What is “Arctic Governance”? A Critical Assessment of the Diverse Meanings of “Arctic Governance”

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Abstract

The history of the concept of governance in Arctic social science does not necessarily take into account the process and degree of conceptualization pertaining to the subject or any semantic consistency in its use. Unlike the homogeneous or ‘taken-for-granted’ use of the concept by policy-makers in general, centered on a Westphalian or state-centered understanding of governance, the academic production on Arctic governance is characterized by four categories of approaches – pragmatic, prescriptive, functional and critical – which do not attempt to coincide with disciplinary borders or theoretical framework distinctions. The substantive goals of these approaches differ depending on the context – the likeliness of implementation, compliance with law, efficiency and effectiveness of processes, or the framing or re-framing of issues. Whereas not mutually exclusive, the four approaches contrast in the role they grant to law and normativity in the governance process, as well as in their assessment of effectiveness, and the specificity of the yardsticks used. This diversity leads to very contrasted assessment of governance. Although, economic governance is poorly investigated in governance studies, as well as the diverging views on governance amongst the actors concerned, the concept of governance has provided a valuable tool, affording complementary or contrasting insights, in understanding the state of the Arctic and anticipating its future.

Keywords

Arctic – governance – regimes – sovereignty – cooperation – critical analysis – analytical framework – normativity – legitimacy – efficiency

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Introduction

In recent years, an increasing emphasis has been placed on the concept of governance in Arctic social sciences, with contributions from various disciplines ranging mainly from political science, law and geography. The question of how the region is governed started before the end of the Cold War,¹ before the region had been conceptualized as a distinct region,² and before it was perceived as a region for initiating international cooperation,³ although some sporadic initiatives occurred in the course of the 20th century starting with the 1911 North Pacific Sealing Convention designed to restore the fur seal population in the Bering sea. International cooperation in the Arctic started to become a serious question at the end of the 1980s, at the time when Gorbachev's discourse created an impetus in the shift from confrontation to cooperation in the region.

However, the use of the concept of governance is fairly recent. It can be dated back to the end of the 1990s with the emergence of questions concerning international cooperation and the nature of the international regime in the Arctic region.⁴ Since then, the concept has had some success, and the picture of academic production on the theme of governance in the Arctic is very diverse, as for example in the literature of social sciences.⁵ Indeed, governance is analyzed at various levels of territoriality and jurisdiction: international,⁶ or regional such as the Faroese governance.⁷ The Territory of Nunavut has

1 Young, Oran. "The Age of the Arctic." *Foreign Policy* 61 (1985): 160–79; Young, Oran. "Arctic waters: The Politics of Regime Formation." *Ocean Development and International Law* 18(1) (1987): 101–14.

2 Young, Oran. "The Internationalization of the Circumpolar North: Charting a Course for the 21st Century." *The Arctic*. Akureyri: Stefanson Arctic Institute, 2000, <http://www.thearctic.is/PDF/The%20Internationalization%20of%20the%20Circumpolar%20North.pdf> (accessed November 10, 2013)

3 Ibid.

4 Oran Young, "Institutional linkages in International society: Polar Perspectives." *Global governance* 2(1) (1996): 1–23.

5 Kjær, Anne Mette. *Governance*. Cambridge: Polity Press, 2004.

6 Stokke, Olav Schram, and Geir Hønneland (eds), *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building*, (London & New York: Routledge, 2007).

7 Kári á Rógvi. "Faroese governance." in *Polar Law textbook II*, edited by Natalia Loukacheva, 215–240. Copenhagen: Nordic Council of Ministers, 2013.

received much attention,⁸ as well as the Arctic Council.⁹ Governance can also be applied to a large range of policies,¹⁰ or be sectorial and focus on issues such as: environmental issues;¹¹ climate change;¹² economic activities;¹³ economic resources;¹⁴ off shore oil exploitation;¹⁵ shipping;¹⁶ or fisheries.¹⁷ Moreover, studies of governance in the Arctic can involve the whole civil population or some segments of the Arctic population such as indigenous peoples in deter-

- 8 Loukacheva, Natalia, and Matthew D. Garfield. "Sustainable Human Rights and Governance: The Quest of an Arctic Entity in Transition." In *The Yearbook of Polar Law* Volume 1, edited by Guðmundur Alfreðsson, Timo Koivurova and David Leary (special ed.), 283–305. Leiden: Martinus Nijhoff Publisher, 2009; Loukacheva, Natalia, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut*. Toronto: University of Toronto Press, 2007. Rodon, Thierry. "Iqqanaijaqatigiit: The Dynamics of Multilevel Governance in Nunavut." forthcoming.
- 9 Graczyk, Piotr, and Timo Koivurova. "A new era in the Arctic Council's external relations? Broader consequences of the Nuuk observer rules for Arctic governance." *Polar Record* (2013): 1–12. DOI:10.1017/S0032247412000824; Koivurova, Timo. "Limits and possibilities of the Arctic Council in Arctic governance." *Polar Record* (2009): 1–11. DOI:10.1017/S0032247409008365.
- 10 Young, Oran. "Building an international regime complex for the Arctic: current status and next steps." *The Polar Journal* 2(2) (2012): 391–407, DOI: 10.1080/2154896X.2012.735047.
- 11 Koivurova, Timo. "The Arctic Council: A Testing Ground for New International Environmental Governance." *Brown Journal of World Affairs*. Fall/Winter, 19(1) (2012): 131–144.
- 12 Koivurova, Timo, Eva Carina Helena Keskitalo, Nigel Bankes, *Climate Governance in the Arctic* (Dordrecht: Springer, 2009).
- 13 Sutyryn, Sergei F., "What Type of Global Governance Do we Need in Arctic?" Proceedings from the 5th NRF Open Assembly in Anchorage, September 24–27, 2008.
- 14 Caulfield, Richard A. (lead author), "Resource Governance." in *Arctic Human Development Report*, edited by Niels Einarsson, Joan Nyman Larsen, Annika Nilsson et al., 121–138. Akureyri, Iceland: Stefansson Arctic Institute, 2004.
- 15 Humrich, Christoph. "Fragmented International Governance of Arctic Offshore Oil: Governance Challenges and Institutional Improvement." *Global Environmental Politics* 13(3) (2013): 79–99.
- 16 VanderZwaag, David L. "Law of the Sea and Governance of Shipping in the Arctic and Antarctic." in *Polar law Textbook*, edited by Natalia Loukacheva, 45–64. Copenhagen: Nordic Council of Ministers, 2010; Stokke, Olav Schram. "Regime interplay in Arctic shipping governance: explaining regional niche selection." *International Environmental Agreements: Politics, Law & Economics* 13(1) (2013): 65–85. DOI: 10.1007/s10784-012-9202-1.
- 17 Jeffers, Jennifer. "Climate Change and the Arctic: Adapting to Changes in Fisheries Stocks and Governance Regimes." *Ecology Law Quarterly* 37(3) (2010): 917–977.

mining the principles of Arctic indigenous governance,¹⁸ the extent to which current governance incorporates traditional knowledge in decision-making,¹⁹ or the extent to which current governance accommodates indigenous rights and fulfills equity conditions.²⁰

Another feature of the diversity of Arctic governance analysis lies in the various analytical frameworks used by scientists. Since there is no official or dominant definition of governance, scientists refer either to processes, activities, set of rules or the very framing of governance issues. The analytical logic used by scientists and the different ontological assumptions or theories within disciplines that they refer to, determine the criteria of evaluation used in the analysis. This diversity can lead to a confusing picture – in particular when research focusing on the same topic provides diverging conclusions – and may limit the generalizability of findings in Arctic governance studies.

