

**PCRC WORKING PAPER SERIES**



PCRC 2nd Symposium  
“The Future Design of the Arctic Ocean Legal Order”  
July 28-29, 2016

**PCRC Working Paper No. 5 (December, 2016)**

**“Future Legal Development in the Arctic:  
Prerequisites and Prospects”**

**Viatcheslav V. Gavrilov**

© Viatcheslav V. Gavrilov 2016

Polar Cooperation Research Centre (PCRC)  
Graduate School of International Cooperation Studies (GSICS)  
Kobe University, Japan

<http://www.research.kobe-u.ac.jp/gsics-pcrc/index.html>

## **Future Legal Development in the Arctic: Prerequisites and Prospects**

*Viatcheslav V. Gavrilov*

Far Eastern Federal University

Viatcheslav V. Gavrilov is Professor, Head Department of International Public and Private Law, School of Law, Far Eastern Federal University (FEFU), Vladivostok, Russia. He received his PhD in International Law from Kazan State University in 1994 and his S.J.D. in 2006. He is the author of many scientific publications devoted to actual problems of international public and private law, including two monographs and textbooks: "International Private Law: Course of Lectures"; "International Law. General and Special Parts" (with co-authors); and "International and Interstate Protection of Human Rights" (with co-authors). In recent years he has been heading the scientific working group of FEFU's law school for International Law of the Sea and the Arctic Studies.

He was invited as a speaker and has participated in numerous international conferences and programs in the US, China, France, Hungary, Taiwan, Spain, Indonesia, Malaysia, Philippines, Cambodia, India, Thailand, Canada and Japan. He is also a member of the Executive Committee of the Russian Association of International Law, member of Asian Society of International Law and co - founder and attorney of the Etalon Board of Lawyers in Vladivostok. In 2010-2011, he was a member of the Study Group on the Responsibility to Protect of the Council for Security Cooperation in the Asia Pacific".

### **1. Introduction**

While the significance of the Arctic is increasing in the modern world, the international community is facing some challenging tasks, which nowadays determine the essence and main areas of cooperation between the Arctic States and other interested actors in the region.

The most important among them lies in determining fundamental characteristics of the multilateral governance of the Arctic and improving mechanisms and procedures that already exist within the Arctic Council and other regional institutions and are

intended to ensure its effective implementation. This task is largely associated with the current deep transformation of the Arctic Region, which entails the necessity to examine the reasons lying behind the ongoing developments and to build a roadmap for the Arctic development in new historical conditions.

In this regard, it is noteworthy that in 1991 the Arctic Environmental Protection Strategy (AEPS)<sup>1</sup> adopted by eight Arctic States and the Arctic Council (AC),<sup>2</sup> which replaced it in 1996, were “very much built on the idea of protecting vulnerable Arctic ecosystems from human induced pollution, both from within the region and, perhaps more importantly, from outside it.”<sup>3</sup> However, as early as in 2000, the climate change became a key issue on the Arctic political agenda, when the AC launched the Arctic Climate Impact Assessment (ACIA).<sup>4</sup> Its results “dramatically changed the way we perceive the Arctic as a region. Instead of the ‘frozen desert’ image that had influenced the work of the AEPS, it became almost the opposite, a region undergoing a vast and long transformation process.”<sup>5</sup>

It is obvious that the ongoing transformation process in the Arctic cannot be successfully managed without adopting relevant legal and other rules to determine main areas, terms and procedures for the multilateral interstate cooperation in the region as well as without creating an effective international structure or mechanism to ensure that cooperation from an organizational point of view.

The last task to a large extent should have been resolved by the Arctic Council, which was established in 1996 as a high-level forum to “provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and others Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.”<sup>6</sup>

---

<sup>1</sup> See Arctic Environmental Protection Strategy, Rovaniemi, Finland. June 14, 1991, available at [http://library.arcticportal.org/1542/1/artic\\_environment.pdf](http://library.arcticportal.org/1542/1/artic_environment.pdf), accessed 04 April 2016.

