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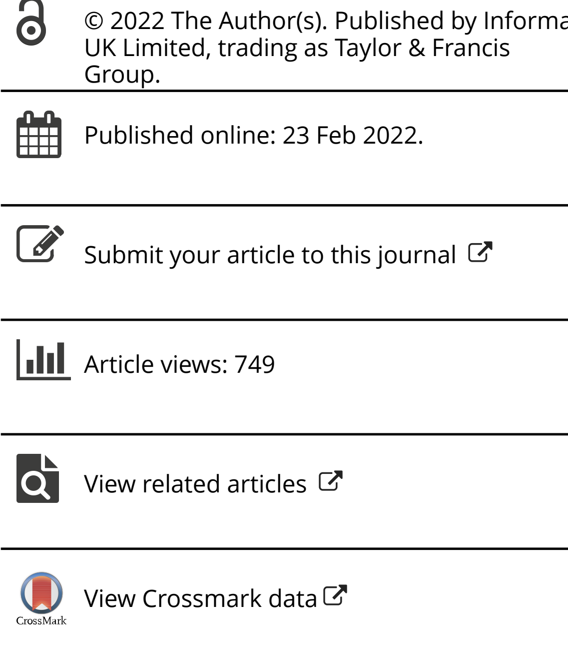

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ARTICLE

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Introductory essay: Polar regions and multi-level governance

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ABSTRACT

This introductory essay synthesises the contributions to this special issue on polar regions and multi-level governance, showing how they address three important themes in the study of institutional complexes: interplay management; the influence that global institutions and processes exert on regional regimes; and the ways in which states and other actors pursue their interests within complexes of institutions. The institutional complexes in focus here comprise institutions relevant to Arctic Ocean governance, EU–Arctic relationships, Arctic maritime boundary disputes, the Antarctic Treaty System (including CCAMLR), the preservation of cultural heritage and the traditional economy in Newfoundland and Labrador, and scientific research in Svalbard.

KEYWORDS

Arctic; Antarctic; governance; international institutions; legitimacy; CCAMLR; marine protected areas; Svalbard; scientific research

Introduction

A range of institutions at subnational, national and international levels have the capacity to influence developments in the polar regions, and efforts to use them for such purposes have multiplied in recent years.

In the Arctic, province-level governments cooperate through several circumpolar or subregional bodies, such as the Northern Forum and the Barents Regional Council. At the national level, Arctic policy documents are routinely developed and refined by Arctic states as well as by non-Arctic states like Germany, the UK and distant but geopolitically rising actors such as China, India and the Republic of Korea. All of them have stepped up their Arctic-related activities and have obtained observer status in the Arctic Council, the foremost regional forum for addressing issues of circumpolar interest.

This applies also to a partly supranational actor: the European Union (EU). It is a founding member of the Barents Euro-Arctic Region, participates as an informal observer in the work of the Arctic Council, and is among the signatories to the Central Arctic Ocean fisheries agreement, which entered into force in 2021.[1] Since its first official publication of an Arctic policy in 2007, the EU has regularly updated and elaborated its positions on Arctic affairs – structured, as are most other Arctic policy documents, around the core topics of environmental and climate change, sustainable development and international cooperation.

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[1] Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Ilulissat 3 October 2018, in force 25 June 2021); Olav Schram Stokke, 'Arctic geopolitics, climate change, and resilient fisheries management.'

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The shift towards increasing institutional density has also marked the Antarctic Treaty System (ATS) over the past 60 years. The ATS is a cluster of institutions and legal instruments centred on the 1959 Antarctic Treaty, including separate agreements, advisory or decision-making bodies, as well as regulatory measures. The Scientific Committee on Antarctic Research (SCAR), a thematic organisation of the International Science Council, existed prior to the ATS and has maintained close interaction with it from the outset.

