA provides a comprehensive description of the status and trends of Arctic biodiversity and describes stressors, knowledge gaps and conservation and research priorities. The presentation is divided into five components: 1) Arctic Biodiversity Trends 2010 – selected indicators of change; 2) scientific assessment; 3) scientific synthesis; 4) report for policy-makers and 5) Life Linked to Ice: a guide to sea-ice associated biodiversity in a time of rapid change. The report for policy-makers offers 17 recommendations for dealing with the key findings, grouped under three cross-cutting themes:

- the significance of climate change as the most serious underlying driver of overall change in biodiversity;
- the necessity of taking an ecosystem-based approach to management;
- the importance of mainstreaming biodiversity by making it integral to other policy fields, for instance by ensuring biodiversity objectives are considered in development standards, plans and operations.

2.3 CAFF and protected areas

Another indication of CAFF's shift in focus from policy formulation and application to monitoring and assessment activities was the *de facto* termination of work on a Circumpolar Protected Areas Network (CPAN) around 2004. This had been an early high priority of CAFF with quite ambitious policy objectives.[18] Already in 1991 the Arctic Council forerunner, the Arctic Environmental Protection Strategy (AEPS) had identified the development of a network of Arctic protected areas as an important work area.[19] The aim was set out in greater detail at the inaugural meeting of CAFF in 1992 and was politically endorsed by a ministerial meeting in 1993: '(…) the Ministers requested the CAFF Working Group to Prepare a Plan for developing a network of Arctic protected areas that will ensure necessary protection of Arctic ecosystems, recognize the role of indigenous cultures, and provide a common process by which Arctic countries may advance formation of circumpolar protected areas.'[20]

[14] Millennium Ecosystem Assessment, 2005: http://www.millenniumassessment.org/en/index.html.
[15] Koivurova, 2009.
[16] Circumpolar Biodiversity Monitoring Programme (CBMP): http://www.caff.is/monitoring
[17] Arctic Biodiversity Assessment (ABA). http://www.Arcticbiodiversity.is/.
[18] For an analysis of achievements in Arctic cooperation as regards protected areas, see Koivurova, 2009.
[19] Chapter 2.2. (Principles), viii, p. 11, at http://arcticportal.org/en/arctic-council2.
[20] *The Nuuk Declaration on Environment and Development in the Arctic,* Nuuk, 1993.

A CPAN Strategy and Action Plan was developed which highlighted the Arctic environment as being of global significance and requiring a regional cooperative effort for its conservation.[21] CPAN was also seen as a response to Convention on Biological Diversity (CBD), which had recently entered into force, and its call upon parties to establish a system of protected areas (Art. 8) as well as the CBD recommendations 'that countries examine means of implementing the Convention on a regional level'.[22] Various actions were identified, to be taken at the national and regional levels.

As described by Koivurova 2009, in the first years of CAFF there was clear momentum for promoting CPAN. A standing committee for CPAN was established, which the USA was nominated to lead. However, in 2004 CPAN came to a halt when its co-chairs resigned and no other Arctic state was prepared to take over the leadership.[23] According to the Arctic Council website, CPAN is 'dormant'.[24]

Reports of CAFF meetings do not clearly reveal the underlying causes of CPAN's termination, but CAFF stakeholders have indicated to this author that, due to sovereignty consideration, some Arctic states were not politically prepared to engage in work that would affect the governance of their national protected areas and lead towards a transboundary network.[25] Similarly, Koivurova (2009) argues that the termination of CPAN could be seen as an acknowledgement by CAFF that, with limited resources and government officials represented at expert rather than political level, the working group was better suited for scientific cooperation free of the 'policy' aspects of CPAN.

Koivurova mentions another reason cited by stakeholders: that CPAN 'competed' with and was overtaken by the CBD Programme of Work on Protected Areas adopted in 2004 at COP7,[26] which also aimed at establishing networks of protected areas and reporting requirements for countries. That argument, however, seems to overlook the fact that the CBD Programme of Work generally deals with national *and* regional networks of protected areas. Hence, the CBD as well as other global environmental forums have increasingly called for regional implementation mechanisms, for which AC/CAFF could be well suited. [27]

Protected areas were again addressed by the ABA 2013. It recommends advancing the protection of large areas of ecologically important marine, terrestrial and freshwater habitats, taking into account ecological resilience in a changing climate and building upon existing international and national processes and networks. (Policy recommendation 5)

As regards *marine protected areas*, a 2013 assessment (AMSAIIC) identified 95 areas across each of 16 Arctic large marine ecosystems, cov-

[21] CPAN Strategy and Action Plan, CAFF Habitat Conservation Report no. 6: http://www.caff.is/strategies-series/95-cpan-strategy-and-action-plan.

[22] Ibid. p. 12.

[23] Koivurova, 2009, and CAFF Management Board Meeting Minutes 1–3 February 2005, Helsinki, Chapter 8.3: http://arcticportal.org/uploads/t-/9F/t).9FpbaWsOdX3RSz._UyIFw/CAFF-Board-Meeting-Helsinki-Finland-February-1-3-2005.pdf>.

[24] https://oaarchive.arctic-council.org/handle/11374/148.

[25] This is supported by the following quote from minutes of the CAFF board meeting in February 2008 which discussed a possible resumption of CPAN: 'The challenge which faces CPAN now is how best to continue? CPAN has in the past run into difficulties as each CAFF country has its own protected areas policy and therefore may not need any outside suggestions on how these policies should be structured. Thus in order to proceed CPAN needs to focus more on generalities and the international context.'