<sup>2</sup> See Declaration on the Establishment of the Arctic Council, Ottawa, Canada. September 19, 1996, available at [https://oarchive.arctic-council.org/bitstream/handle/11374/85/00\\_ottawa\\_decl\\_1996\\_signed%20%284%29.pdf?sequence=1&isAllowed=y](https://oarchive.arctic-council.org/bitstream/handle/11374/85/00_ottawa_decl_1996_signed%20%284%29.pdf?sequence=1&isAllowed=y), accessed 04 April 2016.

<sup>3</sup> T. Koivurova, ‘Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance’ (2010) 46(237) *Polar Record* 146-156 at 148.

<sup>4</sup> See A.E. Nilsson, *A Changing Arctic Climate. Science and Policy in the Arctic Climate Impact Assessment* (Linköping University, Department of water and Environment Studies, Linköping 2007), 5.

<sup>5</sup> Koivurova, supra note 3, at 149.

<sup>6</sup> Ottawa declaration, supra note 2, para 1(a).

However, as practice showed, over the last years the Arctic Council proved itself more as a producer of influential scientific assessments and international initiatives and as a mechanism for increasing the prominence of the Arctic's indigenous peoples,<sup>7</sup> rather than an international regulatory body able to solve Arctic governance issues and make associated decisions mandatory for its member States.

As few exceptions may serve the formulation and conclusion under the auspices of the Arctic Council at the Nuuk Ministerial Meeting in May 2011 of an international agreement on search and rescue in the Arctic<sup>8</sup> as well as an international agreement on Arctic marine oil pollution preparedness and response,<sup>9</sup> which was signed by representatives of 8 AC member States in May 2013 at the Kiruna Ministerial Meeting. The third legally binding agreement in the Arctic Council history on enhancing international Arctic scientific cooperation is expected to be signed in the spring of 2017 during a ministerial meeting, which should take place in Alaska, USA.

Meanwhile, as the dangerous effects of climate change are increasingly being observed throughout the Arctic, it has become apparent that new multilateral agreements of various nature and content aimed at protecting the Arctic environment are urgently needed to respond to this crisis. "As climate change causes the ice to melt and new areas to open up, this unique environment is facing unprecedented changes and serious threats from increased activities such as shipping, oil and gas, and fishing."<sup>10</sup> In light of these rapid changes, the current regulatory and governance regime for the protection of the Arctic marine environment has become inadequate, and new measures must be adopted if we are really interested in protecting and preserving the environment and in using the Arctic resources sustainably.<sup>11</sup>

---

<sup>7</sup> See P. Kankaanpää and O.R. Young, 'The Effectiveness of the Arctic Council' (2012) 31 *Polar Research*, available at <http://www.polarresearch.net/index.php/polar/article/view/17176>, accessed 11 April 2016.

<sup>8</sup> See Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (Nuuk, 12 May 2011), available at [https://oaarchive.arctic-council.org/bitstream/handle/11374/531/Arctic\\_SAR\\_Agreement\\_EN\\_FINAL\\_for\\_signature\\_21-Apr-2011%20%281%29.pdf?sequence=1&isAllowed=y](https://oaarchive.arctic-council.org/bitstream/handle/11374/531/Arctic_SAR_Agreement_EN_FINAL_for_signature_21-Apr-2011%20%281%29.pdf?sequence=1&isAllowed=y), accessed 11 April 2016.

<sup>9</sup> See Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (Kiruna, 15 May 2013), available at [https://oaarchive.arctic-council.org/bitstream/handle/11374/529/MM08\\_agreement\\_on\\_oil\\_pollution\\_preparedness\\_and\\_response\\_%20in\\_the\\_arctic\\_formatted%20%282%29.pdf?sequence=1&isAllowed=y](https://oaarchive.arctic-council.org/bitstream/handle/11374/529/MM08_agreement_on_oil_pollution_preparedness_and_response_%20in_the_arctic_formatted%20%282%29.pdf?sequence=1&isAllowed=y), accessed 11 April 2016.