In both polar regions, global institutions define important parameters of governance – most fundamentally, the general principles and the specific allocation of legal competences that are codified in the 1982 UN Convention on the Law of the Sea (UNCLOS). In the Southern Ocean, as elaborated in several articles in this special issue, the provisions in the Antarctic Treaty concerning claims to sovereignty, which in effect largely suspended those claims, narrow the applicability of the central UNCLOS pillar regarding the management of natural resources and the environment: sovereign rights and exclusive jurisdiction based on the concept of a 'coastal state' and the principle that the 'land dominates the sea;' thus also extended coastal state jurisdiction. Many other components apply equally in both polar regions, as seen in the process under the UN-based International Maritime Organization (IMO) of negotiating and adopting a legally binding Polar Code, with more stringent requirements as to vessel construction and equipment, training and discharges than those applicable elsewhere.

A further level of governance relevant in both polar regions is that conducted by private organisations. A prominent example is the Marine Stewardship Council (MSC), which originated in a partnership between a major transnational food company and a global environmental organisation. Today, this private governance institution certifies more than 10% of the world's capture fisheries, including several of those for krill in the Southern Ocean and for cod and, on and off, mackerel and herring in the marine Arctic.[2]

Alongside this proliferation of institutional arrangements at the global, regional and private levels of governance, scholars have developed tools for examining how these various arrangements may overlap or complement each other.[3] Such institutional interplay, with one or more institutions affecting the contents, operations, or consequences of another regime, may involve normative conflict – but can also generate normative diffusion or reinforcement, as, for instance, when principles or approaches developed in one sector of environmental governance are emulated or strengthened in another institution.

Under such circumstances, the management of activities in a particular issue-area is best understood as the result of interplay among several relevant institutions, often operating at different levels of governance. Terminology differs, but scholars agree on the conceptual core and the empirical significance of this phenomenon. Among the terms in use are 'clusters', 'regime complexes', 'governance architectures' and 'institutional

2. Stokke et al. "*Marine Resources, Climate Change, and International Management Regimes*.

3. Young, 'Institutional Linkages in International Society'; Stokke, *Governing High Seas Fisheries*; Young, *The Institutional Dimensions of Environmental Change*; Oberthür and Gehring, *Institutional Interaction in Global Environmental Governance*; Oberthür and Stokke, *Managing Institutional Complexity*; Biermann and Kim, *Architectures of Earth System Governance*.

complexes;' their shared conceptual core is a plurality of institutions, distinctive in terms of decision-making and participation, but dealing with the same activity or aspects of it, normally in a non-hierarchical manner.[4]

As the articles in this special issue bring out, the institutional complexity that marks polar governance follows inevitably from the enmeshment of change in polar regions in wider and often global environmental, economic, political, and legal processes – and from the determination among those affected by polar change to engage the level of governance most conducive for pursuing their interests.

By far the broadest regime complex examined in this special issue is that for the Arctic Ocean, the subject of Oran Young's contribution. His article is the first among three that address *interplay management* – efforts to influence regime interaction.[5] The Arctic Ocean complex includes a wide range of global, regional, national, subnational as well as private institutions for governing fisheries, whaling, commercial hunting of polar bears, petroleum extraction, shipping, environmental protection, and numerous other activities. The institutional complex studied by Romain Chuffart, Andreas Raspotnik and Adam Stępień is spatially broader, covering also the terrestrial Arctic, but its functional scope is narrower, as it includes only those Arctic-relevant regimes that are significantly influenced by EU policies on energy and the environment. A third regime complex examined in this special issue is far more closely integrated, leaving less leeway for multi-level governance: that is the ATS cluster of legal instruments and decision-making bodies. Marcus Haward examines one elemental regime, CCAMLR, and how those operating it manage interactions with an ongoing regulatory process at the global level.

A second set of articles in this issue narrows in on *global influences on regional regimes*, here how the contents, performance or legitimacy of regional regimes are affected by institutions or political pressures at the global level. The complex in focus for Andreas Østhagen and Clive Schofield comprises institutions and practices that influence maritime disputes in the Arctic; the contributions by Yelena Yermakova and Erik Molenaar address the ATS.