This study proposes a qualitative design and relies on a comparative approach to academic literature explicitly referring to the concept of governance in Arctic social sciences. Many studies actually deal with questions of governance without necessarily referring to the concept.²¹ Such studies, showing a proximity of analysis with the concept of governance without specifically referring to the concept, will not be considered in this article. Instead our aim is to understand in nominalist terms the variety of results of studies on governance in the Arctic, and assess the operational nature of the concept, its added value, and any specificity when applied to the Arctic region. The article begins with a discussion on the definitions of the concept of governance, the

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- 18 Fondahl, Gail, and Stephanie Irlbacher-Fox. *Indigenous Governance in the Arctic*. Toronto: Walter and Duncan Gordon Foundation, 2009.
 - 19 Fenge, Terry, and Bernard W. Funston. "Arctic Governance: Traditional Knowledge of Arctic Indigenous Peoples from an International Policy Perspective." Contribution to the Arctic Governance Project (www.arcticgovernance.org), 2009, 8. <http://www.arcticgovernance.org/arctic-governance-traditional-knowledge-of-arctic-indigenous-peoples-from-an-international-policy-perspective.4667262-142902.html> (accessed November 10, 2013)
 - 20 Pelaudeix, Cécile. "Inuit governance and contemporary challenges: new questions for Arctic governance." In *The Yearbook of Polar Law* Volume 4, edited by Gudmundur Alfredsson, Timo Koivurova and Waliul Hasanat (special ed.), 155–188. Leiden: Martinus Nijhoff Publisher, 2012; Cambou, Dorothée, and Steffan Smis. "Permanent Sovereignty over Natural Resources from a Human Rights Perspective: Natural Resources Exploitation and Indigenous Peoples' Rights in the Arctic." forthcoming.
 - 21 Solsrud, Lene Forssell. "The Barents Euro-Arctic Council: a Case Study of an International Forum for Intergovernmental Cooperation and its Environmental Work." Master Thesis, Institut d'Études Politiques de Grenoble, 2008.

context of its utilization in academic literature, and the differentiated use by academics and policy-makers when dealing with the Arctic. The second section focuses on the specific use of the concept by policy-makers. The third section proposes a categorization to capture the diverse set of approaches to governance by academics, and distinguishes four main approaches qualified as pragmatic, prescriptive, functional and critical. The fourth section builds on these distinctions to highlight and discuss three main dimensions identified in the analysis of Arctic governance: legitimacy, normativity and efficiency. The article concludes with a reflection on the main trends in the use of the concept of governance in Arctic social sciences literature, its strengths and limitations in analyzing the Arctic region.

1 Definitions and Differentiated Uses

1.1 *Government, Regimes, and Governance*

First used in public policies, the concept of governance entered the field of European studies, and subsequently the field of international relations, from the 1980s. At more or less the same time, it entered the discourse of the World Bank. Described as a more encompassing phenomenon than government, the concept has been found appealing as societies have become more complex and has served to enlighten the role of non-state actors in the mechanisms of political regulation. It has been used to legitimize the role of non-state actors in regulation activities by virtue of their expertise rather than their political legitimacy. In other studies, the driver for the use of the concept of governance comes from the assessment of a deficit in democracy and its various symptoms such as crises of representation or participation.²²

In international relations, the notion of 'regime', commonly defined as "institutions possessing norms, decision rules, and procedures which facilitate a convergence of expectations"²³ preceded the reference to the concept of governance. For Rosenau, regimes exist only in some specific areas (like trade, public health, environment), whereas governance, when analyzed at the international level, is inseparable from the world order and is not limited to specific activities.²⁴

22 Smouts, Marie-Claude. "The Proper Use of Governance in International Relations." *International Social Science Journal* 50(155) (1998): 81–89. DOI: 10.1111/1468-2451.00111

23 Krasner, Stephen D., ed. *International Regimes*. Ithaca, NY: Cornell University Press, 1983.

24 Rosenau, James N., and Ernst-Otto Czempiel, *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992, 9.

Interestingly with regards to the Arctic region, where international relations dramatically changed after the Cold War, the Commission on Global Governance was founded in 1995 on the initiative of Willy Brand after the end of the Cold War and the fall of the Berlin Wall,²⁵ with the aim of conceptualizing how best to organize life in a completely new world. The definition of the Commission on global governance emphasizes the complexity of the network of actors and their possible conflicting views:

Governance is the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.²⁶

Smouts has highlighted the four characteristics of governance stated in this definition. Governance is neither a rule system nor an activity but a process. It is not founded upon domination but upon accommodation. Governance involves public and private actors at the same time, and it is not a formal institution, but is reliant on continual interaction. This definition offers the advantage of being comprehensive: it insists on a wide set of actors, as well as highlighting the important notion of 'common affairs,' and the notions of process and conflict. Indeed, many scholars agree to view governance as "a complex set of structures and processes, both public and private,"²⁷ but the notion of conflict is not always prominent. In their well-known definition, Keohane and Nye, for example, consider governance to consist of "the processes and institutions, both formal and informal, that guide and restrain the collective activities of a group."²⁸

The concept of governance has been adapted and extended to capture the complexity of interaction of various institutions (multi-level governance) and

25 Smouts, *supra* note 22.

26 The Commission on Global Governance, *Our Global Neighbourhood*. Oxford: Oxford University Press, 1995, 4.

27 Weiss, Thomas. "Governance, Good Governance, and Global Governance." *Third World Quarterly* 21 (2000): 795–814.

28 Keohane, Robert O., and Joseph S. Nye. "Introduction." in *Governance in a Globalizing World*, edited by Joseph S. Nye and John D. Donahue, 1–44. Washington, D.C.: Brookings Institution, 2000, 12.

to emphasize a normative dimension (good governance), both concepts having been used in the context of Arctic research.

1.2 *Multi-level Governance*

The concept of multi-level governance was first proposed by Gary Marks as a useful concept to better understand the decision-making dynamics in the EU and to go beyond the theories of neo-functionalism and inter-governmentalism that focused on market forces and national interests.²⁹ Marks points out the complexity (overlapping competencies among levels of governments) and the interaction of various actors (across those levels) that encompasses more than national and supranational actors but also sub-national actors (interests groups and subnational governments).³⁰ As underlined by Piattoni, the levels which are connected by multilevel governance may be understood as *territorial levels* (supranational, national, subnational), “each commanding a certain degree authority over the corresponding territory and the individuals residing in it,” but also “more generally as *jurisdictional levels*, identified with regard to a certain function and to the constituents who are interested in the performance of that function.”³¹

Since governance is a continuing and dynamic process, multi-level governance refers to inherently dynamic arrangements.³² The concept of multi-level governance insists on the sharing of authority across “an institutionalized, hierarchically structured set of actors with varying degrees of unity/coherence, commitment to EU norms, and power resources,”³³ but it also lead to the acknowledgment of a possible dispersion of power among institutions that can be detrimental to efficiency. Schmitter has provided an exhaustive definition of multi-level governance:

29 Marks, Gary. “Structural Policy in the European Community.” in *Euro-politics. Institutions and Policymaking in the “New” European Community*, edited by A. Sbragia, 191–225. Washington, DC: The Brookings Institution, 1992.

30 Marks, Gary et al., “Competencies, Cracks and Conflicts: Regional Mobilization in the European Union.” *Comparative Political Studies* 29(2) (1996): 164–192.

31 Piattoni, Simona. “Multi-level Governance in the EU. Does it work?” *Globalization and Politics: A Conference in Honor of Suzanne Berger*, MIT, May 8 and 9, 2009. <https://www.princeton.edu/~smeunier/Piattoni>.

32 Ibid.

33 Smith, Michael E., “Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe’s common foreign and security policy.” *Journal of European Public Policy* 11(4) (2004): 740–758.

