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## European Union Actorness in Arctic Governance

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# Abstract

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This Working Paper sheds light on the role and influence of non-Arctic actors<sup>1</sup> in Arctic governance. Specifically, it looks at various factors that enable or impede stakeholder collaboration in the development of sustainable governance frameworks for which various stakeholder groups from within and outside the Arctic region must be engaged.<sup>2</sup> The two illustrative cases considered here are the European Union's (EU) involvement in black carbon reduction and in the management of fisheries in the Central Arctic Ocean. By comparing these two cases, we gain a good sense of the EU's varying degree of actorness in Arctic issues within the context of an increasingly complex Arctic institutional framework. This in turn reveals enabling and constraining factors of non-Arctic actor engagement in Arctic governance.

The paper shows that the EU strives to influence Arctic governance across different policy fields. The degree of actorness achieved by the EU (understood as the institutional involvement in regional regulatory arrangements that are part of the Arctic regime complex) varies significantly across these different fields. It also presents contradictory evidence of EU Arctic engagement, with the EU emerging as a strong actor in an area where the Union has no exclusive competence (i.e. climate change), but displaying weak actorness in an area where we would expect the EU to take on a strong role on the basis of its exclusive competence (i.e. the conservation of marine biological resources). The paper finds that the degree of EU actorness depends firstly on the EU's internal consistency in a respective policy field, and secondly on the interests of the major relevant Arctic actors and the benefits that they expect to draw from cooperation.

<sup>1</sup> The term "non-Arctic actors" is applied here to state and non-state actors that are not members of the Arctic Council and have no territory above the Arctic Circle.

<sup>2</sup> See the IASS project "SMART – Sustainable Modes of Arctic Resource-driven Transformations". Available at: <http://www.iass-potsdam.de/en/content/sustainable-arctic-futures-regional-and-global-challenge> (last accessed on 12 July 2016).

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# 1. An ambitious actor in a complex region

Ever since Oran Young introduced “The Age of the Arctic” in 1985, the range of institutional arrangements operating in the Arctic region has attracted considerable scholarly attention (Young 1985). The Arctic has always played an important role in the field of global climate and environmental policy, and its significance has grown within the context of global warming. Over a decade ago, the Arctic Climate Impact Assessment showed that the presence of greenhouse gases in the atmosphere results in rising average global temperatures, with particularly strong impacts in the Arctic (ACIA 2004: 2). As the polar ice cap continues to shrink, the links between Arctic transformations and their global causes and consequences have become increasingly evident (AMAP 2012: v). With stakeholders residing inside and outside the region contributing to the transformation of the Arctic, driven not least of all by the growth in opportunities for economic development created by its increasing accessibility, the region’s role in fighting global climate change and developing sustainable approaches to the exploitation of living (e.g., fisheries) and non-living (e.g., oil and minerals) resources is becoming ever more prominent (Heininen 2010: 91; Keil 2014: 163).

The substantial growth of interest in the region on the part of a large number of international actors gives rise to the need for a more robust governance system for the Arctic (Young 2012a: 75). This could be addressed by the creation of an Arctic regime complex: a “mosaic of arrangements” (ibid.: 81), ranging from fully integrated to more fragmented elements, which could be managed by different institutions with overlapping sets of members. The regime complex could incorporate, for instance, regional environmental regulations on soot emissions, but also fisheries regulations for specific parts of the Arctic

Ocean that would bind both coastal states as well as any other state fishing in the Arctic (ibid.). This highlights the linkages between Arctic and non-Arctic regions and, specifically, their political, economic, and social interactions, which have been largely neglected in research.

This paper aims to address this gap in the research by analysing the engagement in Arctic governance of the EU, a non-Arctic actor to which a major role in current and future Arctic governance has been ascribed (Koivurova 2009, 2010; Bailes 2010; Stepien/Koivurova 2015). Although the EU’s role in external relations has been subject to academic analysis (Groen/Niemann 2010: 2), the lack of clear criteria for assessing actorness (and non-actorness) (Jupille/Caporaso 1998: 213) makes the assessment of EU actorness a challenging task. In this analysis, the EU’s *actorness* is understood as the *degree of institutional involvement*, defined as the participation in issue-specific arrangements and regional regulatory bodies that are part of the Arctic regime complex.

This paper rests on the assumption that Arctic states are motivated to assign actorness within regional institutions by the prospect of economic gains. Acting as gatekeepers, the Arctic states grant or deny the EU access and competence in core Arctic governance forums in line with their interests. It is further hypothesised that the degree of congruence (internal coherence) between the external policies of the three EU Arctic states (Denmark, Finland and Sweden) and the European Union is crucial to its the Union’s actorness in any given policy field (Bretherton and Vogler 1999: 38; 2006: 30).

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## 2. A challenging playing field for the EU

While the Arctic is a distinct element within the global system, the governance of Arctic affairs is primarily overseen by the five Arctic coastal states (Canada, United States, Russia, Norway, and Denmark), also known as the Arctic Five, or A5. These countries play a special role in Arctic governance due to their direct access to the Arctic Ocean. For non-Arctic actors, including the EU, the Arctic constitutes a more challenging playing field (Wegge 2011: 173). The EU has not, for example, been granted official observer status in the Arctic Council to date – a circumstance that is widely perceived to be an outcome of the Union’s decision in 2009 to ban all trade in seal products within the EU.<sup>3</sup> This is illustrative of the difficulties faced by the EU as it struggles to gain a foothold in Arctic governance. Since its first Arctic Communication in 2008, the EU Commission has persistently claimed to be increasing its engagement in policymaking around Arctic matters (European Commission 2008; 2012b). The impression remains, however, of the EU as an “outside actor” (Röver/Ridder-Strolis 2014: 5) that is not “accepted as part of the governance system in the broader Arctic region” (Bailes/Heininen 2012: 96).