The final set of contributions to this special issue examines specific actors and their *pursuance of interests within institutional complexes*. Danita Catherine Burke draws attention to the sub-state level, focusing on the Canadian province of Newfoundland and Labrador; Nora Apelgren and Cassandra Brooks examine the role played by Norway in a particularly controversial process under CCAMLR. Norway is also among the actors studied in Torbjørn Pedersen's article on the politics of research presence in Svalbard; that article is subject to a legal debate involving also Erik Molenaar and Geir Ulfstein, concerning the relationships between Norwegian sovereignty over the Svalbard archipelago and the rights that other actors may claim based on the Svalbard Treaty.

Interplay management

Interplay management is the subfield of governance dealing with efforts to improve, from the perspective of actors engaging in it, the interplay of two or more institutions. Scholarship on interplay management has tended to focus on the role of certain powerful

4. Gòmez-Mera et al., 'Regime Complexes.'
5. Stokke, 'Interplay management.'

states, or blocs of states. However, also other agents have distinct properties that can equip them for this role: this includes international organisations with responsibilities for initiating or coordinating activities in certain areas, such as the UN Environmental Programme, industry associations and civil society organisations.[6]

The agents of interplay management examined in this special issue are three international institutions that differ considerably in their capacities to influence the operation or performance of other institutions: the Arctic Council, the EU, and CCAMLR.

Institutional strength and management of regime complexes

The first case of interplay management studied here is Oran Young's critical evaluation of the Task Force on Arctic Marine Cooperation. This process was set up under the Arctic Council in 2015 to assess the need for a regional seas programme or some other mechanism for improving cooperation in Arctic marine areas, and to make recommendations on the nature and scope of any such mechanism. After 2 + 2 years of deliberations, the task force recommended a rather modest coordinating mechanism centred on activities within the Arctic Council itself. Young uses this case to discuss the generic question of what conditions are necessary or conducive for engaging effectively in interplay management.

As the members of the task force clearly recognised, successful attempts to coordinate activities within the larger complex of regimes that co-govern the Arctic Ocean will require institutional capacities well beyond those held by the Arctic Council – in terms of membership and competence, as well as material resources.

Thus, although the Council includes all the Arctic states as full members and involves indigenous peoples' organisations more deeply than the case in international bodies otherwise, the actors fully involved in its deliberations represent only a subset of those with stakes in, and influence on, Arctic activities, especially in areas such as high-seas fisheries, shipping, and environmental protection.[7] Most non-Arctic states with substantial interest in the region are now involved with formal Observer status – but this role can hardly be expected to commit them to decisions or priorities deriving from Arctic Council meetings.

Moreover, even among its own members, the Council has not been endowed with the competence to make legally binding decisions, and its scarce and unpredictable financial basis cannot provide sufficient material resources to incentivise those operating other institutions to take instructions or even guidance from the Arctic Council.

However, the most important lesson to draw from the performance of the Task Force on Arctic Marine Cooperation is not that a weak institution such as the Arctic Council has no role to play in the management of interplay among the institutions and initiatives relevant to governance of the Arctic Ocean. On the contrary, argues Young, the conclusions and recommendation of the task force should be seen as a missed opportunity for devising a strategy for making the most of the unique institutional capacities held by the Arctic Council.

6. Stokke, 'Interplay Management.'
7. On stakeholder saliency in Arctic governance, see Stokke, 'Asian Stakes and Arctic Governance.'

As Young points out, despite its limited membership, the high-level meetings regularly held under the Council are typically attended by hundreds of representatives of states, provinces, civil society organisations, businesses and international organisations with stakes in Arctic developments. This makes the Council exceptionally well placed as a venue for focusing political energy towards certain selected and pressing issues.

Moreover, the advantage of a soft-law institution is its greater flexibility to address new issues, launch initiatives, or develop non-binding guidelines or action plans in areas, such as offshore petroleum activities and marine litter, where the distance between best practices and existing practices in other parts of the Arctic can be significant. Nor has lack of regulatory competence hindered the Arctic Council from serving as the venue for negotiating legally binding agreements, as has been the case regarding search and rescue, oil-spill preparation and response, and scientific cooperation in the Arctic.