[26] *CBD Programme of Work on Protected Areas:* https://www.cbd.int/doc/publications/pa-text-en.pdf.

[27] Goal 1.3. of the above is to 'establish and strengthen regional networks, transboundary protected areas (TBPAs) and collaboration between neighbouring protected areas across national boundaries'.

ering 12 million km^2 – more than half the total ice-covered area of the marine Arctic – as marine areas of heightened ecological and cultural significance.[28] AMSAIIC was carried out by CAFF in collaboration with its two sister AC working groups, the Arctic Monitoring and Assessment Programme (AMAP) and the Sustainable Development Working Group (SDWG). While these sea areas were identified as sensitive to shipping activities, they were selected on the basis of their ecological importance to fish, birds and/or mammals. Thus, the assessment could serve as the basis for identifying sea areas in need of protection from impacts beyond shipping as well. The AMSAIIC is also relevant to the CBD-initiated global process for identifying and describing Ecologically or Biologically Sensitive Sea Areas (EBSAs) around the world.[29]

Moreover, in 2015 the Working Group on the Protection of the Marine Environment (PAME) issued a Framework for a Pan-Arctic Network of Marine Protected Areas (MPA).[30] This sets out a common vision for Arctic cooperation in MPA network establishment and management, based on international best practices and previous Arctic Council initiatives. It aims to support Arctic states in developing their MPA networks and charting a course for future collaborative planning, management and actions.

Despite their non-binding nature, these developments, with the ABA recommendation on protected areas, the AMSAII identification of sensitive marine ecosystems and now the MPR framework for a network of marine protected areas, indicate a return to formulating policies on protected areas in the Arctic.

2.4 Latest developments in the Arctic Council and CAFF related to biodiversity

The increasing global awareness of Arctic biodiversity was clearly evident at the Arctic Biodiversity Congress in Trondheim, Norway, in December 2014 – the largest gathering in the history of the Arctic Council.[31] The 450 participants comprised a mix of scientists, policy-makers, government officials and representatives of indigenous peoples, industry and civil society. The two main challenges for the Arctic Council, as expressed by presenters at the Congress, were to develop an umbrella strategy for sustainable development that would include, as a core component, conservation and sustainable use of biological resources, while maintaining traditional ways of life for Arctic peoples; and to speed and scale up actions to implement the recommendations of the ABA and international commitments on biodiversity such as the Aichi targets under the CBD.[32]

Among actions suggested at the Congress was the development of 'binding agreements related to the conservation and/or sustainable use of biodiversity' – however, with no further

[28] AMAP/CAFF/SDWG, 2013. Identification of Arctic marine areas of heightened ecological and cultural significance: Arctic Marine Shipping Assessment (AMSA) IIc. Arctic Monitoring and Assessment Programme (AMAP), Oslo. http://www.caff.is/publications/view_document/251-Arctic-marine-areas-of-heightened-ecological-and-cultural-significance-Arctic-marine-shipping-assessment-amsa-iic.

[29] See https://www.cbd.int/ebsa/ . As part of the EBSA process, CAFF provided data, scientific and technical support, and participated in an Arctic regional workshop to facilitate the description of EBSAs in the Arctic in Finland in March 2014 (see Report of the Arctic Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas. http://www.cbd.int/doc/?meeting=EBSAWS-2014-01).

[30] PAME and Arctic Council. 2015 Framework for a Pan-Arctic Network of Marine Protected Areas. https://oaarchive.arctic-council.org/bitstream/handle/11374/417/MPA_final_web.pdf?sequence=1&isAllowed=y.

[31] R. Smith, T. Barry and F. Katerås, 2014. *Arctic Biodiversity Congress, Co-Chairs Report*. Conservation of Arctic Flora and Fauna, Akureyri, Iceland. http://www.caff.is/assessment-series/10-arctic-biodiversity-assessment/284-arctic-biodiversity-congress-co-chairs-report.

[32] Ibid.

specification. Another action suggested was the expansion of both the marine and terrestrial protected areas network and monitoring its effectiveness. Moreover, various actions were suggested for mainstreaming biodiversity concerns across sectoral policies and activities. These include biodiversity as a fundamental component of Environmental Impact Assessments, Strategic Environmental Assessments and risk assessments; mapping biodiversity hot spots and biologically and ecologically sensitive areas on a scale appropriate for industry to use in planning; inclusion of biodiversity in national accounting so that the true value of healthy Arctic ecosystems can be recognized; and expansion of the responsibility for taking care of biodiversity and implementing ecosystem-based management in marine, terrestrial, freshwater and coastal ecosystems.[33]

The report of the co-chairs also noted diverging views on the role of the AC and CAFF. While many Conference participants felt that this should not go beyond assessments, monitoring and data management, there were also many who felt that the AC and CAFF should now move towards policy formulation.[34]

Also in 2015, CAFF published a plan for implementation of the 17 ABA recommendations organized in two-year implementation periods.[35] The plan is presented as a living document to be reviewed and updated every two years. It was developed in cooperation with other AC working groups and external stakeholders and applies to the AC as a whole. CAFF will prepare annual reports on progress towards implementation. Key actions for 2015–2017 include: mainstreaming biodiversity, reducing stressors on migratory birds, ecosystem services evaluation, communications and outreach, adaptation to climate change, invasive species, pollution, safeguarding critical areas, improving knowledge and public awareness, and developing indicators.