Three EU members – Denmark (through Greenland),

Finland, and Sweden – possess territory north of the Arctic Circle and are member states of the Arctic Council. Moreover, the EU is linked to Iceland and Norway – also Arctic Council members – through the European Economic Area (EEA) (Degeorges 2013: 2). As a consequence, the EU influences Arctic affairs in various ways that are not necessarily part of its official Arctic policy but which may be related to its internal market or the bilateral cooperation with Arctic states. This is illustrative of the interplay between the governance processes of Arctic-specific and Arctic-relevant actors. It also underscores the importance of the EU’s acceptance as a relevant actor in the Arctic in addition to its member states (Gehring et al. 2013: 851).

A closer look at different aspects of Arctic governance reveals that the EU’s involvement varies sharply across different policy areas. While the Arctic states have welcomed the involvement of the EU in negotiations relating to environmental policy, most notably on climate change prevention, the EU has encountered significant resistance around economic and resource-related issues, especially with regard to commercial fishing in the Central Arctic Ocean.

<sup>3</sup> The ban on the trade in commercial seal products within the EU provoked fierce opposition from some Arctic stakeholders, especially Canada (SADA 2014: 13–14).

### 3. Two Arctic issues of global concern

With respect to global climate change, two of the currently most important issues in Arctic politics are the reduction of black carbon and the management of fish stocks in the Central Arctic Ocean. Black carbon, which is a major component of soot, is emitted into the atmosphere through the incomplete combustion of fossil fuels. These fine, strongly light-absorbing particles are classified as a short-lived climate-forcing pollutant (SLCP) and have a powerful impact on climate over a relatively short lifetime (EPA). Black carbon particles are transported over long distances to the Arctic region, which is not itself a significant source of black carbon emissions. The EU's black carbon footprint in the Arctic is substantial and accounts for approximately 59% of black carbon depositions on Arctic surfaces (Maurer et al. 2012: 5). The EU also influences the abundance of fish stocks in the Arctic Ocean through its economic and fisheries policies and the consumption of large amounts of Arctic fisheries products (SADA 2014: xviii). In light of the links between the EU's socio-economic behaviour and the biophysical changes taking place in the Arctic region, a case can be made for the involvement of the EU in problem-solving mechanisms established to support sustainable development in the Arctic region. Two exemplary efforts to establish governance regimes that account for these linkages are directed towards the reduction of environmental pollution such as black carbon and the management of living marine resources in the Arctic Ocean (TFSLCF 2013: 2; Wegge 2015: 331).

**Black Carbon:** Black carbon concentrations in the atmosphere are harmful to both human health and the environment. The deposition of black carbon on Arctic snow and ice is believed to accelerate their melting (Young 2012b: 407). The majority of black

carbon affecting the Arctic region originates from external sources, with the EU ranking high among them (AMAP 2012: 74; Maurer et al. 2012: 5). Finding and implementing viable solutions to this issue will therefore require an encompassing dialogue and cooperation between Arctic and non-Arctic actors (including but not limited to the EU). Although it has not yet been formally accepted as an accredited observer to the Arctic Council, the European Commission contributed to the Arctic Council's Task Force on Black Carbon and Methane (TFBCM), which discussed strategies and targets to reduce black carbon emissions. The Commission's involvement granted the EU an opportunity to influence Arctic governance in the field of environmental protection by contributing to negotiations. These led to the development of the "Arctic Council Framework for Enhanced Action to Reduce Black Carbon and Methane emissions" (Arctic Council 2015b: 21), which commits Arctic States to promote actions and mechanisms. It also engages Arctic Council observers, for example by calling upon states to develop and improve black carbon emission inventories, participate in relevant meetings, and submit regular national action reports to the Arctic Council Secretariat. In September 2015, the EU submitted its report on policy actions relevant to the emissions reduction framework, alongside the Arctic Council observers France, Japan, Poland, Spain, UK, Republic of Korea, India, and Italy (Arctic Council 2015c).

**Management of Arctic fisheries:** The combination of rising average temperatures and increased accessibility (ACIA 2004: 2) are likely to spur economic activity in the Arctic as states seek to benefit more from the region's living and non-living resources (Keil et al.

2014: 4). Although much uncertainty surrounds the prospects for new fishing opportunities in the Arctic Ocean, which are unlikely to arise over the short- to mid-term (Babcock et al. 2013: 355), the Arctic Ocean is increasingly attracting the attention of non-Arctic states interested in developing these new resources and engaging in their trade as partners or licence holders (Kim/Morrison 2012: xiv; Maurer et al. 2012: 25). Parts of the Arctic Ocean belong to the high seas, where the freedom of the seas<sup>4</sup> applies and no single state has national jurisdiction. Attempts are being made to ensure the sustainable usage of resources in these areas through international agreements. Such arrangements are of great concern to Arctic and non-Arctic actors alike, including the EU as a major consumer of Arctic fish resources (SADA 2014: xviii). While Arctic fishing by EU member state flagged vessels is negligible<sup>5</sup>, the EU is the largest single market for imported fish<sup>6</sup> and the primary destination for fisheries exports by Arctic states such as Norway and Iceland (Rudloff 2010: 12).<sup>7</sup> To ensure sustainable fishing and ocean management practices in the Central Arctic Ocean, an effective agreement would need to involve all actors with fishing interests in the area. The EU supports the establishment of a regulatory framework for the currently unregulated areas of the Arctic high seas (European Commission 2008: 7–8). Despite this, the EU has not been able to play a decisive role in shaping policy around the development of a multilateral agreement on the management of fisheries in the Central Arctic Ocean in interplay with Arctic coastal states. Instead, this issue was initially discussed in meetings of the A5 at the exclusion of the EU and other non-coastal actors, which were only invited to participate in the broader process once the A5 had negotiated a draft agreement.