Admittedly, the Council lacks a substantial financial mechanism: however, it does have privileged access to a well-developed network of world-leading expertise, extending well beyond the Arctic states, in most areas relevant to environmental protection and sustainable development in this region. This network and the authoritative assessments on the state of knowledge, including local and indigenous knowledge, regularly produced in areas, such as Arctic climate change, Arctic shipping, and Arctic biodiversity, have encouraged and promoted regulatory advances in broader forums. Examples include the Stockholm Convention on Persistent Organic Pollutants, the Minamata Convention on Mercury, and the Polar Code adopted under the International Maritime Organization.

All things considered, Young argues, despite the procedural weakness inherent in consensus-based decision-making and the softness of its substantive norms, the Arctic Council is uniquely placed for playing an active and important role in the multi-level governance of the Arctic Ocean. That potential is based, not on institutional strength in the conventional meaning of the term, but on the capacity for exercising soft power by framing issues in ways conducive to joint action, by launching initiatives on issues not addressed by others, and by nudging better-placed actors or institutions to take regulatory or materially costly action on matters relevant to the Arctic.

The EU and Arctic sustainable development

Young explains how a weak institution, such as the Arctic Council can nevertheless make significant contributions to regional governance. By contrast, the institution examined by Romain Chuffart, Andreas Raspotnik and Adam Stępień in this issue is unusually strong; in the context of Arctic governance, however, the EU is often seen as a relatively weak actor.[8]

Chuffart and associates challenge such claims of EU marginality in the Arctic, arguing that the EU's Arctic policy, evolving since 2007, and its participation in the Arctic Council and other regional bodies are only minor parts of the influence exerted by the EU on Arctic developments. Far more important, they hold, is the evolution of the EU's *internal* policies in the energy and environmental areas: these affect the EU's own Arctic footprint, as well as *external* policies that influence the contents of broader regional and global standards applicable in the Arctic.

8. See e.g. Offerdal 'The EU in the Arctic'; Langlet 'Planning from the Margin.'

Both internal and external EU policies are capable of binding governments in the Nordic part of the Arctic, which are either members of the EU or are committed to most of its laws through the European Economic Area Agreement. The influence of those policies on corporate actors is even wider, notably through a variant of policy diffusion known as the 'Brussels effect', which induces rule-makers and industries beyond the EU's jurisdiction to adopt standards that facilitate access to the EU internal market.[9] Cuffart and colleagues expand that concept to embrace also specific trade restrictions, such as the controversial EU ban on seal products and EU plans for a carbon border tax, as well as various programmes and networks funded by the EU and open to participants from neighbouring regions – also in the Arctic.

Concerning EU internal policies and legislation, the authors pay particular attention to the European Green Deal policy package, outlining pathways towards climate neutrality by 2050, and associated legislative proposals that were published in 2020 and 2021.[10] In their view, the ongoing change in how the EU specifies and operationalises sustainable development has become particularly clear in this package. In EU constitutive documents such as the Treaty on the European Union, as well as in policy documents like those on the Arctic, that term has often been used to obscure tensions and trade-offs between environmental objectives, economic goals and European energy security. The ambitious actions envisaged in the 2021 package on energy efficiency, renewables, and a circular economy, argue Chuffart and colleagues, can reduce those tensions, thereby raising the credibility of the EU as a driving force for sustainable development in the Arctic.

Here, it should be noted that political tensions with Arctic coastal states will not necessarily be reduced by lower EU dependency on Arctic energy. In its most recent Arctic policy document, the EU calls for a ban on hydrocarbon development in the Arctic, indicating that it will explore possibilities for restricting trade in oil and gas that originate in the Arctic.[11]

Regime assertiveness, deference, and Antarctic biodiversity

The study of interplay management reported by Marcus Haward in this issue centres on CCAMLR, the key marine living-resources management component of the ATS. Although this regime's effectiveness has been increasingly questioned in recent years, it has long been deemed as relatively successful, due to its early formulation of an ecosystem-based management objective, its adoption of precautionary regulation of krill fisheries and innovative measures for combating IUU fishing, as well as its designation of large MPAs.[12]

Haward examines areas of institutional interplay between this regional regime and the UN Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement), currently being negotiated.