Multi-level governance can be defined as an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels).³⁴

The concept of multi-level governance has been used in the field of Arctic studies to analyze the development of the EU Arctic policy,³⁵ and in the context of indigenous governance to describe vertical power sharing by a central power (the Canadian Federation) with sub-provincial units like Nunavik.³⁶ Multi-level governance has also been used, as analyzed further below, to explain the horizontal dispersion of power between a public institution, the Government of Nunavut and an indigenous institution: Nunavut Tunngavik Inc.³⁷

1.3 *Good Governance*

The concept of 'good governance,' promoted by the World Bank,³⁸ introduces a normative dimension in the definition and reflects concerns about the effectiveness of aid provided to developing countries. The main criteria of 'good governance' are non-corruption, transparency, accountability, equal participation and inclusiveness, decentralization, law reform and the rule of law. Good governance has become a political and economic conditionality,³⁹ the criteria of which are based on the 'neoliberal' economy policy model. Recognizing that sustained market reforms also need an improvement in democracy, the UN in the "post-Washington consensus" advocated readjustments and stressed the

34 Schmitter, Philippe. "Neo-functionalism." in *European Integration Theory*, edited by A. Wiener and T. Diez, 45–74. Oxford: Oxford University Press, 2004.

35 Holdus, Ida. "Developing an EU Arctic Policy: Towards a Coherent Approach. A study of coherence in European Foreign Policy." Master's Thesis in Peace and Conflict Studies, University of Oslo, 2010.

36 Wilson, Gary N., "Nested Federalism in Arctic Quebec: A Comparative Perspective." *Canadian Journal of Political Science/Revue canadienne de science politique*, 41(1) (2008): 71–92.

37 Rodon, *supra* note 8.

38 World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Development*. Washington, DC: World Bank, 1989; Van Doeveren, Veerle. "Rethinking Good Governance, Identifying Common Principles." *Public Integrity* 13(4) (2011): 301–318.

39 Weiss, Thomas G., "Governance, good governance and global governance: conceptual and actual challenges." *Third World Quarterly* 21(5) (2000): 795–814.

need to integrate economic and social welfare in the goals to be achieved by good governance.⁴⁰

The concept of good governance has now extended from the normative discourse of the banking world and is now regarded as a normative ideal that developing states should aspire to. It is applied more and more to developed states in specific sectors like health,⁴¹ or sustainable development.⁴² The concept of good governance has recently also been applied to Arctic states, as is further developed below.⁴³

Although the concept of governance is referred to more and more in Arctic studies, it is not always clearly defined. This lack of precision may be related to the loose use of the concept in the social sciences in general, but can also be related to the recent focus on the issue of governance itself in the Arctic. Its use derives from the need to consider transnational issues like: off-shore exploitation; endangered migratory species such as marine mammals or polar bears;⁴⁴ climate change and environmental protection;⁴⁵ as well as national and international issues such as indigenous participation in policy-making. Its use in the academic arena has recently entered the agenda of non-governmental organizations (NGOs) and, finally, the policy agendas of states and other authoritative policy entities.⁴⁶

40 Santiso, Carlos. "Good Governance and Aid Effectiveness: The World Bank and Conditionality." *The Georgetown Public Policy Review* 7(1) (2001): 1–22.

41 Committee of Ministers, "Recommendation CM/Rec(2010)6 of the Committee of Ministers to member states on good governance in health systems." *European Journal of Health Law* 17 (2010): 389–401.

42 Juknevičienė, Vita, and Roberta Kareivaite, "Good Governance as the Instrument for the Implementation of the Sustainable Development's Conception." *Socialiniai tyrimai/Social Research* 3(28) (2012): 28–42.

43 Alfredsson, Gundmundur. "Good governance in the Arctic." in *Polar Law Textbook II*, edited by Natalia Loukacheva, 185–198. Copenhagen: Nordic Council of Ministers, 2013.

44 Banks, Nigel. "An Arctic Governance Issue: The management of shared populations of polar bear." in *Juss i nord: Hav, fisk og urfolk: En hyllest til Det juridiske fakultet ved Universitetet i Tromsø 25-årsjubileum* edited by Øyvind Ravna and Tore Henriksen, 40–70. Oslo: Gyldendahl Juridisk, 2012.

45 Heininen, Lassi. "New External Political Structures in Northern Cooperation and Northern Governance: From Quantity to Quality" in *Arctic Governance*, edited by Timo Koivurova, Tanja Joonas and Reija Shnorro, 27–42. *Juridica Lapponica* 29. Rovaniemi: Oy Sevenprint, 2004.

46 Koivurova, *supra* note 9.

2 Policy Makers: A Westphalian Model of Governance for the Arctic

As a concept underlying the fact that state governments no longer possess the monopoly of legitimate authority and that other *de facto* institutions and actors contribute to the maintenance of order and participate in economic and social regulation, it is not surprising that the notion is seldom used by the Arctic states.

The government of Canada does refer to the concept but only in a national perspective, i.e. in its Northern strategy.⁴⁷ The federal government emphasizes the "need to improve and devolve Northern governance," which should be achieved through a better "control over lands and resource management." Yet at an international level, the government of Canada explicitly denies the "need for a new governance."⁴⁸ The Canadian government explains that while "many players far removed from the region itself [seek] a role and in some cases [call] into question the governance of the Arctic," Canada "does not accept the premise that the Arctic requires a fundamentally new governance structure or legal framework. Nor does Canada accept that the Arctic nation states are unable to appropriately manage the North as it undergoes fundamental change."⁴⁹

The EU Parliament and the Commission have both referred to governance in key policy documents. The first Arctic resolution of the EU Parliament voted in 2008 even includes the term in its title.⁵⁰ In its first policy document, the Commission recommended as the first policy objective that: "the EU should work to uphold the further development of a cooperative Arctic governance system based on the UNCLOS."⁵¹ The European Parliament Resolution on a "Sustainable EU policy for the High North" of 20 January 2011 displays a

47 Government of Canada, "Canada's Northern Strategy, Our North, Our Heritage, Our Future." Canada's Northern Strategy, March 2009. <http://www.northernstrategy.gc.ca/cns/cns-eng.asp>. (accessed November 10, 2013)

48 Government of Canada. "Statement on Canada's Arctic Foreign Policy: Exercising: Sovereignty and Promoting Canada's Northern Strategy Abroad." http://www.international.gc.ca/arctic-arctique/assets/pdfs/canada_arctic_foreign_policy-eng.pdf (accessed November 10, 2013)

49 *Ibid.*, at 8.

50 European Parliament, "European Parliament resolution of 9 October 2008 on Arctic Governance." 2008, P6_TA(2008)0474.

51 Commission of the European Communities, Brussels, November 20, 2008, COM(2008) 763 final. Communication from the Commission to the European Parliament and the Council. The European Union and the Arctic region.

more moderate use of the concept.⁵² Yet this use was not to be continued: the proposal for an Arctic treaty in the resolution on Arctic governance of the Parliament and the proposal for contribution to Arctic multilateral governance by the Commission caused a disturbance in the Arctic arena which was deemed detrimental to the EU application to observer status to the Arctic Council.⁵³ It is worthy of note that the European Council, which is intergovernmental by nature, did not use the word 'governance' in its conclusions on Arctic issues of 2009, but simply referred to the Commission Communication.⁵⁴

Russia has firmly opposed international governance in the region, and has questioned the meaning of the term 'governance'. Russia has explained that the Arctic is and will be governed by the Arctic states and its peoples: "[t]he question should not be 'who rules the Arctic?' but rather to ask 'in good faith' how to strengthen cooperation. The Arctic belongs to those who live there and the Arctic is not a "common home" for everyone."⁵⁵ Interestingly, the agreement on the delimitation of the Barents Sea between Russia and Norway in 2010 has been interpreted by some scholars as mainly intended to prove that the existing framework for cooperation (i.e. UNCLOS) is working, and that there is no

52 Article 42 of the European Parliament Resolution on a "Sustainable EU policy for the High North" of 20 January 2011 "recognizes the institutions and the broad framework of international law and agreements that govern areas of importance to the Arctic [...] and thus concludes that the Arctic region is not to be regarded as a legal vacuum, but as an area with well developed tools for governance"; Article 43 "emphasizes that, although states play a key role in governance in the Arctic, other players – such as international organizations, indigenous and local people and sub-state authorities – also have important roles; points out that it is important to increase trust among those with legitimate interests in the region by taking a participative approach and using dialogue as a way of developing a shared vision for the Arctic"; while article 45 "recognises the important role of the AC as the foremost regional forum for cooperation for the whole Arctic region". EParl (European Parliament). 2011. Resolution P7_TA(2011)0024, A sustainable EU policy for the High North – European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North (2009/2214(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2011-0024+0+DOC+PDF+Vo//EN> (accessed July 10, 2013).