Given the global dimension of these challenges, the European Union should rightfully be considered a

relevant stakeholder in the negotiation of governance frameworks. Its actual involvement as an actor in the Arctic regime complex presents an interesting puzzle, however. While the EU is evidently equipped with the internal capacity necessary to play an active role in both cases under study, and although the international character of these issues requires the recognition of the EU as a contributor in both policy fields, it has so far been unable to achieve the same level of engagement across these issues.

In both cases almost similar internal preconditions for EU engagement exist. The lack of success with which the EU has met with respect to the management of high seas fisheries in the Central Arctic Ocean is all the more astonishing given the Union's exclusive competence over “the conservation of marine biological resources under the common fisheries policy” (TFEU 2012: Art. 4.2). The reduction of pollutants, on the other hand, falls within the scope of environmental policy, and is a competence that the EU shares with member states (*ibid.*: Art. 3.1). Vertical coherence, a measure of the commitment of EU member states to common EU policies in their external bilateral relations, “is highest in areas [...] where there is exclusive EU competence” (Bretherton/Vogler 2013: 382). One would therefore expect areas of shared competence to be characterised by vertical incoherence, in which the policies of different EU member states are not consistent and complementary to EU policies. Since coherence is a commonly applied criterion for determining EU actorness and success of engagement, this leads one to assume that the EU would be capable of a greater degree of engagement in the field of fisheries than in the field of black carbon reduction. Empirical findings indicate the opposite however. In considering this puzzle, this paper fills a critical gap in the analyses of the EU's international actorness, which have thus far paid little attention to distinct issue areas in specific regional contexts.

<sup>4</sup> Article 87 of UNCLOS states that the “high seas are open to all States, whether coastal or land-locked” (UNCLOS 1982: Art. 87). The freedom of the high seas includes, among others, the freedom of navigation, overflight, fishing, and scientific research (*ibid.*).

<sup>5</sup> The EU accounts for only 4% of all fish caught in the Arctic (Rudloff 2010: 12).

<sup>6</sup> The EU remains the largest single market for imported fish worldwide and its dependence on imports continues to increase. In 2012, it accounted for 36% of total world fishery imports (or 23% when excluding EU intraregional trade) and this volume was valued at US\$47.0 billion (EUR42.0 billion) (FAO 2014: 50).

<sup>7</sup> The EU imports 39% of the total fish exports of the Arctic countries of Iceland, Norway, Canada, the US and Russia (Cavaliere et al. 2010: 55).

# 4. EU engagement in black carbon reduction

## 4.1 The effects of climate change and black carbon in the Arctic

It is well established that the warming of the climate system is unequivocal and that substantial Arctic warming has occurred since the mid-twentieth century (IPCC 2013: 9). The SWIPA assessment<sup>8</sup> has reaffirmed the alarming melting of Arctic sea ice over the last decade (AMAP 2011: 3). As the Arctic is an especially fragile region with unique flora and fauna, the effects of climate change are much more pronounced here (SADA 2014: 21). According to research, the region experiences warming at a rate of twice the global average as a result of so-called “Arctic amplification” (ibid.: 19). This accelerated warming is the result of feedbacks between the cryosphere<sup>9</sup> and the climate system (AMAP 2011: 4): With their darker surfaces, ice-free land and sea areas absorb more of the sun’s energy than ice-covered surfaces. This in turn further accelerates the melting of sea ice (Riedel 2014: 29). The capacity of white Arctic ice and snow surfaces to reflect solar radiation back into space (known as the albedo effect) is diminished as these surfaces are covered by soot deposits or replaced by darker bare land as a result of melting processes (Young 2012b: 407).

Arctic amplification is driven by greenhouse gas and aerosols emissions (SADA 2014: 24). Black carbon in particular is assumed to play an important role in Arctic warming (Tedsen/Cavaliere 2014: 258). Through its physical consistency, black carbon darkens sur-

faces and thus absorbs light (Riedel 2014: 29). The deposition of black carbon on Arctic ice and snow is assumed to account for at least 50% of the temperature increase in the Arctic (Young 2012b: 407). Black carbon drives not only feedback processes in the atmosphere, which it warms directly, but also on the cryosphere where black carbon deposits absorb solar radiation and accelerate the melting rate (Bond et al. 2013: 5384; SADA 2014: 24). It is estimated that those feedback loops caused by black carbon depositions have a magnifying effect on global climate change processes (Young 2012b: 407). Whereas reductions in the emission of long-lived greenhouse gases such as carbon dioxide will only have an effect in the distant future, reducing emissions of SLCPs such as black carbon would directly affect the albedo and could slow Arctic warming in the short term (MACEB). Black carbon is therefore considered to be an “actionable harm” (Young 2012b: 409) that can be addressed through legal and political responses.

Black carbon emissions are primarily of anthropogenic origin and are the product of various combustion processes (Bond et al. 2013: 5384). The specific sources vary from region to region,<sup>10</sup> but the major global sources include diesel engines, industry, residential solid fuel, and open burning (Bond et al. 2013: 5385). Very few sources are located within the Arctic region, and black carbon deposits in the region are overwhelmingly the result of long-range atmospheric transport (AMAP 2012: 74). Emissions originating in

<sup>8</sup> SWIPA (Snow, Water, Ice and Permafrost in the Arctic) is an assessment coordinated by the Arctic Monitoring and Assessment Programme (AMAP), one of the Arctic Council’s six working groups.