9. Bradford 'The Brussels Effect'; on policy diffusion through either ideational or material impacts, Underdal, "Meeting common environmental challenges.
10. European Commission, 'Delivering the European Green Deal.'
11. European Commission and High Representative, "A Stronger EU Engagement for a Peaceful, Sustainable and Prosperous Arctic " (2021).
12. McBride et. al. 'Antarctic krill *Euphausia superba*.'

Here, he applies a typology of institutional interplay based on the degree of assertiveness displayed by those operating the institutions on matters involving regulatory or programmatic interaction. The variants of institutional interplay opted for by ATS bodies, as Haward brings out, are typically on the assertive side of this typology: either by claiming exclusive competence within its issue area, as CCAMLR does with respect to regional fisheries management; or by challenging or obstructing regulation under other regimes perceived as competing with its own measures. The latter approach is seen in the rejection by CCAMLR members to support the listing of toothfish species under the Convention on International Trade of Endangered Species of Wild Flora and Flora (CITES).[13]

An important backdrop for understanding such assertiveness is the perception among ATS participants that whenever environmental or resource management may touch upon territorial jurisdiction, no institution outside the ATS can be expected to cope equally well with the disputes over sovereignty that were suspended by the Antarctic Treaty.[14]

As Haward notes, in some cases also variants of interplay that involve deference may be acceptable within the ATS. One such type is complementarity, seen in the recognition in the treaty establishing CCAMLR of the competence of the already existing International Whaling Commission. The second variant, congruence, is illustrated by a set of CCAMLR conservation measures in support of the Agreement on the Conservation of Albatrosses and Petrels, which includes among its parties several non-members of CCAMLR located within the migratory range of these seabirds.

In relationships between CCAMLR and the emerging BBNJ Agreement, Haward argues, all these types of interplay are potentially relevant, but the assertive variants are likely to predominate. This is particularly true for that part of the potential BBNJ instrument that deals with area protection. Here CCAMLR has taken centre-stage, pledging to establish a representative network of MPAs in the Southern Ocean, adopting a general framework for establishing MPAs, and designating two such areas thus far.[15]

As elaborated in the contribution by Apelgren and Brooks in this issue, however, CCAMLR deliberations on MPAs have become increasingly polarised in recent years, and many proposals have failed to obtain consensus.[16] Even the two MPAs in place are subject to controversy, as CCAMLR has not succeeded in adopting research and monitoring plans for either of them.[17]

In this political context, Haward notes, CCAMLR's assertion of competence on the definition and designation of MPAs does not imply that it will remain unaffected by the UN process on the BBNJ Agreement. On the contrary, he argues, the global process may very well strengthen those CCAMLR members and observers that press for firmer advances in marine area protection or other major issues dealt with in the negotiation of a BBNJ Agreement: marine genetic resources, environmental impact assessments, and capacity building.

13. Haward, 'Contemporary challenges to the Antarctic Treaty and Antarctic Treaty System'; on 'strategic inconsistency' among regimes, see Raustiala and Victor, 'The Regime Complex for Plant Genetic Resources.'
14. See e.g. Stokke and Vidas, *Governing the Antarctic.*
15. .Everson 'Designation and management of large-scale MPAs drawing on the experiences of CCAMLR.'
16. See also Brooks et al., 'Reaching consensus for conserving the global commons'; Sykora-Bodie and Morrison, 'Drivers of consensus-based decision-making in international environmental regimes.'
17. Stokke, 'Climate Change and Management of Antarctic Krill Fisheries.'

Global-regional interplay

A shared topic for the second set of articles in this special issue is how regional governance activities are influenced by global-level institutions or processes.