53 Pelauideix, *supra* note 20.

54 *Council conclusions on Arctic issues*. 2985th Foreign Affairs Council meeting, Brussels, 8 December 2009.

55 Vasiliev, Anton. "Is the Ilulissat Declaration adequate?" in *Arctic-Changing realities*, Conference report, ed. Nordic Council of Ministers. Copenhagen: Nordic Council of Ministers, 2010, 29–33. <http://www.norden.org/no/nordisk-ministerraad/samarbeidsministrene-mr-sam/arktiskalender/arctic-changing-realities/taler-og-presentasjoner/anton-vasiliev-is-the-ilulissat-declaration-adequate> (accessed November 10, 2013).

need for any "enhancement of multilateral governance."⁵⁶ Similarly, Norway reacted quickly to the proposal of the EP resolution on Arctic Governance in 2008 and explained in the European Parliament that "there should be no fundamental uncertainty about how the Arctic is to be governed. We already have a legal regime in place."⁵⁷

The Arctic coastal states do not refer to governance in the 2008 Ilulissat declaration but to 'cooperation'.⁵⁸ The reference to 'cooperation' is also significant in the Nuuk declaration.⁵⁹ The two existing binding agreements signed by Arctic states under the auspices of the Arctic Council include the word 'cooperation' in their title (Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (SAR) – Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic).⁶⁰ Although binding, the actual implementation of the agreements is subject to Arctic states resources (Article 12 of the former, Article 15 of the latter) and to the capabilities of Arctic states which remain very limited. Moreover, the SAR agreement does not contain any obligation for states to enhance their national SAR capabilities.⁶¹

In the Arctic it is certainly in the Standing Committee of the Parliamentarians of the Arctic region (SCPAR), founded in 1994 as an initiative of the Nordic

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- 56 Moe, Arild, Daniel Fjærtøft, and Indra Øverland, "Space and Timing: Why was the Barents Sea Delimitation Dispute Resolved in 2010?" *Polar Geography* 34(3) (2011): 145–162. <http://dx.doi.org/10.1080/1088937X.2011.597887>
 - 57 Støre, Jonas. "Is it Time for an Arctic Charter?" Speech given at the Seminar Arctic Governance in a global world, The European Parliament, Brussels May 7, 2008. http://www.regjeringen.no/nb/dokumentarkiv/stoltenberg-ii/ud/taler-og-artikler/2008/arctic_charter.html?id=511991 (accessed November 10, 2013)
 - 58 Ilulissat Declaration. The Arctic Ocean Conference, Nuuk, Greenland, 27–29 May 2008. http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf (accessed July 10, 2013). 'Cooperation' appears 6 times.
 - 59 Arctic Council, Nuuk Declaration, Seventh Ministerial Meeting of the Arctic Council, 12 May 2011, Nuuk, Greenland, <http://www.arctic-council.org/index.php/en/document-archive/category/5-declarations?download=37:nuuk-declaration-2011> (accessed July 29, 2013) 'Cooperation' appears 8 times.
 - 60 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic. <http://www.ifrc.org/docs/idrl/N813EN.pdf>; Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/> (accessed November 10, 2013)
 - 61 Vasiliev, Anton. "The Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic – A New Chapter in Polar Law." in *Polar Law textbook II*, edited by Natalia Loukacheva, 53–65. Copenhagen: Nordic Council of Ministers, 2013.

Council, that we find the most important adherence to the concept of 'governance' amongst Arctic policy makers.⁶² It is clearly stated that during SCPAR parliamentary conferences, "governance issues have frequently come to the fore."⁶³ The Parliamentarians underline that the 'core' actors should remain the eight Arctic countries, and they focus on the Arctic states as the main actors in the governance in the Arctic, at the same time as stressing the 'vital role' of Indigenous Peoples as permanent Participants as well as the importance of Observers.⁶⁴ SCPAR believes the Arctic Council governance should "amend and enhance its governance structure"⁶⁵ in a few precise areas, and has therefore recommended the creation of an "exclusive treaty among the eight Arctic states to give themselves more formal inter-governmental binding powers."⁶⁶

It is unlikely, however, that the Arctic Council will in the near future become a fully-fledged international organization through a treaty sanctioned by its member states. The United States have opposed such a development during the discussions for the establishment of the Arctic Council, just as they generally show disinclination to engage in treaties, as reflected by their non-accession to UNCLOS. State cooperation in the Arctic is developing only in a very gradual way, with matters of sovereignty remaining central. The current state of cooperation between states in the Arctic does not suggest a broader view than merely preservation of self-interest, nor does it give indication of a clear long-term vision for the region.

Indeed, the State-centered approach, largely predominant amongst policy-makers, characterizes a Westphalian approach to sovereignty, in which no State recognizes any authority above itself.⁶⁷ The reluctance to refer to the concept of 'governance' indicates it is viewed as an unwelcome intrusion if it is intended to over-ride domestic governance. It is clear that two main principles drive policy-makers in the governance of the region: controlling and reinforcing Arctic sovereignty, at the same time as maintaining state sovereignty.

62 Standing Committee of Parliamentarians of the Arctic Region, Arctic Governance in an Evolving Arctic Region, A Proposal by the Standing Committee of Parliamentarians of the Arctic Region (SCPAR) (no date). <http://www.arcticparl.org/files/arctic-governance-in-an-evolving-arctic-region.pdf> (accessed November 10, 2013).

63 *Ibid.*, at 4

64 *Ibid.*, at 3.

65 *Ibid.*, at 5

66 *Ibid.*, at 7.

67 Montevideo Convention on the Rights and Duties of States, 1933. <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897> (accessed November 10, 2013).

Exercising Arctic sovereignty means maintaining the exclusiveness of control by Arctic actors on Arctic affairs (as opposed to a move towards inclusion of non-arctic players). During the 2013 Ministerial Meeting of the Arctic Council, it was stated that a greater number of observers did not put at risk the Arctic Council control of decision-making; on the contrary, new rules "reinforced the sovereignty of the Arctic Council."⁶⁸ The second principle that drives policy makers is maintaining the exclusiveness of States as actors in governance (versus non state-actors). The use of the word 'cooperation' instead indicates a preference for an informal or voluntary combination of means to achieve common goals.

3 Governance as an Analytical Tool: Pragmatic, Prescriptive, Functional and Critical Approaches

The various logics of analysis among social scientists show a great differentiation in the use of the concept of governance, far greater than its use by policy makers. The present study has identified four main approaches in the academic publications dealing with Arctic governance: a pragmatic approach that focuses on questions of (and promotes solutions for) what is *likely* to occur; a prescriptive approach focusing on questions of what *should* occur; a functional approach seeking to analyze what *does* occur, with a particular focus on the interaction of actors; and a *critical* approach that focuses on applying a new interpretative theory to reframe issues and renew our understanding of Arctic issues.

This categorization does not attempt to coincide with disciplinary borders or theoretical framework distinctions: neo-liberal institutionalists for example can be found in the first and second categories. Some approaches by lawyers and political scientists can also be very similar in their analysis of local processes of governance. Neo-realist approaches seldom refer to governance and therefore will not be given much emphasis in this study.⁶⁹ Murray, whose analysis focuses on security issues and emphasizes the risk of international conflict

68 Bildt, Carl. Comment at the Arctic Ministerial Meeting, Question and Responses session, Kiruna, 15 May 2013. <http://www.arctic-council.org/index.php/en/events/meetings-overview/kiruna-ministerial-2013> (accessed 15 September 2013).