Although the implementation plan is meant to concern what are referred to as the ABA *policy* recommendations, the plan only to a very limited extent provides for the development of policies, norm-setting or other outcomes aimed at achieving a direct causal impact on the conservation and sustainable use of Arctic biodiversity. Once again, the vast majority of the actions mentioned concern generating new knowledge, guidance, recommendations, public awareness, data collection and outreach activities by CAFF or other AC bodies, sometimes in collaboration with individual Arctic states. One exception to that pattern is a recommendation for the third phase of the plan (2017–2019) to 'Develop, as needed, binding and/or voluntary agreements/standards that work towards the harmonization of industry-specific and cross-industry standards related to the conservation and/or sustainable use of biodiversity'.[36] Another exception concerns phase two (2015–2017) to 'Execute international exercises under the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic and maintain and update the Operational Guidelines'.[37] Here the executive character of the action is directly linked to and authorized by one of the two legally binding agreements concluded under AC auspices.

On the whole, however, the limited orientation of the implementation plan towards 'action on the ground' indicates that the Arctic Council is still not ready to move from scientific cooperation and policy shaping to policy-making in the field of biodiversity.

[33] Ibid.
[34] Ibid.
[35] CAFF, 2015. *Actions for Arctic Biodiversity, 2013 – 20121: Implementing the recommendations of the Arctic Biodiversity Assessment*. www.caff.is/actions-for-arctic-biodiversity-2013-2021.
[36] Ibid.
[37] Ibid.

3. International agreements related to biodiversity, and Arctic alignment with these

Several multilateral agreements to which Arctic states to varying degrees are parties include explicit and implicit obligations for states to conserve and sustainably use biodiversity. These agreements have increasingly come to focus on Arctic biodiversity. From the beginning, CAFF viewed its activities as an Arctic response to the global biodiversity commitments included in these agreements. Let us now examine the main global agreements as regards framing AC work on biodiversity, with special emphasis on the Convention on Biological Diversity and correlations between the work of AC/CAFF and the international agreements.

3.1 The Convention on Biological Diversity (CBD)

The CBD was signed by a large number of states at the Rio Summit (UNCED) in 1992; it entered into force in 1993 and has now almost universal global membership – including all Arctic states except the USA. Unlike earlier nature conservation conventions, which covered either threatened species, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) or the Convention on Migratory Species (CMS) (1979), or threatened habitats, such as the Ramsar Convention (1971), the CBD covers *all* aspects of biodiversity: the diversity of ecosystems, species and genetic diversity. Its objectives are the conservation and sustainable use of biodiversity and the fair and equitable sharing of benefits from the use of genetic resources. This represents a shift of paradigm from traditional nature conservation to view biodiversity in light of and as an important component of sustainable development. Also as a new concept, the CBD includes provisions to protect the traditional knowledge, innovations and practices of indigenous and local communities in relation to biodiversity. Although the CBD does not itself address regional approaches to implementation, many of its COP decisions do.[38]

In spite of the CBD, with its many work programmes and national biodiversity strategies and action plans developed in most countries, the global decline in genetic, species and ecosystem diversity has continued, and the pressures on biodiversity have remained constant or have increased.[39] In response, the CBD COP 10 in 2010 adopted a Strategic Plan for Biodiversity 2011–2020 with a shared vision, mission, five strategic goals and 20 targets ('the Aichi Biodiversity Targets').[40]

ABA from 2013 refers to itself as a regional contribution to the attainment of these targets.[41] Information from ABA was used in preparing the *Fourth Global Biodiversity Outlook,* launched at the 12th COP meeting in October 2014. Throughout the ABA, reference is made not only to the uniqueness of Arctic biodiversity but also to the increasing threats from human activities, often due to factors outside the Arctic.

The overall approach of the CBD, recognizing both the intrinsic value of biodiversity and the essential ecosystem services it provides to people, is shared with CAFF. *The Ecosystem Approach* was recognized by CAFF as a cornerstone approach for conservation in the Arctic be-

[38] See for example paragraph 5 of decision X/2 (Strategic Plan for Biodiversity 2011–2020) in which the Conference of the Parties 'Urges regional organizations to consider the development or updating of regional biodiversity strategies, as appropriate, including agreeing on regional targets, as a means of complementing and supporting national actions and of contributing to the implementation of the *Strategic Plan for Biodiversity 2011–2020;'.*

[39] See *Global Biodiversity Outlook (GBO 3),* 2010. http://www.cbd.int/gbo3/.

[40] *Strategic Plan for Biodiversity 2011–2020.* CBD decision X/2.

[41] https://www.cbd.int/doc/strategic-plan/2011-2020/Aichi-Targets-EN.pdf.

fore the CBD adopted it, together with 12 principles, in 2000[42] as 'the primary framework for action under the Convention' and described as 'a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way'.[43] The Ecosystem Approach includes the concept of *adaptive management* – particularly relevant in the Arctic, due to the severe impacts on ecosystem functioning caused by climate change.[44] CAFF's Circumpolar Biodiversity Monitoring Programme (CBMP), with its ecosystem-based monitoring plans for freshwater, terrestrial and marine, coastal ecosystems, is an example of application of the approach. Concerning another important topic on the international biodiversity agenda, *The Economics of Ecosystems and Biodiversity (TEEB)*, a scoping study on the Arctic was published in 2015.[45]