<sup>10</sup> T. Koivurova, E.J. Molenaar, *International Governance and Regulation of the Marine Arctic* (Oslo, Norway: WWF International Arctic Programme: 2009), 5.

<sup>11</sup> *Ibid.*

In our view, the framework of the legal development in the Arctic will directly depend on what decision the Arctic States and other interested parties will make with respect to the following three groups of necessary actions, which have crucial importance for determining the future design of the Arctic Ocean legal order:

The first one is to identify promising areas of international cooperation in the Arctic Region that require political and legal regulation and to determine the role of legal and non-legal regulators in that process.

The second is to clarify the significance of universal and regional acts in the AO rule-making process and their correlation for increasing the effectiveness of the Arctic governance; to determine the role of the Arctic and non-Arctic States in solving that issue.

The third is to analyse the potential that the Arctic Council and/or other international institutions have in order to support and realize the further development of the legal regulation of the Arctic use and preservation.

## **2. What to Regulate**

According to this, first, it is necessary to determine the range of questions and issues that should be prioritized for regulation within the future framework of the Arctic Ocean legal order. In my opinion, the foregoing may be achieved only as a result of a balance between the real needs of participants in the Arctic rule-making process, on the one hand, and their capability to reach compromise agreements on relevant issues and to implement such agreements in practice, on the other.

From all appearances we should agree with the opinion expressed by the participants of the 1<sup>st</sup> meeting of the Arctic Council Task Force on Arctic Marine Cooperation (TFAMC), which took place in September 2015 in Oslo, that in the “time of strained budgets and competing priorities, proposals for new cooperative ventures will be closely scrutinized in terms of need.”<sup>12</sup> Moreover, the participants of that meeting fairly emphasized that “an assessment of future needs for cooperation should en-

---

<sup>12</sup> Arctic Council Task Force on Arctic Marine Cooperation 1st meeting September 21 - 22, 2015, in Oslo, Co-chairs summary report, available at <http://hdl.handle.net/11374/1532>, accessed 15 July 2016.

compass not only gaps (i.e., what is not happening) but also opportunities (i.e., optimizing existing cooperation, making it more cost effective, etc.).”<sup>13</sup>

In this respect, the 2015–2025 Arctic Marine Strategic Plan (AMSP)<sup>14</sup> may be used as one of the most important points of departure for the actors of the relevant rule-making process. The significance of that instrument lies in the fact that it clearly determines strategic tasks of the promising cooperation of the Arctic States and other parties in protecting the Arctic marine and coastal areas and promoting sustainable development of this region. That is why the rule-making activity of the Arctic 8 and other interested parties should first of all be aimed at achieving those goals.

The Arctic Marine Strategic Plan is important also because it is not limited to the sphere of social relations, the regulation of which should become a priority on the present-day Arctic agenda, but also determines fundamental principles and approaches on the basis of which such regulation should be carried out, such as the sustainable development, the precautionary approach, the polluter pays principle and others. However, without a doubt, the most important among them is the Ecosystem Based Management (EBM) approach. It is most likely that the reliance on the EBM while creating and implementing Arctic regulatory acts of various levels will become determinative for the future legal development in the region.

As it was highlighted in the AMSP, the “EBM is increasingly being implemented worldwide in recognition that traditional single-sector and single-resource approaches to management are inadequate... In applying EBM as an overarching approach and putting it into practice through Strategic Actions, Arctic states and observers will have the opportunity to further promote a common understanding and sharing of lessons learned for EBM and to demonstrate this as a best practice internationally.”<sup>15</sup>

### **3. Peculiarities of the Rule-Making Process in the Arctic**

In addition to determining the areas and principles of regulating the cooperation of States and other interested parties in the Arctic, the high significance for increasing

---

<sup>13</sup> *Ibid.*

<sup>14</sup> Arctic Council Arctic Marine Strategic Plan 2015-2025, available at [http://www.pame.is/images/03\\_Projects/AMSP/AMSP\\_2015-2025.pdf](http://www.pame.is/images/03_Projects/AMSP/AMSP_2015-2025.pdf), accessed 15 July 2016.