<sup>9</sup> “‘Cryosphere’ is the scientific term for that part of the Earth’s surface that is seasonally or perennially frozen. [...] The cryosphere is an integral part of the climate system, and affects climate regionally and globally.” (AMAP 2011: 3)

<sup>10</sup> Coal and biomass combustion are responsible for up to 80% of emissions from Asia and Africa. In Europe and the Americas diesel engines are responsible for the majority of emissions (about 70%) (Bond et al. 2013: 5385).



the Arctic through shipping activities and gas flaring constitute a comparatively small source and account for an estimated 9% of black carbon mass emissions (ibid.; Tedsen/Cavalieri 2014: 258). The significant contribution of the EU to global soot emissions is thus a major argument for its involvement in multilateral efforts to reduce black carbon.

#### **4.2 Arctic and non-Arctic cooperation in the TFBCM**

In 2013, the Arctic Council Task Force on Black Carbon and Methane (TFBCM) was established to find mechanisms to reduce black carbon and methane emissions in the Arctic (Arctic Council 2015a). The framework document represents a high-level political commitment on the part of the Arctic states. While the document is not legally binding under international law, it aims to promote national, regional, and global action to reduce black carbon emissions (Arctic Council 2015b: 21). An important basis for the EU's engagement in the TFBCM is the task force members' commitment to involve both Arctic Council observers and other affected and affecting stakeholders in the mitigation processes (TFBCM II 2013: 6). These observers, who were invited to comment on the framework document during the negotiation process, subsequently proposed to submit periodic reports on their national black carbon emissions (TFBCM IV 2014: 2).

A representative from the Institute for Environmental Sustainability of the EU Commission's Directorate General Research represented the EU as an observer to the TFBCM process (Personal Interview). The EU participated in four of the six TFBCM meetings, which provided a forum for informal discussions with Arctic states. The EU was permitted to follow negotiations at these meetings, to respond to the questions of Arctic Council members, and to make statements at the discretion of the chair (ibid.). The comments of the EU representative and other observers were included in the minutes of the meeting (ibid.). With its presence in the TFBCM, the EU makes use of one of the Arctic Council formats "where observers really have any influence" (Personal Interview). Although it

was not granted official observer status, the EU was afforded a prominent role in the task force's discussions.

In consideration of its member states' large environmental footprint in the Arctic, the EU has proposed a variety of actions and has declared the reduction of Arctic black carbon to be a key policy goal (Cavalieri et al. 2010; Cavalieri 2014). Moreover, the EU has participated in and continues to play a prominent part in various international efforts that address Arctic environmental issues. A working document<sup>11</sup> published by the Commission in 2012 lists a large number of activities in which the EU is involved, including the Northern Dimension Environmental Partnership, through which the EU supports environmental projects in the Arctic (European Commission 2012a: 7). In 2012, the European Commission joined the Climate and Clean Air Coalition to Reduce SLCPs (CCAC), which targets black carbon and methane, and supplements global actions to carbon dioxide reduction (ibid.: 5; Cavalieri 2014). The EU also contributes to efforts to raise awareness and generate knowledge about climate change in the Arctic and the effects of black carbon in the region through research programmes and cooperation, monitoring, environmental technologies, and mapping and assessments (European Commission 2012a). Against this background, environmental policy figures as an entry point that enables the EU to increase its visibility and influence on matters of Arctic governance (Maurer et al. 2012: 18).

#### **4.3 The EU's contributions to black carbon reductions**

The EU's participation in the TFBCM and its relatively high degree of engagement can be explained by its potential to contribute to the Arctic Council efforts on black carbon reductions.

The EU's ambitions and leading role in mitigating climate change and promoting sustainable development in the Arctic (European Commission 2012b: 1; 2008: 3), as well as its large experience and recognised role in reducing SLCPs on a global level, constitute valuable contributions to the Arctic states' policy goals within

<sup>11</sup> The European Commission Joint Staff Working Document is titled "The inventory of activities in the framework of developing a European Union Arctic Policy" and accompanies a Communication to the Parliament and the Council titled "Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps".

the Arctic Council. Several EU member states (e.g. Germany and the UK) have made specific mention of the effects of black carbon and their national responsibility to reduce emissions in their Arctic strategies, and support the clear commitment expressed by the EU in this regard (Auswärtiges Amt 2013: 8; Foreign and Commonwealth Office 2013: 18)<sup>12</sup>. In addition to these efforts on the global level, mutual learning processes between the EU and the Arctic states on coping with rapid environmental change could also contribute to the Arctic regime and benefit regional approaches to adaption (Hoel 2009: 449).

There is a growing demand for scientific research on change processes in the Arctic and the EU is well placed to address this through its substantial research funding capacity (Hoel 2009: 449; Personal Interview). In areas such as energy consumption or alternative energy, collaboration of Arctic states with the EU is expected to continue (ibid.). Measures include for instance infrastructure funding through the framework programme Horizon 2020 or the European Research Infrastructure Consortia as well as EU-funded satellite programs, data collection and the identification of specific climate indicators for the Arctic (SADA 2014: xvii).

In the TFBCM, the Arctic Council members and non-Arctic states have a common understanding of the black carbon problem and the role of the Arctic as an indicator of global climate change. A consensus exists within the TFBCM as to the sources of contaminants as well as the causal relationship between black carbon emissions outside the Arctic and environmental impacts within the Arctic (Personal Interview). The involvement of the EU and other major polluters such as China and India is thus accepted among the Arctic states as a promising way of dealing with black carbon, because changes in their domestic policies have a significant impact in the Arctic (ibid.).

For the EU to be visible and present in the Arctic, it needs to be both aware and sensitive to changes in the region (Personal Interview). The EU is aware of the prevalent Arctic discourses on black carbon, not only through its involvement in the work of the Arctic Council, but also through its participation in efforts to identify emissions sources outside the Arctic region and to develop appropriate solutions (ibid.). While most Arctic states would be reluctant to see the EU involved in the regional day-to-day governance of the Arctic, they welcome the work of the EU and its relevant policy instruments (Personal Interview).