Related to the Ecosystem Approach is the *sustainable use of biodiversity components*, the second objective of the CBD. As stated in the ABA, unsustainable use of mammals, birds and fish was historically the most significant pressure on Arctic biodiversity. While much of this pressure has been significantly lessened by improved management and regulation, it has not been eliminated, according to the assessment. CAFF's work on monitoring and assessments has addressed threats to biodiversity, including unsustainable use, and made recommendations on measures to overcome these threats. Nevertheless, attention in CAFF has been unevenly distributed among species groups, with most attention to flora and birds, some attention to terrestrial mammals – and less attention to marine mammals and fish, despite their significance for Arctic community livelihoods. One explanation could be the political sensitivity often associated with the management of marine mammals and fish stocks in the region.[46]

The *mainstreaming* of biodiversity across sectors as a means to address the underlying causes of biodiversity loss is another topic at the core of implementing the CBD and featuring prominently in the Aichi Targets.[47] This is also a top CAFF priority: it is one of the three main themes

[42] Under the CBD, the ecosystem approach is described as a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way, although it is often referred to as 'an ecosystem-based approach' in the CAFF context

[43] CBD Decision V/6

[44] 'Adaptive management' refers to the fact that 'ecosystem processes are often non-linear, and the outcome of such processes often shows time-lags. The result is discontinuities, leading to surprise and uncertainty. Management must be adaptive in order to be able to respond to such uncertainties and contain elements of 'learning-by-doing' or research feedback. Secretariat of the Convention on Biological Diversity (2004), *The Ecosystem Approach (CBD Guidelines)*, Montreal. https://www.cbd.int/doc/publications/ea-text-en.pdf.

[45] The study was prepared by CAFF, with Sweden as the lead country, in cooperation with the UNEP TEEB Office, the UNEP Regional Office for Europe, UNEP GRID Arendal and the WWF Global Arctic Programme. http://www.caff.is/administrative-series/292-the-economics-of-ecosystems-and-biodiversity-teeb-scoping-study-progress-report.

[46] The selective approach to species groups has gradually shifted with CBMP and its ecosystem-based approach. For example, the marine expert monitoring group covers all marine species groups. Also the ABA addresses fish and marine mammals alongside other species and includes specific recommendations (10c and d) on planning and managing commercial fisheries in international waters and on fishing technologies and practices. See *Arctic Species Trend Index (ASTI): Tracking Trends in Arctic Marine Populations*. http://www.caff.is/assessment-series/view_document/28-Arctic-species-trend-index-tracking-trends-in-Arctic-marine-populations.

[47] Under Strategic Goal A, 'Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society', the first four Aichi targets address general awareness-raising on the value of biodiversity, integration of biodiversity concerns into national and local development plans and strategies, phasing out harmful subsidies and promoting positive incentives for biodiversity, promoting sustainable consumption and production, and keeping the use of natural resources within safe ecological limits. https://www.cbd.int/sp/targets/.

of the ABA, with recommendation 4 requiring 'the incorporation of biodiversity objectives and provisions into all Arctic Council work and encourage the same for on-going and future international standards, agreements, plans, operations and/or other tools specific to development in the Arctic. This should include, but not be restricted to, oil and gas development, shipping, fishing, tourism and mining.' Mainstreaming has also been expressed through the close involvement of CAFF in the work of other Arctic Council working groups, especially AMAP and PAME and their biodiversity considerations.

The CBD was innovative in giving global recognition to *knowledge innovations and customary practices of indigenous and local communities* as important tools for safeguarding biodiversity. Further, the CBD adopted an innovative approach to community participation, by establishing a special open-ended working group where government and indigenous representatives co-chair and participate on an equal footing.[48] To a large extent this is also the approach of the AC including CAFF. The Council recognizes the importance of traditional and local knowledge and therefore seeks to include traditional ecological knowledge where possible. In terms of the participation of indigenous organizations in the working process, six major Arctic indigenous organizations have been granted Permanent Participant status in the Arctic Council, entitling them to participate in the Arctic Council and its working groups with full consultation rights.

The impact of *climate change* on biodiversity ranks high on the international biodiversity agenda, inspired not least by ACIA and its focus on this problem for Arctic biodiversity.

Monitoring, assessment and developing indicators have been important for the CBD in evaluating trends and progress towards targets set out in strategic plans. As noted, these are core AC activities and can therefore be regarded as the primary area of AC/CAFF contributions to the CBD and related international regimes most recently being expressed through the CBMP and the ABA. In fact, the CAFF contributions on the various thematic areas of the CBD agenda described above could also be categorized under this heading. CBMP is recognized as one of four regional Biodiversity Observations Networks of the Global Earth Observation System of Systems – Biodiversity Observations Networks (GEO BON).[49] Arctic indicators developed under CBMP have taken into account global biodiversity indicators developed under the CBD, and the CBMP is a partner to the Global Biodiversity Indicators Partnership (BIP). [50] Thereby, CAFF is also an actual and potential contributor to the recently established Intergovernmental Panel for Biodiversity and Ecosystem Services (IPBES), 'as the leading intergovernmental body for assessing the state of the planet's biodiversity, its ecosystems and the essential services they provide to society'.[51]

While the Arctic Council has acknowledged the CBD, the CBD has acknowledged the Council as an important regional forum. In 2010, a Resolution of Cooperation between CAFF and the CBD was signed; and the CBD COP at its 11th meeting in 2012 adopted decision XI/6, with eleven paragraphs on Arctic biodiversity.[52] These paragraphs, *inter alia,* call upon the CBMP to deliver Arctic biodiversity status and trends information as a contribution to tracking progress towards

[48] Ad-Hoc Open-Ended Working Group on Article (8j) and Related Provisions.