69 Murray, Robert W. "Arctic Politics in the Emerging Multipolar System: Challenges and Consequences." *The Polar Journal* 2(1) (2012): 7–20; Huebert, Rob. "Canada and the Changing International Arctic: At the Crossroads of Cooperation and Conflict." In *Northern Exposure: Peoples, Powers and Prospects for Canada's North*, edited by Frances

over Arctic resources, assesses the shift in the Arctic from the uni-polarity of American hegemony to multi-polarity as increasing the risk for northern conflict and security competition, whereas “efforts at Arctic governance,” seen as the expression of soft power structures, are “at present” mitigating this risk.⁷⁰ On a similar topic, Wegge, who refers to governance but, like Murray, does not conceptualize the term, applies insights from classical international theory to analyze the political order in the Arctic: but, unlike Murray, he concludes on the stability of the multipolar system in the Arctic which he explains by the role of multilateral institutions, and by the balance of power between the actors involved.⁷¹

The four categories highlighted in this study should not be seen as mutually exclusive. Indeed, a clear-cut distinction between these categories is no more than an analytical device, and academics may incorporate several features of these categories.⁷² The choice of authors in this article is determined by the importance of the ‘governance’ concept in their analyses of Arctic politics, and/or by the centrality of the concept in the topics and issues that they address.

3.1 *The Pragmatic Approach*

The pragmatic approach, focusing on questions of (and promoting solutions on) what is *likely to occur*, is best represented by Oran Young’s neo-institutionalism. Oran Young defines governance systems as “social institutions or set of rules guiding the behavior of those engaged in identifiable social practices,” whereas governments are “organizations or material entities established to administer the provisions of governance systems.”⁷³ His approach departs from the postulates of realism and the central role of states and shows the importance of other institutions in international politics.⁷⁴ According to Young, the basis for good governance is founded in the interaction of institutions, rules, laws, norms and procedures that allow people to express their concerns and to defend their interests in a relatively fair and foreseeable context.

Abele, Thomas J. Courchene, F. Leslie Seidle and France St-Hilaire, 77–106. Montreal: Institute for Research on Public Policy, 2009.

70 Murray, *supra* note 69.

71 Wegge, Njord. “The Political Order in the Arctic: Power Structures, Regimes and Influence.” *Polar Record* 47 (2011): 165–76.

72 See for example Sutyrin, *supra* note 13.

73 Young, Oran. *International governance: protecting the environment in a stateless society*. Ithaca, New York: Cornell University Press, 1994.

74 de Senarclens, Pierre. “Governance and the Crisis in the International Mechanisms of Regulation.” *International Social Science Journal* 50(155) (1998): 91–104.

Young's focus on governance is indicative of a skeptical attitude towards the role of government in governance, a 'disillusionment' with its performance "in a wide variety of settings."⁷⁵ The distinction between government and governance leads him to the conclusion that "under a variety of conditions, the operations of governments are not only insufficient to ensure that growing demands for governance are met but also may be unnecessary for the provision of governance."⁷⁶ Young's definition of governance does not depart fundamentally from that of regimes. The author defines governance as equivalent to institutions and regimes on several occasions.⁷⁷ This equivalence gives his approach a somewhat more static characteristic compared with other approaches to governance that are more centered on negotiation processes through which regimes are discussed.

Young is particularly attentive to one of the defining characteristics of governance, derived from the definition of the Commission on Global Governance, which entails that governance is to be founded upon accommodation, not domination. His definition of a regime complex, as "a set of elemental regimes or elements that pertain to the same issue domain or spatially defined area" insists on the absence of hierarchy between the various regimes.⁷⁸

The pragmatic dimension of Young's approach is reflected by the focus on the limited probability of governance arrangements being successfully negotiated, in a realistic time-frame, or on the likeliness of them simply being implemented at all. "The case for spending political capital on an effort to negotiate the terms of an Arctic Ocean treaty is weak."⁷⁹ "It would be unrealistic to expect the Arctic Council to metamorphose into a body with the authority, much less the capacity, to handle regulatory matters in the far North."⁸⁰ Or: "Can the parties succeed in putting a mandatory Polar Code in place soon enough to regulate commercial shipping using the Northern Sea Route?"⁸¹ This pragmatism forms the main argument of his rejection of the concept of a treaty to be applied to the Arctic region, a position he already stated in 1987.⁸²

75 Young, *supra* note 73.

76 Ibid.

77 Ibid; Young, *supra* note 4; Young, *supra* note 10.

78 Young, *supra* note 10.

79 Young, Oran. "If an Arctic Ocean treaty is not the solution, what is the alternative?" *Polar Record* 47(243) (2011): 327–334. doi:10.1017/S0032247410000677 327.

80 Young, Oran. "Arctic Governance, Pathways to the Future." *Arctic Review on Law and Politics* 1(2) (2010): 164–185.

81 Young, *supra* note 10.

82 Young (1987), *supra* note 1.

Young's evaluation of governance in the Arctic emphasizes the efforts made to address the needs in the region and in particular the progress made in the integration of a regime complex, as exemplified by the 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue.⁸³ His approach focuses less on results according to defined aims than on the sort of efforts which are in line with Weiss and Gordenker's definition of governance as "efforts to bring more orderly and reliable responses to social and political issues that go beyond capacities of states to address individually."⁸⁴ Considering the opposition of the Arctic coastal states to an ocean framework, Young views a treaty as "neither politically feasible under current conditions nor necessary to respond effectively to emerging needs for governance in the Arctic."⁸⁵ Insisting on progress, but without underestimating the challenges of next steps (i.e. the 'daunting problems' of implementation of the search and rescue agreement or the 'frustrating' slowness of the negotiations on the provisions of the Polar Code), Young's assessment is overall positive and optimistic: "there are reasons to be optimistic that a mandatory Polar Code can be put in place by the time commercial shipping in the Arctic gets underway on a large scale."⁸⁶

Focusing on international institutions and regimes, his approach pays attention to the association in governance processes of actors such as indigenous peoples or the involvement of non-Arctic states, although Young's approach does not give the same weight to the interdependency of activities and actors or possible conflicting views of actors with other approaches.

Scholars inspired by his approach have developed various uses of the concept of governance.⁸⁷ Exner-Pirot has recently proposed an analysis of patterns of institutionalization to assess the path towards a "well-constructed, resourced and implemented regional seas agreement."⁸⁸ Keskitalo has adapted the 'fit, interplay and scale' framework designed by Young to assess the capacity of international Arctic governance to support climate change

83 Young, *supra* note 10.

84 Thomas G. Weiss and Leon Gordenker, eds, *NOGS, the United Nations and Global Governance*. London: Lynne Rienner Publishers, 1996, 17. "We define global governance as efforts to bring more orderly and reliable response to social and political issues that go beyond capacities of states to address individually".

85 Young, *supra* note 10.

86 Ibid.

87 Not all scholars inspired by Young's approach refer to the concept of governance. See Solsrud, *supra* note 21.

88 Exner-Pirot, Heather. "New Directions for Governance in the Arctic Region." In *Arctic Yearbook 2012*, edited by Lassi Heininen, 224–246. Akureyri, Iceland: Northern Research Forum, (2012).

adaptation.⁸⁹ The concept of governance is here mainly conceptualized through an implementation focus, i.e. the 'adaptive capacity' of governance systems to tackle climate change efficiently. The author deems that governance adaptation requires horizontal and vertical inter-linkages between actors, as well as resources (including funding and legislation). The paper concludes that organizational capacities will need to be strengthened for effective implementation of adaptive actions.