In sum, as black carbon reduction necessitates the engagement of non-Arctic actors, the EU and other non-Arctic states are welcomed to cooperate in the TFBCM. The Arctic states have an interest in sharing the burden of developing a common approach to solving this collective action problem. The EU's involvement in the TFBCM is accordingly welcomed, as it is willing to engage in mitigation strategies and can make significant contributions through its expertise and promotion of Arctic research. Moreover, the Arctic states recognise that non-Arctic states contribute to the region's governance through various national policies and international instruments and that these policies provide international benchmarks against which they might also measure their performance. As a result of these factors, the EU has attained a relatively high degree of actorness and engagement in Arctic environmental affairs – a policy field of shared competence between the EU and its member states. As is shown in the following, the EU has struggled to achieve a similar degree of actorness in the field of Arctic high seas fisheries management, where it enjoys exclusive competence.

<sup>12</sup> The EEA Joint Parliamentary Committee makes clear that environmental protection, carefully balanced with economic activity, is also a key issue for the Arctic EEA members Denmark, Finland, Iceland, Norway and Sweden (EEA 2013: 3–4). Sweden in particular promotes climate change mitigation with a focus on reducing SLCP emissions for the benefit of the Arctic (Smieszek 2013: 172).

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# 5. EU engagement in high seas fisheries management

## 5.1 A new arrangement for future Arctic Ocean fisheries

Although at present no commercial fisheries occur in the Central Arctic Ocean (Fluharty 2012: 157; Hoel 2009: 450; Molenaar 2014: 105), some neighbouring fishing areas<sup>13</sup> in the southern Arctic region are inhabited by large fish stocks that are of commercial interest (Weidemann 2014: 30). A key finding of the ACIA is that shifts in the Arctic eco-system induced by climate change lead to “radical changes in species composition” (ACIA 2004: 62). Some studies predict an accelerated growth of fish species (Babcock Hollowed et al. 2013: 355). Polar cod, for instance, is expected to increase in scope and extent and stands out among the few species that are also of commercial interest (Wegge 2015: 334–335; ACIA 2004: 62). An indicator for an increased abundance of fish stocks in the Arctic is the occurrence of species that usually inhabit more southerly waters<sup>14</sup> (Misund et al. 2016: 2; Berge et al. 2015). Scientists predict that the migration of relevant Arctic species will first occur in shallow waters and within the Exclusive Economic Zones (EEZs) of the A5, before later occurring in the high seas (Wegge 2015: 334; Molenaar 2014: 105). This grants a special role to the coastal states in the management and exploitation of those future fisheries (Fluharty 2012: 166).

A complex web of factors, including the suitability and quality of habitat, as well as the size of the popu-

lation, influences the distribution and abundance of fish and shellfish (Babcock Hollowed et al. 2013: 355), and only fish capable of easily adapting to new living conditions are expected to expand or move from sub-Arctic to Arctic areas. This calls into question predictions of an abundance of new fishing opportunities (ibid.: 355–356, 360). How living marine species will react to warmer temperatures and changes in essential habitat features cannot currently be predicted (ibid.: 366). Some species, such as northern shrimp, are likely to be negatively affected by the changes and are expected to decrease in abundance (ACIA 2004: 62). Whether commercial fishing activities in this area will remain viable is uncertain. According to some Arctic shipping analyses, the long distances between ports and fishing areas, coupled with a lack of infrastructure, processing, and emergency response capacities, and the comparatively high costs arising from insurance and permits, are likely to make Arctic fishing a risky affair (Raspotnik/Rudloff 2012: 7; Fluharty 2012: 166).

Despite these uncertainties, the effects of climate change have put pressure on regulators to fill gaps in the existing legal and policy frameworks in order to prevent illegal, unreported and unregulated (IUU) fishing in the Central Arctic Ocean and to ensure that fish stocks are managed sustainably (Rudloff 2010: 4; Molenaar 2014: 122). Currently, the United Nations Convention on the Law of the Sea (UNCLOS) provides a regulatory framework that estab-

<sup>13</sup> These areas are the Bering and Barents Sea, Baffin Bay, and the coasts of East and West Greenland (Molenaar 2014: 105).

<sup>14</sup> Blue mussels, for instance, have spread to the fjords of western Svalbard with the rise of average water temperatures there in recent years (Misund et al. 2016: 2). Atlantic mackerel has continued its northwards expansion and was found in Arctic waters for the first time in 2013 (Berge et al. 2015).

lishes maritime zones and governs the use of marine resources. Under UNCLOS (1982: Art. 3) the national jurisdiction of a littoral state extends up to 12 nautical miles beyond its baseline. Within this area, the state exercises “full regulatory powers, including absolute rights over fish and seabed resources” (Wegge 2015: 333). Beyond this area, up to 200 nautical miles, littoral states can establish an Exclusive Economic Zone (EEZ) where they can exercise sovereign rights over natural resources (UNCLOS 1982: Art. 55–57). The waters beyond the EEZs are defined as high seas. While regional arrangements, predominantly regional fisheries management organisations (RFMOs), exist for some areas, those parts of the Central Arctic Ocean still covered by ice are currently unregulated<sup>15</sup> (Weidemann 2014: 139; Hoel 2009: 451; Rudloff 2010: 9). These regulatory gaps could facilitate overexploitation of fish stocks through IUU fishing if populations reach commercially viable levels (Molenaar 2014: 106, 110; Hoel 2009: 451–452).

### 5.2 Exclusive cooperation in high seas fisheries management

A first attempt to regulate fisheries management in the Central Arctic Ocean was undertaken by the A5, who started negotiations for an agreement in 2008. Their exclusive “ad hoc institutional set-ups” (Keil 2012: 14) took place outside the framework of the Arctic Council and without the participation of the remaining Arctic Council member states, permanent participants, or observers. The A5 justified this with their “stewardship role” (Ilulissat 2008: 2) in protecting the Arctic Ocean. From a legal point of view, a “coastal states-only *inter se* approach” (Molenaar 2014: 119) is compatible with international law, but would be ineffective in preventing overfishing by fishing vessels flagged to third-party states.