<sup>15</sup> *Ibid.*, p. 10.

the efficiency of the future AO legal order will bear the solution to the question of what nature and legal force the documents determining its content should have.

### **3.1. Essence of the International Rule-Making Process**

However, before this it is necessary briefly dwell upon the essence of the international rule-making process as a whole, the understanding of which will allow us to find a right solution to that question.

The main feature of the international rule-making process is that, unlike similar national rule-making procedures, it lacks a legislative body that could approve rules and regulations obligatory for all subjects. Existing international bodies that are entitled to make decisions binding on the States (for example, the UN Security Council or the European Court of Human Rights) are involved only in the application of relevant legal norms rather than in their creation. Therefore, international norms are being created by the States themselves and appear to be a result of their wills' harmonization. Such harmonization may be achieved through a variety of forms and methods in bilateral and multilateral negotiations, international conferences and organizations. The result of such coordination are the rules agreed and embodied by the States in relevant documents or the rules that have not been embodied therein but have become the norms of customs.

There are two key stages of the harmonization of States' wills within the international rule-making process. The first one concerns the harmonization of wills on the content of norms. In this context, depending on the number of contracting countries and the presence or absence of contradictions concerning the subject of an agreement and areas of cooperation in terms of which such agreement will be created, relevant norms can have concrete or abstract character, be mandatory or dispositive.

The second stage deals with the harmonization of wills on the determination of the legal force that such agreed norms will have. Its main purpose is for the States to recognize the binding power of international instruments (or customs) containing such norms. This process is called *opinio juris*. After its completion, new international treaties, conventions and other sources of international law appear. However, the creation of sources of international law is not the only result of the international rule-making process. If States do not pass the stage of *opinio juris*, the rules that impose legal obligations upon them simply cannot be created. In this case, norms and documents appear that regulate the behavior of States and other actors,

but not at the legal level. Such instruments are not international treaties but arrangements, and their norms have political force rather than a legal one.

Therefore, norms and documents of different nature and content can be a result of the international rule-making process: from abstract and dispositive political declarations to imperative self-executing legal international treaties having direct effect on the territory of participating countries. In each specific case, the rule-making process is determined by the intended use of each created document and by the achieved level of coordination of contracting States' positions concerning its content and mechanism of its implementation. In some cases, regulation at political level may be preferable to the legal, and in other cases, only a legally binding document is required.

That is why it is pointless to talk about the undoubted advantages of legal norms over political ones or vice versa. Each result of the international rule-making process, depending on the circumstances, has its strengths and weaknesses. Therefore, they should not be opposed to each other but skillfully combined in order to solve the challenges that the international cooperation is facing today.

### **3.2. Rule-Making and the Arctic Council**

In exactly the same way we should assess the general picture of the present and near future of the Arctic regional rule-making activity, especially within the Arctic Council. Even quick and shallow analysis of its nature and features shows that the AC members are still not ready to create a wide and extensive network of international treaties in the main trends of their cooperation in the Arctic. It can be explained by the fact that there still exist a lot of diversities and differences in terms of understanding of the future Arctic development. Moreover, the possibilities of regional players to ensure such cooperation are far from being limitless from political, organizational and financial point of view.

This and some other reasons explain why the Arctic Council and other regional institutions have not been created in the form of an international organization with a supranational authority and why their institutional frameworks are designed to coordinate activities of independent States and other interested actors in the first place.

That is why the Arctic Council and other regional institutions prefer to carry out their activities with the help of various meetings and working groups and with the adoption of non-legally binding declarations, demonstrating an example of low legalization. But it does not mean that they show an 'aversion legalization' or offer to



move away from international organizations possessing international legal personality. It simply means that they go their own way of institutionalization and normative enforcement of their member States' cooperation, correcting it when necessary.