[49] http://geobon.org/.

[50] *Global Biodiversity Indicators Partnership (BIP)*. http://www.bipindicators.net/.

[51] IPBES website: http://www.ipbes.net/index.php/about-ipbes.html.

[52] Paragraphs 30 to 40. https://www.cbd.int/doc/decisions/cop-11/cop-11-dec-06-en.pdf.

achievement of the Aichi Biodiversity Targets. Decision XI/6 also expresses appreciation of the Arctic Council's collaboration with indigenous and local communities, and encourages Parties and relevant organizations to ensure their full and effective participation in research projects and programmes on Arctic biodiversity.

3.2 The Ramsar Convention on Wetlands

The Ramsar Convention was the first of the biodiversity-related conventions: adopted in 1971, it entered into force in 1975. Its mission is 'the conservation and wise use of all wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world'.[53] Originally, the Ramsar Convention focused on wetlands as habitats for waterfowl, but because of the high economic, scientific, cultural, and recreational value of the world's wetlands, the concept of 'wise use' was introduced – basically an ecosystem approach. The Convention has 168 parties and includes all the Arctic states.

According to the Ramsar Convention Secretariat, 60 % of the terrestrial area of the Arctic is covered by wetlands and 68 Ramsar Sites have been designated in the Arctic.[54] Arctic wetlands provide significant ecosystem services; they are biodiversity hotspots and play a crucial role in permafrost protection and water regulation. However, Arctic wetlands are also undergoing active degradation induced by human impacts and climate change.[55]

CAFF and the Ramsar Convention signed a Resolution of Cooperation in 2012. Cooperation takes place on a regional basis through the Ramsar regional 'NorBalWet' Initiative covering the Nordic countries and the countries around the Baltic Sea, but NorBalWet also acts as Ramsar's operational arm for cooperation with CAFF and for developing a focus on Arctic wetland ecosystems and their crucial role in climate change.[56]

3.3 The Convention on Migratory Species (CMS)

The importance of multilateral cooperation for the conservation of migratory species was recognized by the UN Conference on the Human Environment in Stockholm in 1972, which mandated the elaboration of a broad convention. This led to the negotiation of the Convention on Migratory Species of Wild Animals (CMS).[57] The CMS entered into force in 1983 and has since been ratified by 120 countries, including four Arctic States (Finland, Sweden, Norway, and Denmark with the Faroe Islands and Greenland). The CMS includes various types of requirements for conservation, depending on the degree of threat to the species in question. Those considered endangered are listed in Annex I, while Appendix II lists species seen as 'merely' having an unfavourable conservation status and in need of international agreements for their conservation and management. The most comprehensive agreement under CMS is the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), which entered into force in 1999. It encompasses 554 populations of 255 waterbird species whose ranges include Europe, Africa, the Middle East, parts of West-Central Asia and parts of the Arctic. The geographic area covers 118 states, of which 63 are Parties to the AEWA, including five Arctic states (Iceland, Finland, Sweden, Norway,

[53] Ramsar Convention website. http://www.ramsar.org/news/how-about-arctic-wetlands.
[54] Ibid.
[55] Wetlands International website: http://www.wetlands.org/Whatarewetlands/Arcticwetlands/tabid/2740/Default.aspx.
[56] NorBalWet website: http://www.norbalwet.org/.
[57] Convention on Migratory Species (CMS) website, www.cms.int.

and Denmark with the Faroe Islands and Greenland). [58]

The Arctic is home to several species – especially birds – that migrate both to and from other parts of the world and within the Arctic. Migratory species are an important indicator of ecosystem health, which make the CMS and AEWA highly relevant to the work of CAFF. A recent important contribution to these international commitments is the Arctic Migratory Birds Initiative (AMBI) initiated by CAFF in 2013. This project will require enhanced cooperation among the Arctic states themselves and with non-Arctic states that host Arctic birds during the non-breeding season. [59]

3.4 United Nations Convention on Law of the Seas (UNCLOS) and the protection of Arctic marine biodiversity

Recognizing the Arctic as one ecosystem that requires joint, transboundary management is particularly important in relation to the marine ecosystem. For marine areas beyond national jurisdiction this is self-evident, but it is also highly relevant to areas within the jurisdictions of each Arctic coastal state, given the special geographical and ecological conditions of the often ice-covered waters. This makes the United Nations Convention on the Law of the Sea (UNCLOS), which provides for a comprehensive regime of law governing all uses of the oceans and their resources, another important global treaty for the protection of Arctic biodiversity – although the Convention does not explicitly refer to the term.[60] All Arctic states are Parties to UNCLOS, except the USA.[61]

UNCLOS applies to marine areas under and beyond national jurisdiction. Most of the Arctic marine areas are under coastal-state jurisdiction, but there are also areas of high seas beyond national jurisdiction in the Central Arctic Ocean, the Northern Pacific and Northern Atlantic. For these areas UNCLOS is the only legal instrument with provisions on the conservation and sustainable use of marine resources, and thereby biodiversity. To emphasize the importance of this concern and make more specific the rather broad provisions of UNCLOS, the UN General Assembly in 2015 decided to launch a process for the development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction.[62]

UNCLOS Article 194 sets out the general requirement of due diligence to protect the marine environment from pollution. This includes taking measures 'to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life' (Art. 194.5). The general obligation is specified in more detailed provisions until Article 237. With particular relevance to the Arctic, Art. 234 provides Coastal States with the right to take legal measures to prevent, reduce and control marine pollution from vessels in ice-covered areas.