3.2 *The Prescriptive Approach*

Prescriptive approaches focus on questions of what *should* occur (in governance). In this approach we find an important contribution made by law studies. The criteria for this assessment are to be found in the provisions of domestic or international law, and often relate to human rights, autonomy or good governance, in a generally top-down approach. Indeed, Polar Law is defined as an inter-disciplinary field of law that promotes the *values* of law in addressing the challenges across the Arctic.⁹⁰

Gudmundur Alfredsson has recently applied the concept of 'good governance' to the Arctic region.⁹¹ He links the concept of good governance (and its various components: transparency, accountability, equal participation and the rule of law) to the themes of human rights and democracy to propose a holistic approach of governance in the Arctic, with a focus on indigenous peoples. Recalling that the domestic implementation of the good governance standards rests with governments, he shows that Arctic states are well behind the worldwide trend when it comes to endorsing the international human rights standards that concern the indigenous peoples who live in the northernmost areas. His argument points to the weakness of Arctic states' compliance to principles of good governance, and concludes with the necessity of improving national law, e.g. by incorporating international standards into national law. Complying with international standards on human rights, good governance and democracy might entail a limitation of sovereignty, which Alfredsson considers a consequence of accepting treaty obligations and the result of the emergence of international customary law.

This prescriptive approach is also evident in Cambou and Smis' analysis of permanent sovereignty over natural resources, which they tackle from

89 Keskitalo, Eva Carina Helena. "New governance in the Arctic and its Role for Supporting Climate Change Adaptation." in *Climate Governance in the Arctic*, *supra* note 12.

90 Loukacheva, Natalia. "What is Polar Law?" in *Polar Law Textbook*, edited by Natalia Loukacheva, 13–22. Copenhagen: Nordic Council of Ministers, 2010

91 Alfredsson, *supra* note 43.

the perspective of human rights.⁹² The authors note that despite its prominence in international law, the right of peoples to freely dispose of their natural wealth and resources has been remarkably inconsistent in its application. From a human rights perspective it is peoples who are the right holders, whereas States are the duty bearers. Cautiously recognizing that there is no one model of governance and management to accommodate indigenous self-determination, the authors, who have focused on Nordic countries and Sami people, conclude on the need to invigorate indigenous peoples' rights as a new source of authority in governance systems.

An approach more focused on the conditions for effective international governance is proposed by Koivurova and Molenaar, who distinguish between governance and regulation.⁹³ In their analysis of gaps in Arctic Ocean governance, they interpret the concept of 'governance' as the international institutional framework, including institutions or mechanisms at a global, regional or sub-regional level, and mandates of existing organizations and mechanisms. On the other hand, 'regulation' refers to the international legal framework, impacting the global, regional or sub-regional levels. This differentiation allows them to point to implementation mechanisms and the authority needed to achieve these ends, such as the OSPAR Commission, working as an authority by default for the implementation of the Convention for the Protection of the Marine Environment of the North-East Atlantic, in the absence of a competent international organization at the global level.

This approach of governance puts much emphasis on mechanisms of implementation, especially when it comes to state-level activities. Analyzing the governance of the Arctic Council, Koivurova questions its effective capacity to deal with challenges such as environment protection, climate change adaptation, indigenous people and 'non-Arctic actors' participation. The absence of legal status of the Arctic Council is seen as the main obstacle to its effectiveness, and the creation of an Arctic framework treaty a more and more pressing issue, although Koivurova acknowledges there are many obstacles to the adoption of a treaty.⁹⁴ In 2010, Koivurova deems the Arctic Council as unlikely to "engage in serious strategic discussion over its place in Arctic governance"

92 Cambou and Smis, *supra* note 20.

93 Koivurova, Timo, and Erik J. Molenaar, *International Governance and Regulation of the Marine Arctic: Overview and Gap Analysis*. Oslo: WWF International Arctic Programme, 2009.

94 Koivurova, Timo. "Alternatives for an Arctic Treaty, Evaluation and a New Proposal." *Review of European Community & International Environmental Law* 17(1) (2008): 14–26. DOI: 10.1111/j.1467-9388.2008.00580.x

and hopes the Arctic Council would revisit the "governance fundamentals in a critical manner" for "real governance over economic activities."⁹⁵ Pointing at several strengths of the organization, such as its flexibility or the status given to the Arctic indigenous peoples organizations, Koivurova nevertheless underlines that, since the legislative powers remain exclusively in the hands of individual member states, the Arctic Council has a limited role in natural resource management.⁹⁶ He also provides a skeptical evaluation of the current capacity of the Arctic Council, beyond the sponsoring of climate science, to directly influence policy on climate change, since ACIA did contain "very weak policy recommendations," and since "joint statements by the Arctic Council member states do not reflect the realities of the climate policies of the very same states."⁹⁷

Focusing on Nunavut, Loukacheva and Garfield develop another approach of governance in which the prescriptive role of law has a prominent place.⁹⁸ The authors refer to the concept of 'sustainable governance', which they link to the notion of human rights in stressing the importance of self-reliant development and performance of governmental institution as the two essential dimensions of socio-economic improvement. The two authors provide an analysis of the complex network of actors, institutions, and legal framework at stake. Their approach leads them to reveal tensions between actors engaged in the governance process. The authors refer several times to 'a cultural clash' between culture and values and more specifically to a 'clash' between "Qallunaat concepts and institutional structures," and certain contradictory elements in "Inuit social systems, values and perceptions" while Nunavumiut are nevertheless incorporating Western concepts and institutional structures into their legal arrangement, legislation and model of governance. Loukacheva and Garfield also bring to light tensions between socio-economic development and sustainable governance and they identify the interaction of various groups of actors and institutions, such as the court of Justice, the educational institutions, and civil actors (e.g. Elders). Their approach is close to the functional approach in so far as they focus on actors and their diverging views in the governance processes.

95 Koivurova, *supra* note 9.

96 Koivurova, Timo, and David Vander Zwaag. "The Arctic Council at 10 Years: Retrospect and Prospects." *University of British Columbia Review* 40 (2007): 123.

97 Graczyk and Koivurova, *supra* note 9.

98 Loukacheva and Garfield, *supra* note 8.

3.3 *The Functional Approach*

Functional approaches seek to analyze what *does* occur (in governance), and to understand the processes of decision-making. Authors in this approach put a significant emphasis on interaction of actors such as consultation processes, negotiations, identification of innovative processes. Coherence, but also democracy or effectiveness, appear as criteria of evaluation. Political scientist Rodon has provided an analysis of multi-level governance as it has developed in Nunavut. He analyses the interaction between the Government of Nunavut (GN) and Nunavut Tunngavik Incorporated (NTI), the Inuit organization that was created to manage the compensation funds allocated under the Nunavut Land Claims Agreement and the policy coherence of their arrangements in making an overall assessment of the “policy coherence and efficiency” in Nunavut.⁹⁹

Thus he identifies conflicting views on governance emanating from the two institutions. The GN is the only Canadian public government created by a land claim agreement and this creates a special set of obligations and entrenches a horizontal multi-level governance model with the Inuit land claims organizations. Rodon analyses how devolution is implemented and the contradictions between the institutional framework and the views of actors on development, through a close focus on implementation of two policies: one related to the implementation of the land claims agreement regarding resources; and the other related to the language Act. Suggesting detailed options, Rodon concludes with the need for a more cooperative approach to policy making and implementation between the GN and NTI in order to strengthen Nunavut policy-making and ensure a better policy coherence and efficiency in Nunavut.