This path can be defined as a '*Down-Up Way*', when at first a common position of States on a specific issue is being developed at the lower level (level of Working Groups and Tasks Forces), and then necessary steps towards its solving are being made (level of Senior Officials and Ministers Meetings). Relevant bodies elaborate institutional and normative mechanisms to improve their collaboration in specific areas only after the appearance of a joint movement through this path and if it is necessary. This approach significantly differs from the majority of international institutions (with the exception of some institutions in Asia and Asia Pacific), which clearly demonstrates their adherence to formal procedures and high level of legalization. This behavior can be defined as an '*Up-Down Way*', when creation of institutional structures and elaboration of rules and norms at the highest level are put on the first place.

However, only the '*Down-Up Way*' within the rule-making mechanism more or less successfully solves the issues faced by the Arctic States at the moment and corresponds to the current level and nature of their relationships and, more importantly, to their opportunities.

Besides, it is most likely that the institutional framework of the international institutions in the Arctic will remain relatively weak in the near future in comparison, for instance, with the respective mechanisms of universal inter-governmental international organizations. It could be explained by the fact that, despite the growing objective necessity for more and more strict coordination of the AC members' and observers' activity against increasing challenges and threats in the Arctic, among them still exist serious subjective disagreements concerning the ways, methods and means of the required cooperation, not to mention existing political tensions and even confrontation between some of them.

Considering the foregoing, at the moment it would be naive to expect the prompt transformation of the AC into a fully-fledged international regional organization capable of taking decisions mandatory for its member States or to discuss the necessity for complete replacement of the current mechanism of the Arctic governance and regulation, based on the coordination and application of political norms, with a

mechanism aimed at creating legally binding documents and enforcing their strict implementation.

### **3.3. The Role of Legally Binding Agreements**

This, however, does not mean that the regional regulation of the Arctic agenda issues can and should be entirely political. In certain cases, the more preferable, and sometimes the only possible, way is to work out and adopt legally binding international agreements. Their conclusion is required, for example, for the delimitation of maritime spaces, the determination of the procedure for protecting and exploiting trans-boundary resources or the application of formal dispute settlement procedures.

By entering into legally binding agreements, States make obligations for the breach of which they may be held liable. That is why the adoption of such documents is possible only subject to the objective interest of the international law-making process participants in concluding relevant agreements and their readiness for mutual compromises.

At the moment, the Arctic States demonstrate such interest and readiness comparatively rare, which explains limited number of international treaties concluded by the States with respect to the Arctic Region and their mostly bilateral nature. However, the future looks promising, and the AC members' activity in working out the three above-mentioned regional legal binding agreements bears witness thereto.

## **4. Correlation of Universal and Regional Regulation**

The task to determine the future design of the Arctic Ocean legal order may not be completely solved without settling the issue on the correlation of regional acts regulating and ensuring the international cooperation in the Arctic with the relevant universal international treaties and agreements.

It is well known certain confrontation exist between supporters of the 'global internationalization' of the AO legal status by means of increasing the role of the 1982 United Nations Convention on the Law of the Sea (LOSC),<sup>16</sup> on the one hand, and advocates of the AO special legal regime based primarily on the regional and bilat-

---

<sup>16</sup> United Nation Convention on the Law of the Sea, Montego Bay, 10 December 1982. In force 16 November 1994; 1833 *UNTS* 397.

eral cooperation of the Arctic States under the paramount importance of the customary international law, on the other.

The second point of view is based on a thesis (which, by the way, gained widespread acceptance in terms of substantiation of China's claims over the South China Sea areas) that coastal States in the Arctic have special legal rights and obligations that proceed from their multi-year activity in developing Arctic areas and resources and stipulate the priority of regional regulation over the universal one in this part of the globe.