One type of such influence is cognitive or ideational in nature, as when certain approaches to handling disputes or difficult issues serve as examples for those operating other institutions. Another category is normative: this may involve, for instance, principles or decisions under broader institutions that are recognised as authoritative by those negotiating or operating a regional institution; or when outside actors criticise certain features of the institution or its performance on the basis of certain widely shared norms. As illustrated in the EU case indicated above, concerning efforts to influence sustainable development practices in the Arctic, a third type of external influence is material, as when, access to markets or funding programmes is made conditional on certain criteria defined by external actors or institutions.

Global ocean law, regional dynamics, and maritime boundary disputes

Andreas Østhagen and Clive Schofield disentangle the relationships between global ocean law, as codified in UNCLOS, and regional practices in the Arctic as to maritime claims and international boundary agreements. This the two authors do by examining how Arctic coastal states have drawn straight baselines along their coasts; how they perform, relative to other regional groupings, as to resolution of boundary disputes; and how they approach overlapping assertions to the outer continental shelf located beyond 200 nautical miles from the baselines.

In each of these areas, Østhagen and Schofield note how UNCLOS, and international decisions based on it, set the parameters for state action. For instance, international courts have delimited the types of circumstances that may be relevant when moving from a provisional equidistance line to an equitable boundary delimitation. Further, the Commission on the Limits of the Continental Shelf has decided whether the scientific documentation presented by states in support of claims to the outer continental shelf meets the UNCLOS-based criteria and adopted specific recommendations on exactly where the outer limit shall be. Global ocean law, they argue, has contributed significantly to the high level of cooperation and peaceful dispute resolution in the Arctic maritime space.

That said, Østhagen and Schofield also note several important regional characteristics and dynamics that have contributed to this outcome. Prominent among regional explanations are innovative arrangements regarding resource sharing and ocean boundary-drawing; various conflict-avoiding measures developed by Arctic states, as well as a track record of pragmatic dispute management practices that have facilitated the search for integrative solutions.

Dispute management is seen, for instance, in a string of arrangements for cooperative fisheries management despite unsettled delimitation lines, including the Joint Norwegian–Russian Fisheries Commission, which for more than 40 years has managed the world's biggest cod stock as well as several other stocks shared

by the two coastal states in the Barents Sea.[18] Conflict avoidance is evident, as Østhagen and Schofield explain, in the decision by Canada and Denmark (the latter on behalf of Greenland) to insert a gap in the Nares-Strait segment of the continental shelf boundary they agreed on in 1973, to avoid affecting their competing claims to Hans Island, which today is the only disputed land territory in the Arctic.

Integrity, accountability, and ATS legitimacy

Institutional legitimacy is the core concept in Yelena Yermakova's contribution, applied to the ATS and specified through a set of criteria proposed by Allen Buchanan and Robert Keohane.[19] This legitimacy framework is broader than the one conventionally applied in legal scholarship, which emphasises the way in which a rule or an institution comes into being and the internal consistency and external coherence of its provisions – that is, on certain building blocks of due process.[20] By contrast, the legitimacy criteria applied by Yermakova derive from a review of moral reasons for supporting an institution.

She begins by asking whether the ATS meets the standards of minimal moral acceptability. As that requires no more than non-violation of basic human rights, the ATS passes with ease, for the time being at least.

A second criterion, comparative benefit, is more demanding, also from a methodological point of view. It concerns whether the institution under study provides benefits otherwise not obtainable – a central question in the extensive strand of regime analysis that addresses institutional effectiveness.[21] Noting the challenges associated with counterfactual analysis, Yermakova opts instead for the pragmatic approach of comparing the present situation with that existing prior to the adoption of the Antarctic Treaty, focusing empirically on the avoidance of military conflict over the competing sovereignty claims.

A third legitimacy criterion in this framework – institutional integrity – concerns the alignment between institutional goals and the regime's actual performance, measured by the dynamism and the adequacy of its procedural and substantive rules. Yermakova holds some reservations also regarding the comparative advantage of the ATS, but finds its institutional integrity even more questionable. She backs up this claim by critically assessing the capacity of the ATS to withstand rising geopolitical tensions, to ensure optimal allocation of scarce financial resources for scientific research, and to provide adequate protection of the Antarctic environment, also from actions that Antarctic states conduct outside the region.