In an analysis of Faroese governance, which so far has received little attention in Arctic academic literature, Rógvi examines in a similar fashion the coherence of governance processes and the logic of its development through time.¹⁰⁰ The better functioning aspects of Faroese governance such as fish-farming, employment services, taxation and pelagic fisheries are seen as the results of trial and error, of evolved law and structures and vigorous debate, and not the results of planning or legal transplants.¹⁰¹

Stokke and Hønneland have developed a structured analytical framework to assess international governance in the Arctic. In the book they have edited, *International Cooperation and Arctic Governance*, they focus on the impacts of three institutions: the Arctic Council, the Barents Euro-Arctic Region and

99 Rodon, *supra* note 8.

100 Rógvi, *supra* note 7.

101 Ibid.

the Council of the Baltic Sea States. The analytical framework is designed to assess three categories of impacts that the authors of the collective book have referred to: (1) effectiveness defined as mitigation or removal of specific problems; (2) political participation, highlighting changes in participation and influence in decision making on Arctic affairs; and (3) region building understood as contributions by Arctic institutions to denser functional or discursive connectedness among the inhabitants of the region.

Although Stokke and Hønneland refer to Young's definition of governance, the design of their analytical framework and its application by the academic contributors also connects them to the 'functional approach'.¹⁰² One noticeable feature of this analytical framework is the definition of explicit evaluative yardsticks of effectiveness. To assess the degree to which institutions have succeeded in problem solving, i.e. the effectiveness of governance, they distinguish between outputs (decisions), outcomes (behavior) and impacts (on policy objectives).¹⁰³ Some contributing authors like Offerdal have put emphasis on the various interests of actors in the processes and on the resulting 'tension', e.g. between indigenous peoples organizations, NGO's and the Arctic Council on specific issues and contexts.¹⁰⁴

3.4 *The Critical Approach*

The critical approach category includes approaches that focus on applying a global interpretative theory on governance analysis in order to renew our understanding of Arctic issues. These approaches, in which the analytical framework often stands for a central argument of the demonstration, are mainly to be found in international relations and in studies on global governance. They focus on border and space perceptions, like Knecht and Keil's critical geopolitics perspective.¹⁰⁵ Not all scholars, be they in international relations or in geopolitics, refer to the concept of governance. When they do so, the concept of governance is not necessarily prominent, and not as conceptualized as concepts like 'critical geopolitics' understood as a concept to question

102 Stokke and Hønneland, *supra* note 6.

103 Stokke, Olav Schram. "Examining the consequences of Arctic Institutions." in Stokke and Hønneland *supra* note 6, 13–26.

104 Offerdal, Kristine. "Oil, gas and the environment." in Stokke and Hønneland, *supra* note 6, 138–162.

105 Knecht, Sebastian, and Kathrin Keil. "Arctic geopolitics revisited: spatialising governance in the circumpolar North." *The Polar Journal*, 3(1) (2013): 178–203. DOI:10.1080/2154896X.2013.783276.

geopolitical practices at the global level,¹⁰⁶ or the concept of 'northernness' used to conceptualize the North as a borderless area as well as to describe new social and civil cross-border regionalization.¹⁰⁷

Heininen has judged that requisite good governance is not a question of experience or innovations, which are already present in the current governance, but a question of avoiding barriers, geographical as well as mental ones, so that institutionalized international cooperation can deal with challenges of globalization, regionalization, security and sustainability in full respect of democracy.¹⁰⁸

Knecht and Keil ask if the Arctic can be considered as a geopolitical entity or if it remains fragmented by state borders, and what effect does this have on circumpolar governance capacities.¹⁰⁹ Their study aims to depart from a conflicting vision and to resolve a supposed contradiction between sovereignty and cooperation. The authors conclude by stressing that maintaining Arctic national sovereignty and promoting the image of a 'borderless North' are not necessarily contradictory patterns of national and regional governance, and can co-exist peacefully. Canadian policy's emphasis on 'absolute sovereignty' is considered as having a more hampering effect on cooperation than "Russia's hegemon-like status."

Although not much conceptualized, the concept of governance appears central in this analysis: it allows the authors to explain the shaping role and impact of spatial imaginaries in the political arenas. The notion of 'spatialities of governance' highlights how spatial imaginaries may exceed borders and state sovereignty.

4 Discussion: Variations and Core Concepts

Each approach provides beneficial insights. It has also become clear that, in general, the concept has not been very much conceptualized. Whereas the notion of governance allows one to pay attention not only to classic institutions, to forms of democracy, to power and its instruments, but also to new social co-ordination mechanisms that make policy action possible,¹¹⁰

106 Heininen, Lassi, and Heather Nicol. "The Importance of Northern Dimension Foreign Policies in the Geopolitics of the Circumpolar North." *Geopolitics* 12 (2007): 133–65.

107 Heininen, *supra* note 45.

108 Ibid.

109 Knecht and Keil, *supra* note 105.

110 Smouts, *supra* note 22.

institutional analysis, and in particular that of international institutions, appears to be the important focus in the literature on Arctic governance, and is mainly to be found in pragmatic and prescriptive approaches. Institutions are still being investigated as a crucial dimension of governance. They are, after all, still in the making, like the Arctic Council, which only recently moved from a policy-shaping role to a decision-shaping role with legally binding instruments.

In order to assess to what extent the results of the various approaches relate to the concept of governance, and to evaluate the operationality of the concept of governance, we look into three interlinked concepts often referred to: normativity, legitimacy and efficiency.

4.1 *Normativity*

Scholars do not share the same perspectives on what should be the normative basis of governance. No consensus prevails over the way to improve governance in the region, be it through the integration of regimes or the implementation of treaties. Even if a treaty is to be implemented step by step, or a regime complex is to be reinforced progressively, the two approaches remain at odds. A major difference lies in the distinctive perception of the role of law, and more particularly, in the notion of hierarchy, or central authority represented by some overarching legal framework. Indeed, the pragmatic approach and Young's neo-institutionalism approach of governance favor horizontal and associational forms of governance, whilst Koivurova's approach, stressing low compliance of states to international principles of law, envisages governance within a system of legal authority. The need to structure the associational form of governance and the regime complex, has been acknowledged by Young, who has come to recognize the need for a "common discourse or narrative" to guide decision-makers in their choice amongst options to address major issues.¹¹¹

Since governance is about rules, the prescriptive approach appears well equipped to tackle the issue of normativity. Indeed it refers to the various principles of 'democratic governance' or good governance', and relies on indicators such as accountability, transparency, equity and human rights... as well as on international agreements, which serve as normative standards such as the International Covenant on Civil and Political Rights, or the United Nations Declaration on the Rights of Indigenous Peoples. By contrast, the critical approach does not claim any normative criteria, and the functional approach, although paying attention to principles of democracy, relates more to processes of efficiency (see below) rather than normative compliance with law.

111 Young, *supra* note 10.

Normativity is linked to legitimacy, which has a normative dimension, since it determines who has the right to rule, and when ruling consists in promulgating rules and determining the costs of noncompliance and the benefits of compliance.¹¹²

4.2 *Legitimacy*

A recurring question associated with governance in the Arctic – a question that has gained much visibility when it comes to international governance – is to determine who is entitled to have a role in governance, as well as who possesses the legitimacy to exercise control in rule-making, implementation and monitoring? Who should participate in the definition of ‘common affairs’ and contribute to substantive content and consequent policies?

By contrast with policy-making approaches to governance, i.e. states for which legitimacy is a core issue interlinked with an indivisible notion of sovereignty, the question of legitimacy has not led to much academic discussion in the context of governance approaches. Regarding the narrative or common vision needed to guide decision-makers, Young has deemed that the Arctic Council was the best vehicle for organizing its elaboration, and this skirts around difficulties that would be raised by the establishment of an Arctic Ocean framework agreement. An approach through a common vision should in his view obviate “intractable issues regarding the identity of the participants” and thereby avoid “protracted and quite likely inconclusive bargaining regarding substantive content.”¹¹³

Nor have prescriptive approaches contributed much to the academic investigation of legitimacy. Koivurova considers that one important factor contributing to legitimacy for the Arctic Council lies in the strong position it gives to Indigenous Peoples in the inter-governmental forum activities.¹¹⁴ The functional approach does not seem to address legitimacy as such. Knecht and Keil deem that littoral states agree – to a greater or lesser extent – that all Arctic actors have a legitimate right to get engaged in Arctic governance. Yet if

112 Buchanan, Allen, and Robert O. Keohane. “The legitimacy of Global Governance Institutions.” Memo prepared for Conference on the Normative and Empirical Evaluation of Global Governance, Princeton University, February 16–18, 2006. http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session1_Buchanan_Keohane.pdf (accessed November 10, 2013).