This point of view is also quite popular in Russia. Some of Russian researchers believe, for example, that “the contractual and legislative practice of the Arctic States themselves plays the dominant role in the legal status of the Arctic. They apply universal international treaties with due consideration of all references to regional agreements therein and in the context of the customary international law.”<sup>17</sup> Moreover, in the Russian legal doctrine there exist an opinion that “the Arctic was not the subject of examination during the Third UN Conference on the Law of the Sea, and its legal status, the core of which is formed by the national legislation of near-Arctic States, was shaped long before the 1982 UN Convention on the Law of the Sea.”<sup>18</sup>

However, I cannot agree with this point of view. The fact is that contraposition of universal and regional international legal sources covering legal status of the Arctic or justification of their selected implementation in certain situations is considered unproductive. The erroneousness of such an approach can be proved, inter alia, by the fact that a considerable number of legal and other issues in the region have already been and are being resolved on the basis of the LOSC (delimitation of internal waters, the territorial sea, the exclusive economic zone, the continental shelf, etc.). To do otherwise would mean to cancel all political compromises and agreements that have already been achieved by the States on the way.<sup>19</sup>

Moreover, a deeper analysis of the issue shows that in fact there are no irreconcilable contradictions between the provisions of the LOSC and other universal treaties, on the one hand, and norms of regional agreements and customary rules, on the other.

---

<sup>17</sup> See A.N. Vylegzhanin, ‘Legal Status of the Arctic Region in Documents,’ in I.S. Ivanov (ed.), *The Arctic Region: International Cooperation Issues: Chrestomathy in 3 volumes / Russian Council on International Affairs* (Aspekt Press, Moscow, 2013) 15–16.

<sup>18</sup> M.N. Kopylov, S.N. Kopylov, ‘Prospects of the Environmental and Legal Status of the Arctic’ (2015) 11 (90) *Eurasian Law Journal* 15-23, at p. 17.

<sup>19</sup> See V.V. Gavrilov, ‘The LOSC and the Delimitation of the Continental Shelf in the Arctic Ocean’ (2016) 31 (2) *The International Journal of Marine and Coastal Law* 315-338 at 317.

The first ones in most cases recognize the necessity of taking into account certain historical, subjective, geographical and other features when regulating relations in the sphere of the international maritime law or, for example, the environmental law and provide for a special procedure for coordination between parties in this context.

In other words, universal international treaties leave room for a possibility to enter into specific regional or bilateral agreements and to adopt by certain States their national laws on the issues highlighted in the LOSC and other multilateral treaties. Such provisions of universal treaties as well as regional and national legal acts should be considered as *lex specialis*, which can and should regulate relevant relations differently than *lex generali*.

In our view, the Arctic States can successfully implement the foregoing mechanism, which combines general and special legal regulation, to regulate topical issues on the Arctic agenda, taking into account the specific features of that region and interests of its subjects.

As the legal foundation for the relevant regional and national law-making activity may serve, for example, the LOSC provisions on:

- the possibility to take into account regional specificities when applying the method of straight baselines and determining the limits of so-called “historic” bays (para. 5 of Article 7 and para. 6 of Article 10);
- the possibility to delimitate the territorial sea, exclusive economic zones and continental shelf between States with opposite or adjacent coasts taking into account historic or other special circumstances and existing agreements between the States concerned (Articles 15, 74, 83);
- the possibility to cooperate at the regional level for the conservation and optimum utilization of associated, highly migratory, anadromous and other species of fish stocks (Articles 63, 64, 66 etc.) and for the management of living resources in the areas of high seas (Article 118);
- the cooperation of States bordering enclosed or semi-enclosed seas (Article 123);
- the cooperation on a regional basis, including formulating and elaborating international rules and standards, for the protection and preservation of the marine environment, taking into account characteristic regional features (Article 197);
- the right of a coastal States to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from

vessels in ice-covered areas within the limits of the exclusive economic zone (Article 234) and some others.

The foregoing list should not be considered exhaustive. The right of the Arctic States to adopt national laws and legally binding regional agreements in relevant areas directly proceeds from the provisions of some other universal treaties, among which one can name, for example, the World Heritage Convention of 1972,<sup>20</sup> the FAO Compliance Agreement of 1993<sup>21</sup> or the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes of 1989.<sup>22</sup>

Therefore, many Arctic issues can be settled by means of both universal and regional agreements and even national laws. However, depending on the situation, the role and significance of each of those sources within the Arctic legal order will be different.