In July 2015, the A5 signed a non-binding “Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean” and

implemented interim measures that authorise commercial fishing only in areas covered by an RFMO (Government of Norway 2015; Nielsson/Magnusson 2015). Finland, Sweden, Iceland, along with the EU and other Arctic stakeholders, were not invited to join negotiations. Although the EU clearly stated its wish to be involved in the A5’s negotiations, it was not even granted access to information circulated during the negotiations preceding the signing of the Declaration (Personal Interview). Despite its non-binding character, the Declaration is relevant because its central ideas provided the template for a proposal presented by the USA at a follow-up meeting held in December 2015, which was also attended by delegations from the EU, China, Iceland, Japan, and South Korea. Together, these countries launched the so-called “broader process” on international fisheries regulation in the Central Arctic Ocean, which includes other states with potential fishing interests within its scope (Government of the US 2015). Whether this process will result in the conclusion of a binding international agreement or a non-binding declaration is still uncertain, and the negotiating states are yet to reach agreement on the adoption of a specific decision-making procedure (Molenaar 2016).

The exclusion of the EU from the initial negotiations stands in contrast with its engagement in Arctic fisheries and the clear position it takes on the management of marine biological resources in the Arctic Ocean. The European Commission stressed in its 2008 and 2012 communications its support for a precautionary approach to Arctic fisheries that includes the establishment of a conservation and management framework for fish stocks in the currently unregulated parts of the Arctic Ocean (European Commission 2012c: 10). The Council (2009: 3) and the European Parliament (2011; 2014) both support this precautionary approach<sup>16</sup>. Under the common fisheries policy the EU has exclusive competence in the conservation of marine biological resources. This implies that it can negotiate RFMOs on behalf of its member states and

<sup>15</sup> The mandate of the North-East Atlantic Fisheries Commission (NEAFC) covers approximately 8% of the high seas areas in the Central Arctic Ocean, the so-called “European wedge”, while the rest of the area remains without institutional coverage (Hoel 2009: 451; Molenaar 2014: 111; SADA 2014: 62).

<sup>16</sup> In a recent document, the European Parliament (2014: 9) concretely “[s]upports the initiative by the five Arctic coastal states to agree interim precautionary measures to prevent any future commercial fisheries in the high seas of the central Arctic Ocean until the establishment of appropriate regulatory mechanisms and protection”. The Council’s conclusion from May 2014 does not mention the Central Arctic Ocean in particular, but stresses that the EU should adopt policies regarding fisheries to protect the Arctic environment (Council 2014).

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has the competence to become a party in an international fisheries regime<sup>17</sup> (Koivurova 2011: 365–366).

But other options are also available to the European Union. As a market state, flag state<sup>18</sup> or port state,<sup>19</sup> the EU can exert considerable influence on regional fisheries (ibid.: 120; Raspotnik/Rudloff 2012: 30). With its immense market power, the EU can influence Arctic fisheries through the adoption of specific food safety standards for Arctic fish and fishery products (SADA 2014: xviii). It can also improve fisheries management by adjusting market-based instruments that aim at decreasing incentives for unsustainable fishery, for instance via tariff-policies accompanied by environmental sourcing standards for imported fish such as the catch certificate scheme (ibid.: Cavalieri et al. 2010: 59). Moreover, the EU engages in Arctic research by funding regional and cross-border cooperation programmes to increase data and knowledge (Commission 2012c: 8; 2014). As an example, the EU is supporting a project together with Canada and the US to advance seabed mapping of the Arctic Ocean for scientific, environmental, and navigational purposes (Personal Interview).

Iceland, Sweden, and Finland disapproved of the A5's exclusive negotiation approach and criticised it as an “attempted encroachment on their interests in the Arctic Ocean” (Baker 2013: 39). Iceland, whose EEZ extends into the Greenland Sea, demanded recognition as a coastal state and protested strongly against the establishment of this exclusive forum, which it claimed would undermine its interests in the region (Althingi 2011; Wegge 2015: 335). Finland and Sweden stated their desire to strengthen the EU's position in Arctic governance and towards other Arctic actors, and expressed support for a joint approach to policy-making that encompassed all interested (Arctic and non-Arctic) stakeholders. (Iceland Ministry for Foreign Affairs 2015, Bildt 2013: 3; Smieszek 2013: 173).

As part of the A5, Denmark was caught up in a complex constellation of competing interests. Officially, the Kingdom of Denmark supports the involvement of the EU in matters of Arctic governance, but a conflict of interest emerges when circumstances require Denmark to represent the interests of the Faroe Islands and Greenland in addition to its own interests as an EU Member State. In matters relating to the Arctic, Denmark appears to be more focussed on representing the interests of Greenland as an Arctic coastal “state”, rather than its own broader interests as a member state of the EU (Personal Interview). In its Arctic strategy, Denmark confirms that it “will retain the “Arctic 5” format [...] as a forum for issues primarily relevant for the five coastal states” (Kingdom of Denmark 2011: 52). Among the three European member states, Denmark is the state that tries hardest to act outside “the EU label” (ibid.). This is partly due to a belief that the A5 label is more valuable in the Arctic context and to Greenland's status as a non-member state of the EU. An EU representative noted critically that Denmark did not inform the EU about the state of the ongoing fisheries negotiations, although the Maastricht Treaty obliges it to do so in areas that touch upon EU competences (Personal Interview).