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[58] Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) website, www.unep-aewa.org.

[59] CAFF, 2013. Arctic Migratory Birds Initiative (AMBI), http://www.caff.is/arctic-migratory-birds-initiative-ambi.

[60] H. Hoel, 2015, Oceans governance, the Arctic Council and ecosystem-based management, in: L.C. Jensen and G. Hønneland(eds.) *Handbook of the Politics of the Arctic*, Cheltenham: Edward Elgar.

[61] The USA, however, considers UNCLOS provisions other than Part XI (which deals with the International Seabed Area) as customary international law and thereby binding (See R. Churchill, 2015. The exploitation and management of marine resources in the Arctic: law, politics and the environmental challenge, in: Jensen and Hønneland (fn 60 above).

[62] UNGA Resolution 69/292, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/292.

Articles 61 to 64 concern obligations for States to conserve and sustainably use marine living resources in the Exclusive Economic Zone, as do Articles 116 to 120 regarding the High Seas. Chapter XIII of the Convention provides for a global regime for marine scientific research.

UNCLOS requires States to collaborate directly or through competent international organizations to protect and preserve the marine environment at the international and regional levels. These requirements include Article 197 concerning pollution, Article 63 on stocks of living resources occurring within more than one Exclusive Economic Zone, and Article 118 regarding management of living resources in the high seas.[63]

Several global and regional agreements build on UNCLOS environmental provisions. These include legally binding agreements regulating shipping negotiated under the auspices of the International Maritime Organization (IMO), where one of particular importance for Arctic marine ecosystem was concluded in 2015: the International Code for Ships Operating in Polar Waters (Polar Code) expected to enter into force in 2017, and with its main goal being ' to provide for safe ship operation and the protection of the polar environment '(Introduction Article 1(n5)).[64]

There are also several regional seas agreements, some developed under the auspices of UNEP, that relate to UNCLOS.[65]

UNCLOS and the related provisions referred to above are dealt with by the Arctic Council mainly through its working group on the Protection of the Arctic Marine Environment (PAME). The mandate of PAME is to address policy and non-emergency pollution prevention and control measures related to the protection of the Arctic marine environment from land- and sea-based activities.[66] These measures are often addressed in cooperation with CAFF when they relate to marine biodiversity. Concerning other biodiversity-related agreements, the Council has contribution mainly through monitoring and assessment activities.

Specifically regarding the Central Arctic Ocean (areas within and beyond national jurisdiction), the five coastal states in 2008 agreed to the Ilulissat Declaration, which acknowledges UNCLOS as a key instrument for, *inter alia*, protection of the marine environment including ice-covered areas. The coastal states also declare that for the moment they see no need to develop a new comprehensive international legal regime for governing the Arctic Ocean.[67] In addition, in July 2015 the five states signed the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean, [68]

[63] Articles 122 and 123 deal with regional cooperation between states bordering 'Enclosed or Semi-Enclosed Seas'. It has been argued that while the Central Arctic Ocean as an 'ocean' and not a 'sea' may not fully satisfy the definition of a semi-enclosed sea area in Article 122, it nevertheless shares similar properties. Thus an analogous cooperation system could legitimately be applied *mutatis mutandis* for the Central Arctic Ocean. See J. Owens, 2013, 'Enclosed and Semi-Enclosed Seas: Does the Arctic count?', *China Oceans Law Review*, 2. The Ilulissat Declaration and the declaration to prevent unregulated fisheries referred to below exemplify such cooperation.

[64] IMO, International Code for Ships Operating in Polar Waters (Polar Code), (Safety-related provisions) (21 November 2014), IMO Resolution MSC.385 (94), (Environment-related provisions) (15 May 2015), IMO Resolution MEPC. 264(68). IMO documents are available at www.imo.org. The Polar Code applies to Arctic and Antarctic waters.

[65] PAME, *The Arctic Ocean Review, Phase I Report (2009–2011)*, 2nd edn.. http://www.pame.is/images/03_Projects/AOR/Reports/AOR_Phase_I_Report_to_Ministers_2011_2nd_edition_Nov_2013_b-1.pdf.

[66] *PAME Work Plan 2015–2017*. http://www.pame.is/index.php/shortcode/pame-work-plan.

[67] *The Ilulissat Declaration,* Arctic Ocean Conference, Ilulissat, Greenland 27–29 May 2008. http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf. The coastal states are the USA, Russia, Canada, Norway and Denmark (in respect of Greenland).

[68] *Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean of 16*

which acknowledges that commercial fishing in this area is unlikely to occur in the near future. Nevertheless, the dramatic reduction of Arctic sea ice and other environmental changes in the Arctic, combined with the still-limited scientific knowledge about marine resources in this area, necessitate a precautionary approach to prevent unregulated fishing in the area.

Section 4 discusses the recent establishment of a task force to consider future needs for strengthened cooperation on Arctic marine areas as well as mechanisms to meet these needs.

3.5 Summary: international biodiversity commitments

To a large extent, commitments related to international biodiversity concerns have guided the work of the Arctic Council as regards generating new knowledge on Arctic biodiversity – knowledge that in return has proven very useful for the various global biodiversity-related regimes and has contributed to greater global awareness on Arctic biodiversity. Lacking executive powers, however, the Arctic Council has not been in a position to take more direct measures in response to international commitments on the conservation and sustainable use of biodiversity.