Lastly, accountability revolves around transparency, openness to contestation, and preparedness among those operating an institution to revise its norms and procedures in response to external criticism. Central to this part of the assessment is the series of UN General Assembly sessions devoted to the 'Question of Antarctica' during much of the 1980s and early 1990s; these were quite polarised, especially up to the adoption of the

18. Stokke, 'Arctic geopolitics, climate change, and resilient fisheries management.'
19. Keohane and Buchanan, 'The Legitimacy of Global Governance Institutions.'
20. Franck, *The Power of Legitimacy Among Nations*; Stokke and Vidas, *Governing the Antarctic.*
21. Underdal and Young, *Regime Consequences*; Stokke, *Disaggregating International Regimes.*

Environmental Protocol in 1991.[22] With a 50-year period until possible review, and the ban on mining activities subject to several decision points, that Protocol undermined the assertions, central to the external criticism that the ATS was an instrument for pursuing parochial and short-sighted economic benefits at the expense of the wider international community.[23] In assessing the ATS response to these external pressures, Yermakova reviews the record of reforms concerning public access to documents and the involvement of non-governmental organisations. Central to her largely negative finding regarding accountability is the continuity of the two-tier system which restricts decision-making power to a subset, currently comprising 29 of the 54 parties to the Treaty: the Antarctic Treaty Consultative Parties (ATCPs).

Participation and differentiation in Antarctic governance

Consultative status under the Antarctic Treaty is a central topic also for Erik Molenaar in his contribution to this issue. Whereas involvement of states and non-state actors in the ATS feeds into one of several criteria applied in Yermakova's legitimacy assessment, Molenaar narrows in on the Antarctic Treaty, with participation as the core issue. What, he asks, are the grounds and requirements for participation in this instrument and its main decision-making body, the Antarctic Treaty Consultative Meeting (ATCM) – and how have those grounds and requirements been operationalised and applied?

Molenaar's answer has three main components. He first outlines the motives that states may have for participating in the ATS – including sovereignty concerns, prestige, engagement in scientific or economic activities, involvement in governance – and explains why such participation has been so sensitive, noting that decision-making proceeds by unanimity, making every new ATCP a veto-holder. That decision rule is hardly conducive to regulatory dynamism – but it does provide procedural support to the suspension of the sovereignty claims set forth in Article IV of the Antarctic Treaty and emulated in CCAMLR: the unanimity rule ensures that no claimant state must accept a binding decision pertaining to its claimed territory unless it consents to this.

Molenaar then describes the stepwise broadening of participation in the Antarctic Treaty, identifying three phases. The mid-period 1978–1994, which includes the 'Question of Antarctica' years in the UN General Assembly, was by far the most dynamic in terms of expanding participation: a full 25 states acceded to the Treaty, and more than half of them obtained ATCP status. Associated with this rapid expansion was an easing of the scientific-activity criterion for obtaining such status – which in ATCM practice had been that an applicant must establish a permanent scientific station.[24] After 1994, the numbers of accessions and new ATCPs have fallen – partly, suggests Molenaar, because of the new requirement written into the Environmental Protocol: an applicant must first be a party to that instrument, with its extensive and substantively demanding obligations.

A third main component in Molenaar's analysis involves assessing, on the basis of ATCM practice and its subsequent codification criteria for obtaining consultative status, whether the differentiation among parties inherent in the two-tier system is justifiable, or

22. Beck, 'The United Nations and Antarctica, 2005.'
23. Stokke and Vidas, *Governing the Antarctic.*
24. Up to 1997, applications for ATCP status were dealt with by Special ATCMs, convened for that purpose; see Molenaar's article in this issue.

amounts to discrimination. Although he notes that the veto power held by every ATCP implies a potential for discriminatory assessment of applications, Molenaar finds little evidence that such discrimination has occurred.