Denmark, together with the other four Arctic coastal states, was unequivocal in its stance on excluding other states – at least at the outset – from the negotiation process. Non-state actors such as individual scientists and NGOs were not even granted an observer status. In 2014, only the USA included representatives from the PEW Charitable Fund in its national delegation to the meeting in Nuuk (Wegge 2015: 335). At that point, the A5 did not have a common view on when to involve other actors to the process (ibid.: 336). The A5 agreed that a future management approach would have to be based on the principle of “science-based and sustainable” (ibid.) utilisation, but were also divided as to the immediate necessity of regulating fisheries in the Central Arctic Ocean.

<sup>17</sup> In exceptional cases relating to “overseas countries and territories” (Molenaar 2014: 120), member states can become simultaneously members of an RMFO alongside the EU, like for instance Denmark in respect of the Faroe Islands and Greenland.

<sup>18</sup> The EU can, for example, establish specific safety and environmental standards for EU flagged shipping in the Arctic Ocean (Koivurova 2011: 165; Raspotnik/Rudloff 2012: 30). As a flag state, it can also be held responsible for failures in regional fisheries management (Molenaar 2014: 120).

<sup>19</sup> As a port state, the EU has the right to make access to its ports conditional on certain safety and environmental standards and to take action to prevent and monitor pollution in the Arctic Ocean (Raspotnik/Rudloff 2012: 30).

Territorial and other sovereign rights appear to have been foremost among the concerns of the A5 in their negotiations. UNCLOS allows for coastal states to apply for an extension of the limits of their continental shelves beyond 200 nautical miles, the so-called “outer continental shelf” (Koivurova/Molenaar 2009: 252). Although this extension only applies to the seabed and subsoil, and does not grant the coastal state additional rights over the water column (UNCLOS 1982: Art. 77), most Arctic states have made use of this option (Wegge 2015: 333). Russia, Norway, Canada, and Denmark have (at least partially) submitted their claims to the outer continental shelf to the Commission on the Limits of the Continental Shelf (CLCS; Koivurova/Molenaar 2009: 252). It would seem then, that for geographical reasons, the A5 countries do not consider Iceland, Sweden or Finland, or indeed any other state actors, to be suitable partners for the negotiation of an agreement governing the Central Arctic Ocean (Wegge 2015: 335).

### 5.3 Few gains for the Arctic Five

The EU’s absence from the first round of negotiations on the management of Central Arctic Ocean fisheries can generally be explained by the specific nature of the issue and the strong interests and sovereignty claims of the A5.

The EU has expressed a strong commitment to sustainable development and has promoted this concept with clear ambitions internationally. This would generally favour the EU taking a leadership role in securing the sustainable management of fisheries in the Central Arctic Ocean (Bretherton/Vogler 2008: 404). Instead, the EU’s efforts to contribute to the sustainable development of Arctic fish stocks had less relevance and the A5 did not see any clear advantage in cooperating on a fisheries management agreement with the EU. Given the lack of knowledge on future developments in the Arctic Ocean, the A5 has opted to focus primarily on various sovereignty claims for extended continental shelf areas. Finland, Iceland, and Sweden’s backing for the EU’s involvement is logical given their interest in participating in the management of future Central Arctic Ocean fisheries.

The A5 have considerable interest in the marine resources in the Central Arctic Ocean. In 2012, four

Arctic coastal states (Norway (2), the United States (5), Canada (7) and Denmark (8)) were among the ten leading exporters of fish and fishery products worldwide (FAO 2014: 50). Norway, for instance, could expand its markets for fresh cod products following the species’ recovery in the Arctic, which was enabled by environmental transformation (ibid.: 49). In short, the A5’s stake in commercial fishing in the Arctic region is high. They do not have an interest in the EU or other states harvesting those fish species in the high seas area that also occur in their adjacent national maritime zones, as any reduction of those species in the high seas areas could lead to a similar decline within their national maritime zones (Molenaar 2016). The interest of these states in drafting and concluding an agreement that is to their advantage is accordingly understandable.

The A5’s strategy of excluding others until negotiations for an agreement are advanced might be related to its implementation. One of the agreement’s main objectives is to prevent IUU fishing and overexploitation, and Arctic coastal states are predestined to take on monitoring activities due to their location, knowledge of geographical and environmental peculiarities, infrastructure, and access to the resources (Personal Interview). Although the agreement concerns areas of the Arctic Ocean beyond the national jurisdictions of the A5 countries, it could be argued that the bulk of the work and expenses relating to its implementation would be focussed on areas inside their EEZs, where fish stocks are first expected to expand (Hoel 2009: 452). Negotiating an international agreement that is in line with national fisheries regulations applicable within their EEZs would clearly be in the interest of the A5 as it would reduce implementation costs. This, combined with the perceived leadership role of the Arctic coastal states’ in the region, might explain why the opportunity to share the burden of those implementation costs did not hold significant weight in discussions on the inclusion of other actors such as the EU.

The A5 and the EU have differing perceptions of the issues around fisheries management. Although global factors influence the prosperity and health of fish stocks, the littoral states believe that fisheries are best managed on a regional level (Personal Interview). Whereas the A5 look at fisheries as a regional issue,



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the EU supports a management approach that is global. The position of the A5 is due in part to the high degree of uncertainty and lack of information about species and their future development in this region of the Arctic Ocean (Personal Interview). Bringing clarity to these issues will require much more research. Monitoring programmes covering the marine ecosystem in the Central Arctic Ocean must be established if we are to understand the dynamics of climate change, living marine resources, and the effects of exploitation (Fluharty 2012: 167). This scientific knowledge is a key element for a well-functioning fisheries regime (Hoel 2014: 32). In this respect, the EU could act as major provider and funder of Arctic research infrastructure (Personal Interview). Despite this, the EU is characterised primarily as a non-Arctic actor and, with the A5 countries already conducting scientific activities within their EEZs, the potential contri-

bution of the EU to Arctic research does not appear to constitute a sufficient gain for the A5 to accept it as a cooperation partner (Wegge 2015: 336).