4. Recent developments in the Arctic Council outside the biodiversity context

Many of the deliverables of AC working groups can be classified as technical and/or scientific knowledge generation and dissemination, as is the case with CAFF deliverables. However, some areas outside CAFF have moved beyond this point. Above all this applies to the conclusion of two legally binding agreements: on aeronautical and maritime search and rescue (2011)[69] and oil spill preparedness and response (2013).[70]

A further indication is the establishment of time-delimited task forces with specific action-oriented mandates and expected outputs. One example here is the Task Force for Action on Black Carbon and Methane, established by the Arctic Ministerial in 2013 in Kiruna, Sweden, to develop arrangements on actions for achieving greater reductions of emissions in the Arctic. This is the result of an Arctic Council Framework for Action on Enhanced Black Carbon and Methane Emission Reductions, which includes actions at the national, pan-Arctic and global levels.[71] At the Arctic Ministerial in 2013, a task force was mandated to prepare a legally binding agreement on Arctic scientific cooperation. Its mandate was renewed at the 2015 Arctic Ministerial in Iqaluit, Canada.[72]

Also at the Iqaluit Arctic Ministerial, a task force was established on Arctic marine cooperation.[73] Its mandate is to consider future needs for strengthened cooperation on Arctic marine areas as well as mechanisms for meeting these needs, and to make recommendations on the nature and scope of any such mechanisms. This includes considerations on whether a cooperative mechanism should be formed within or outside

July 2015: https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arctic-fisheries-16-july-2015.pdf.

[69] *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic:* http://library.arcticportal.org/1709/1/Arctic_SAR_Agreement_EN_FINAL_for_signature_21-Apr-2011.pdf. The agreement entered into force in 2013.

[70] *Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic:* http://arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/. This agreement has not yet entered into force.

[71] Black Carbon and Methane Expert Group website: https://oaarchive.arctic-council.org/handle/11374/1167.

[72] Iqaluit Declaration, para. 44. https://oaarchive.arctic-council.org/bitstream/handle/11374/662/ACMMCA09_Iqaluit_2015_Iqaluit_Declaration_low_resolution_web.pdf?sequence=1&isAllowed=y.

[73] Ibid., para. 43.

the existing structure of the Arctic and whether it should be based on a legally or non-legally binding agreement.[74]

5. General discussion and conclusion

Here we may note one key message from the December 2014 Arctic Biodiversity Congress: 'there is a wide gap between what we know and how we act. Although research to fill gaps in knowledge is still needed, there is enough knowledge about what needs to done to act now.' As noted in the report of the co-chairs, 'A companion to that message is the urgent need to shorten the time it takes to for scientific understanding to be translated into policy in the Arctic.' [75] This statement reflects a basic dilemma for the Arctic Council: First-class scientific work has been generated, documenting with ever-greater strength that actions on the ground are needed to reduce the loss of Arctic biodiversity. However, the cooperation mechanisms for translating these scientific findings into coordinated and joint action by the Arctic states are not in place.[76]

During the first years, Arctic Council cooperation under CAFF seemed to include an executive and normative element, as expressed not least through the establishment of a Circumpolar Protected Area Network, which was considered a cornerstone of CAFF activities.[77] However, at that time the AC and CAFF were not able to handle issues of such a political nature affecting the territorial sovereignty of the Arctic states, and CAFF gradually developed into a body for mainly technical and scientific cooperation. [78]

The value of this cooperation cannot be underestimated. Through its monitoring and assessments, CAFF has contributed considerably to improving the knowledge base on Arctic biodiversity. CAFF has also delivered consistent high-quality communication activities and materials on Arctic biodiversity to a variety of audiences. International processes and fora have been provided with new knowledge, which has helped to increase international attention on issues of importance to Arctic biodiversity. This has put Arctic biodiversity in a global context – an achievement comparable to the catalytic achievements of AMAP in informing and influencing global processes on the severe effects on the Arctic environment of climate change and heavy metal and chemicals contamination. The high attendance rate and diversity of participants at the 2014 Arctic Biodiversity Congress attest to this.

A major challenge for the AC and CAFF today is how to best harness the knowledge and capacity to help enable informed, timely and effective decisions in the face of cumulative and accelerating change – as called for by the Arctic Biodiversity Assessment (ABA) and by decisions under the international agreements with which CAFF claims to be closely aligned. In terms of commitments, these agreements cover far more than generating knowledge on and raising awareness on biodiversity. They also require direct measures to tackle the causes of biodiversity loss – both the direct causes and the root causes – measures that the AC and CAFF are currently not authorized to take. In dealing with these

[74] Arctic Council, 2015. Senior Arctic Officials' Report to Ministers. p. 78. https://oaarchive.arctic-council.org/bitstream/handle/11374/494/ACMMCA09_Iqaluit_2015_Iqaluit_SAO_Report_to_Ministers_formatted_v.pdf.pdf?sequence=1&isAllowed=y.

[75] Smith et al. 2014 (see fn 31 above).

[76] Similarly, Koivurova argues: *'the assessments the council has sponsored seem increasingly to challenge the very fundaments of the cooperation'*. (T. Koivurova, 2010, Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance, *Polar Record* 46, 146–156).

[77] O.S. Stokke, G. Hønneland and P.J. Schei, 2007, 'Pollution and conservation', in Stokke and Hønneland (eds) 2007. *International Cooperation and Arctic Governance.*

[78] Koivurova, 2009, Governance of protected areas in the Arctic (fn. 7 above).

causes, the role of the AC and CAFF at the pan-Arctic level has been at best indirect, through generating new knowledge. To what extent has the work of CAFF influenced individual Arctic states and other relevant actors in their actions for Arctic biodiversity? That is an obvious field for further research.