For example, according to Prof. Y. Tanaka, there exist four possible models of interaction between global and regional legal frameworks on environmental protection against marine pollution in case of the marine Arctic:

1. *The Regional Model.* Under this model, the role of the global treaty is very limited and marine pollution is to be regulated primarily by regional treaties.
2. *The Global-Single Regional Model.* Under this model, while marine pollution is primarily regulated by global treaties, additional measures must be taken in a specific region, such as the Arctic.
3. *The Global-Multiple Regional Model.* This model concerns marine pollution arising from sources located in multiple regions. This type of marine pollution must be regulated by global treaties and multiregional cooperation.
4. *The Global Model.* Under this model, sources of marine pollution are to be regulated by global treaties and the role of regional action is inherently limited.<sup>23</sup>

---

<sup>20</sup> Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972. In force 17 December 1975; 11 *International Legal Materials* 1972; <[www.unesco.org](http://www.unesco.org)>

<sup>21</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Rome, 24 November 1993. In force 24 April 2003, 33 *International Legal Materials* 969 (1994); <[www.fao.org/legal](http://www.fao.org/legal)>.

<sup>22</sup> Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 22 March 1989. In force 5 May 1992, 28 *International Legal Materials* 657 (1989); <[www.basel.int](http://www.basel.int)>.

<sup>23</sup> See Y. Tanaka, 'For Models on Interaction between Global and Regional Legal Frameworks on Environmental Protection against Marine Pollution: The Case of Marine Arctic' (2016) 30 *Ocean Yearbook* 345-376 at 346-347.

Professor Y. Tanaka believes that the choice of one of the foregoing models depends on the sources of marine pollution at which relevant regulators are aimed. Should such sources be of mostly regional character (for example, pollution from land-base sources), the fight against them shall first of all be regulated by regional instruments. Should the marine pollution arise from sources located in multiple regions or, for instance, from seabed activities beyond national jurisdiction, the priority should be given to universal regulation.<sup>24</sup>

Despite the fact that the foregoing approach has been developed with respect to the legal regulation of the environmental protection against marine pollution, in our opinion, it can successfully be applied to regulate other areas of interstate cooperation in the Arctic: from navigation and fishing to the coordination of scientific research or protection of living and non-living resources.

In order to correctly determine the ratio of the general (universal) and special (regional) mechanisms of the legal regulation in all of those cases, irrespective of the specificities of each of them, we need to agree on the nature and origin of the issue that should be solved as a result of adoption of a relevant legal instrument and on the capability or non-capability of the Arctic States to cope with that issue using their own resources.

## 5. Conclusion

Summing up the foregoing, we can arrive at a general conclusion that the success of the legal development in the Arctic will directly depend on the following factors:

- the correct determination of the range of issues that should be prioritized for regulation and correspond to real needs and possibilities of the Arctic States and other interested parties;
- the regulation on the basis of unified principles using the Ecosystem Based Management approach;
- the use of flexible combination of political and legal regulatory instruments depending on the level of concurrence of law-making process participants' positions, the sophistication of the rules of conduct worked out by them and the scope and ultimate purpose of the relevant regulation;

---

<sup>24</sup> *Ibid.*

- the use of various interaction models for universal and regional regulation of the Arctic agenda issues depending on their nature and origin and in cases where the involvement of non-Arctic parties is required for their successful settlement.

To our mind, taking into account the foregoing factors in determining the future design of the Arctic legal order, together with the active involvement of relevant universal and regional organizations in its formation (under the coordination of the AC), will allow to make this process a real success.

And only after all interested parties are on the same page concerning the above-mentioned issues, we will be able to proceed to the next important step in the Arctic legal development, which could involve the working out of a new legally binding comprehensive agreement with a new institutional setup that will be able to ensure protection and preservation of the Arctic Ocean and sustainable ecosystem-based management of its resources.<sup>25</sup>

---

<sup>25</sup> See Koivurova, Molenaar, *supra* note 10, at 6.