The locations of the A5 countries and their “policy-entrepreneurship and proactiveness” are, according to Wegge (2015: 337), the reasons that best explain the A5’s leadership and the direction they gave the negotiations. It becomes clear that the A5 share a common understanding of the problem and support a management approach that is not congruent with the EU’s strategy or with other actors. The lack of support from Denmark, which did not attempt to involve or inform the EU about the negotiations, also constituted a major constraint for the EU’s involvement. As a result of these factors, the EU – like Finland, Iceland, and Sweden – was unable to enforce its claim for involvement.

## 6. Explaining the difference

Both of the cases analysed above have one thing in common: the high seas and the climate system represent two global commons, i.e. geographically isolated ecological systems that have remained outside the bounds of international legal and political regulation for centuries (Imber 2008: 169). The protection of the climate system and the high seas requires the collective action of all states obtaining benefits from these goods (e.g. fishing grounds). Regions outside the Arctic can play a major role in reducing global soot emissions and consequently the negative effects of black carbon in the Arctic. Managing highly migratory fish stocks in a sustainable manner in the high seas areas of the Arctic Ocean, which are international waters accessible to every state, requires political measures

by more than the Arctic Ocean littoral states. The EU’s surprisingly varying involvement in both issues can be explained by the following synthesis drawn from the analysis above.

### **6.1 The EU as an established actor in black carbon reduction**

The EU has a relatively high degree of institutional involvement in the TFBCM, where the EU directly observes the negotiation process and is able to state its opinion and, in doing so, make contributions to the regulatory framework under discussion. The Arctic states and the EU have a congruent position on the need to reduce black carbon emissions to prevent

harmful climate change impacts within the region. Member states of the EU and EEA favour the involvement of the EU in addressing black carbon emissions. The EU's experience and role as a global leader in the reduction of SLCPs make it a valuable cooperation partner. Moreover, the EU's engagement in scientific data collection and infrastructure funding contributes to Arctic research and knowledge. The EU's efforts to contribute to the TFBCM have been supported by both its role as a major emitter of black carbon and its agreement with the Arctic states on the causal relationship between black carbon emissions outside the Arctic and environmental impacts within the Arctic. Given the global environmental dimension of the issues addressed through the TFBCM, an agreement developed through this forum would be greatly enhanced by the involvement of non-Arctic states in negotiations and their willingness to abide by its terms.

### **6.2 The EU's limited actorness in managing Central Arctic Ocean fisheries**

As has been shown here, the EU's involvement in negotiations for a fisheries management agreement for the Central Arctic Ocean was at first minimal. The EU was not given the opportunity to participate in the relevant meetings as an institutional actor; nor were the EU member states Finland and Sweden.

Denmark did not inform the EU as to the state of the negotiations, which prevented the EU and its member states from speaking with one voice on this issue and consequently led to vertical inconsistency that undermined the EU's actorness. The A5 club did not consider any of the other relevant actors to be suitable partners for negotiation – a perception which extended to the other members of the Arctic Council. The EU and the A5 hold differing positions on the central issues in that the A5 treat fisheries (including high seas fisheries) as a matter that is best managed at the regional level. Finland, Iceland, and Sweden favoured the involvement of a broad range of actors, including the EU, which would contribute to the legitimacy, credibility and efficiency of a future agreement. Although research is needed on the development of fish stocks in the Arctic Ocean, the contributions the EU could make in this regard did not exert a significant influence on its involvement. The A5's behaviour appeared primarily tied to issues of state sovereignty and territorial claims, which they attempted to settle internally before admitting outsiders. In sum, it was very difficult for the EU to get involved and to find common consensus with the Arctic states on the issue of fisheries management in the Central Arctic Ocean. Still, any effective implementation of the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean from December 2015 will rely on compliance by actors other than the A5, including the EU.



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## 7. Conclusion

This paper has investigated both an internal dimension (consistency between the EU's and the member states' policies) and an external dimension (recognition through the Arctic Council members) of the EU's engagement in two empirical cases. In the case of black carbon reduction, the defined actorness and engagement criteria of internal consistency and external recognition were met. In the case of the management agreement for Central Arctic Ocean fisheries, internal inconsistency (precipitated by Denmark's lack of support for the EU's preferred approach) impeded the institutional involvement of the EU and its recognition by the Arctic coastal states. The analysis presented here showed however that the EU's exclusion was primarily due to the perceived stewardship role of the A5 with respect to the governance of the Central Arctic Ocean. Contrary to common assumptions, EU consistency was higher in the field of black carbon reduction, an area where the EU has shared competence with its member states, than in the field of fisheries, where the EU has exclusive competence. Moreover, the analysis revealed that the EU's formal or informal involvement in an institution has no influence on its actorness: An official observer status in the Arctic Council would actually be of limited practical relevance because the EU already acts as if it were a formal observer.

This paper sought to analyse the EU's engagement in Arctic governance in the fields of black carbon reduction and fisheries management for the Central Arctic Ocean. The case studies presented here confirm that the degree of EU actorness achieved depends on the Arctic states' interests in the respective policy field and the level and relevance of the EU's contribution to cooperation. The Arctic states could expect to gain more from cooperating with the EU in the field of black carbon reduction than in fisheries management, which enabled the EU to achieve a higher degree of engagement in Arctic environmental and climate policy than in fisheries policy. As the process to formulate an agreement on the management of Central Arctic Ocean fisheries is still ongoing and an EU delegation has recently been invited to attend meetings held within the broader process, the EU's level of influence in negotiations might increase in the future. The EU's role in Arctic governance underlines that further research, extending beyond the scope of the core Arctic states, is needed to gain deeper insights into the Arctic regime complex and its interconnections and implications for the actors involved. With its focus on the EU, this Working Paper represents a step in this direction. ■

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