The discourse on strengthening Arctic biodiversity management largely mirrors the general discourse on strengthening the Arctic Council and giving it more decision-making power, as propounded by scholars and NGOs, but also by actors like the European Parliament. Proposals have been made for replacing the AC's 'lightweight' non-regulatory statutes with an overarching Arctic treaty regime, in some cases referring to the Antarctic Treaty System as the inspiration. [79] As much AC cooperation concerns environmental protection, this would be likely to feature prominently in such an overall treaty, including provisions for safeguarding Arctic ecosystems and biodiversity. Time may be working for such a treaty solution: in recent years, the Arctic has been rising higher and higher on the foreign policy agendas of Arctic and non-Arctic states alike.[80] However, such a general transformation of the Arctic Council is not under discussion at the moment, nor are there any no signs that it will be in the near future.

Instead, AC has moved in a more policy-making and normative direction through issue-specific regimes, like the conclusion of legally binding agreements on Search and Rescue in 2011 and Oil Spill Preparedness and Response in 2013.[81] Although these agreements are very general in terms of state obligations, they hold important symbolic value and the potential to set a precedent for binding agreements in other areas. [82] The two agreements seem already to have influenced the Council, through the mandate set by the 2015 Iqaluit Declaration, for task forces to continue to prepare a legally binding agreement on Arctic scientific cooperation and to consider the need for a pan-Arctic cooperation mechanism to protect the Arctic marine environment – an agreement that may be legally binding.

On that basis, would it be feasible to work towards another legally binding agreement to protect Arctic biodiversity? One challenge here is the broad scope of biodiversity and its overlap with several AC thematic areas on which activities of various types may already have been initiated. These include the 2013 oil spill agreement and the current process of considering an Arctic marine environment mechanism – both of which are highly relevant for Arctic marine biodiversity. In that light, it would seem more realistic to continue the current trend whereby binding agreements evolve in piecemeal fashion within more limited and specialized areas,

[79] European Parliament, Resolution of 9 October 2008 on Arctic governance, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-474. L. Nowlan, 2001. Arctic Legal Regime for Environmental Protection, *IUCN Environmental Policy and Law Paper* No. 44. http://www.iucn.org/themes/law/info04.html; also P. Sands, *Principles of International Environmental Law* (second edition). Cambridge University Press 2003: 731. On the discourse in general, see T. Koivurova (2005) 'Environmental Protection in the Arctic and Antarctic: Can the Polar Regimes Learn from Each Other?', *International Journal of Legal Information, 33* (2): 204–218, http://scholarship.law.cornell.edu/ijli/vol33/iss2/5 ; T. Koivurova 2010. 'Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance', *Polar Record, 46* :146–156; Kankaanpää and Young 2012, 'The effectiveness of the Arctic Council' (fn 7 above).

[80] S.V. Rottem, 'A Note on the Arctic Council Agreements'. *Ocean Development and International Law*, Vol 46, No 1, 2015, pp. 50–59.

[81] Although the two agreements have been signed by the eight Arctic states, they do not formally constitute Arctic Council proceedings, as the Council has no formal authority to make decisions legally binding on its members.

[82] Rottem, 2015; Kankaanpää and Young, 2012

while making sure that biodiversity concerns are properly reflected. That would also be in excellent agreement with the CBD and ABA objectives of promoting biodiversity mainstreaming. Such agreements could be directly under AC framework, or outside as regional agreements under international regimes (as with the Polar Code under IMO) but still with AC serving a role as regional mechanism. One such agreement could concern the establishment of an Arctic protected areas network, thereby reviving an early flagship theme of CAFF. The issue of marine protected areas could be dealt with in the AC task force on marine cooperation.

Legally binding agreements are not a prerequisite for strengthening Arctic biodiversity management, as this could also be achieved through the introduction of 'soft-law' instruments, often a first step towards legally binding instruments – and perhaps, in the Arctic context, the most practical, realistic and quickest way to strengthen management and policy-making. There is no official definition of the 'soft law', but a very broad and simple understanding refers to normative provisions in non-binding texts.[83] Soft law is often expressed through codes of conduct, guidelines, standards etc. In the literature, Arctic cooperation has been widely regarded as already building on soft-law instruments,[84] but recent CAFF cooperation on biodiversity – with the notable exception of the 2013 ABA policy recommendations – can hardly be classified as soft law, given the strong focus on assessing, monitoring and collecting data and lack of normative instruments. An example of a more typical soft-law instrument under the AC, and which could inspire biodiversity-related instruments in its design, is the Arctic Council Framework for Action on Enhanced Black Carbon and Methane Emissions Reductions, adopted by Arctic ministers in 2015.

The Arctic Council and its working group on the Conservation of Arctic Flora and Fauna should continue to do what they are best at doing as regards biodiversity: generating scientific knowledge on the state of Arctic biodiversity and acting as a catalyst within and beyond the circumpolar region. However, when this knowledge clearly points to the need for coordinated or joint solutions to protect Arctic biodiversity, instruments – hard or soft – should be developed for action. Indeed, recent developments under the Arctic Council have paved the way for precisely such types of instruments.

[83] D. Shelton, 2000., ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, Oxford: Oxford University Press.

[84] Koivurova, 2005.