113 Young, *supra* note 10.

114 Koivurova, Timo. “The Status and Role of Indigenous Peoples in Arctic International Governance.” In *The Yearbook of Polar Law* Volume 3, edited by Gudmundur Alfredsson, Timo Koivurova and Kamrul Hossain (special ed.), 169–192. Leiden: Martinus Nijhoff Publisher, 2011.

scholars and practitioners agree on the legitimacy to grant a wide range of actors a right to participate in the governance of the region, the questions remain: to what degree and how? Cambou and Sims have demonstrated the need to invigorate indigenous peoples' rights as a new source of authority for governing and managing land and natural resources.¹¹⁵

It is worth noting that studies on a local or regional scale, like the level of Nunavut governance, have provided detailed and authoritative insights on legitimacy. Loukacheva and Garfield investigating sustainable human rights and governance in Nunavut have come to the conclusion that there is a need for greater participation of actors such as Inuit community leaders or Elders in all aspects of the Nunavut Human Rights Tribunal process, including mediation and the hearings.¹¹⁶ Rodon explores how the two institutions of the Government of Nunavut and Nunavut Tunngavik Incorporated are mapping out their authority and legitimacy throughout the policy process, and how their own legitimacies may lead to competing roles.¹¹⁷

4.3 *Effectiveness*

Although legitimacy has not inspired much empirical investigation by scholars when thinking in terms of governance, they have deployed significant efforts in assessing the effectiveness of governance. Keskitalo's pragmatic approach emphasizes the need to strengthen organizational capacities for effective implementation of adaptive actions.¹¹⁸ Prescriptive approaches mainly assess the effectiveness of international governance through estimating the degree of incorporation of international standards regarding issues like human rights or climate change into national law.

To assess the efficiency of the human rights regime in Nunavut under the Human Rights Act, Loukacheva and Garfield examine the cultural challenges of complaining before a court, together with quantitative notifications and inquiries filed by Inuit.¹¹⁹ The authors do not provide a normative assessment but show how socio-economic conditions, the development of Nunavut self-reliance and the performance of its governmental institutions are linked to sustainable governance, and they provide recommendations in terms of education and participation.

¹¹⁵ Cambou and Smis, *supra* note 20.

¹¹⁶ Loukacheva and Garfield, *supra* note 8.

¹¹⁷ Rodon, *supra* note 8.

¹¹⁸ Keskitalo, *supra* note 89.

¹¹⁹ Loukacheva and Garfield, *supra* note 8.

Rodon's institutional approach assesses the efficiency of the implementation of two public policies in Nunavut in relation to the degree of coherence in the institutional framework and in the views of actors.¹²⁰ He brings to light competing roles and the inadequate statutes of institutions, which are detrimental to efficient governance.

Using the yardsticks proposed by Stokke and Hønneland, Offerdal – in 2007 – assesses the Arctic Council's (AC) impact in tackling environmental challenges of oil and gas exploitation.¹²¹ In terms of effectiveness, she deems the AC as unlikely to reach ambitious goals such as the elimination of pollution in the Arctic, and the AC scores low on effectiveness as a whole. In terms of empowerment, the AC also scores low by reason of the low number of references and its limited role on the international and national arenas but the author grants a relative positive role of the AC in its potential for problem mitigation. Finally, the AC does not seem to play an important role as regards region building in the oil and gas area.

Assessing effectiveness does not seem a central goal of critical approaches, which rather demonstrate how narratives of Arctic states can lead to a false assessment of the contradictory patterns of national and regional governance. In this respect, they contribute to shedding a light on a certain effectiveness of governance, which is denied by neo-realists approaches when they emphasize the probability of international conflict over resources.

One might then ask to what extent does policy influence studies on governance? The state centric approach – along with neo-realist approaches – is leading to the development of a critical geopolitical perspective.¹²² The state centric interpretation of rights over natural resources also points to the conflation of two distinct topics: the human right to self-determination (human rights law); and the principle of state sovereignty (international law).¹²³ Conversely, we might also ask to what extent are policy-makers informed and influenced by the academic literature provided by social scientists. It is a basic supposition that the purpose of social science is to help citizens and policymakers better understand the world, with an eye on changing that world. Social science ought to provide useful answers to useful questions. Yet the question of the interface between academic production and policy-making is too large a question to be specifically addressed here, especially since much of the academic literature published has not necessarily referred to the concept of governance.

¹²⁰ Rodon, *supra* note 8.

¹²¹ Offerdal, *supra* note 104.

¹²² Knecht and Keil, *supra* note 105.

¹²³ Cambou and Smis, *supra* note 20.

Conclusion

This study has examined governance analysis in the Arctic social sciences in order to provide insights into the differentiated use of the concept and its operationality. Unlike the homogeneous use of the concept by policy-makers, centered on a Westphalian or state-centered understanding of governance, the academic production on Arctic governance across disciplines appears very diverse, in terms of the degree of conceptualization attained, and also in terms of its utility as an analytical framework. The four categories of approaches identified (pragmatic, prescriptive, functional and critical) shed light on this differentiated use and their substantive goals: the probability of implementation; compliance with law; the efficiency and effectiveness of processes; or the re-framing of the issues at stake. The four approaches, where not mutually exclusive, contrast in the role they grant to law and normativity in the governance process, as well as in their assessment of effectiveness, and the specificity of the yardsticks used. In particular, some studies develop explanatory approaches, focusing on understanding why a governance process does not reach its goal, while others concentrate efforts on evaluating and measuring the different impacts of a governance system on society. It is this very diversity that can lead to very contrasted approaches. While Young, for example, focuses on the integration of a complex regime and displays an ever-renewed optimism, Koivurova expresses doubts regarding Arctic states compliance with international law without the support of an international legal framework, and Alfredsson, focusing on the principles of good governance, human rights and democracy, offers a severe assessment of state governance in the Arctic.

Two dimensions do not seem to have attracted much attention by scholars. First, corporations or economic actors and international economic governance are poorly represented in governance studies. Yet Smouts has stressed that the criteria underlying the concept of governance is overall efficiency, "but as the regulator acting globally and across every social system is now the market, an approach in terms of governance could hide, under an idealistic consensus vision, the most treacherous economic liberalism."¹²⁴ An analysis of the role of economic actors in Arctic governance would certainly help refine the picture of governance in the Arctic.

Secondly, diverging views on governance amongst actors have not been the subject of sufficient analysis. This debate on the conflicting nature of governance, pointed to in the definition of the Commission on Global Governance,

¹²⁴ Smouts, *supra* note 22.

and commented on by a few scholars, should be given even more importance in the future if we consider the increasing activities in the Arctic and immigration in some regions, highlighting the diverging interests, and differentiated rights between indigenous and non indigenous peoples. It is nonetheless true that the narratives of conflict, and in particular of international military conflict, lead scholars to analyze and emphasize the existing and prevailing state of cooperation between states on the international level in the Arctic.

While not forgetting that governance cannot be the be-all-and-end-all key to understanding and framing all the political issues at stake in the Arctic, the concept of governance has already provided valuable complementary or contrasting insights to our understanding of the Arctic and its future development. The degree to which the use of the governance concept by policy-makers and scholars has benefited the other's arena would appear to deserve additional investigation: in particular, what effect, if any, do social science outcomes on governance have on the behavior of the actors of governance themselves? Further empirical evidence focusing on specific sectors of governance, among them the economic sector, could also provide additional insight into the concept of governance and its relevance as an analytical tool in a diverse and fast evolving Arctic.