Moreover, he argues, the 1977 assertion by the ATCM of a mandate to assess and approve applications for consultative status was justifiable by a combination of 'implied powers' and 'subsequent practice' under international law. Thus, a fairly uniform and continuous practice concerning the scientific-activity criterion is seen in that only members of the SCAR were invited to the conference that negotiated the Treaty, and that the 'interest in Antarctica' requirement in Article IX has been operationalised as substantial engagement in Antarctic research. Both the gradual easing in how this criterion is operationalised, and the subsequent addition of the requirement to accede to the Environmental Protocol, are justifiable differentiation, in Molenaar's view, because they ensure equal treatment and a level playing field between new and existing ATCPs with respect to their obligations.

Thus, Molenaar's finding on how the two-tier system of participation affects the legitimacy of the ATS is notably more positive than that of Yermakova. However, although the broadening of participation implies enhanced applicability of the Antarctic Treaty and measures and instruments adopted under it, Molenaar also warns that this development is no guarantee for improved effectiveness, since every new ATCP is an additional *de facto* veto-holder to regulatory progress.

Pursuance of interests in institutional complexes

The third set of articles in this special issue address strategies and positions taken by states and other actors to pursue or protect their interests within institutions at various levels of governance. Such interests are often entangled with one another; those examined here are largely about cultural preservation, resource use, environmental protection, sovereignty, and to some extent, international cooperation and regional security.

Northern identities and province-level strategies

In an opinion piece, Danita Catherine Burke argues that the Canadian province of Newfoundland and Labrador (NL) is missing out on political and economic opportunities that emerge from the increasing global attention to the Arctic and from the strengthening of ties among northern communities. Despite its location, Burke notes, this province has not been included in the Canadian mythos of 'The Great White North;' nor is there sufficient acknowledgement within Newfoundland and Labrador of their Northern histories.

To improve on this situation, Burke recommends that the Province government of NL and indigenous governments jointly develop a Northern strategy, in consultation with representatives of municipalities and bands in northern and rural parts of the province where the sense of northern-ness is particularly strong. Such a process should enable the NL governments to identify a set of issues within their respective spheres of authority that may benefit from better coordination. Areas for cooperation could include the scope of indigenous hunting and fishing rights, the protection of cultural heritage and traditional sealing practices, and the articulation of NL interests whenever they collide with those of other provinces or of the Canadian government.

Variants of such Northern strategies have already been adopted by other Canadian provinces; especially that of neighbouring Quebec offers an example of a holistic strategy worthy of emulation. As Burke notes, however, strategic planning undertaken by others can also present a political reason for the NL to develop its own Northern strategy: Quebec's Plan Nord rearticulates that province's historic claim to large portions of NL territory, in Southern Labrador. A second potential jurisdictional competition that may find its way into an NL Northern strategy, argues Burke, concerns the division of competence between the province government and the federal government over activities in the 12-mile territorial sea.

Although Burke's opinion piece focuses on the benefits of an NL Northern strategy, she also alerts the reader to certain material and identity-based impediments that must be overcome for such a process to gain traction. These include the province's deep financial difficulties and internal divisions, including the lack of mutual recognition among some indigenous governments in the province.

Norway, MPAs, and the balancing of use and protection in CCAMLR

Like several other contributors to this special issue, Nora Apelgren and Cassandra Brooks address Antarctic governance, but they do so through a case study of one state – specifically, the role of Norway in controversies over MPA proposals in CCAMLR.

Norway is a pertinent case for studying how states pursue their interests within a regional regime for managing natural resources and the environment, because of its central position in Antarctic fisheries as the clearly biggest harvester of krill. Moreover, as the authors point out, Norway belongs to the group of states with historical claims to Antarctic territory, and has also played an active role in CCAMLR debates over MPAs. Studying Norway therefore enables the authors to trace how a broad set of interests plays out in a well-documented Antarctic governance process. The empirical basis for their study is documentary analysis of official Norwegian documents and reports from CCAMLR meetings, complemented by semi-structured interviews with Norwegian scientists, officials, and representatives from industry and civil society organisations.

Apelgren and Brooks begin by mapping the positions that Norway has taken on each of the five MPAs that have been proposed to date, each in several versions, with only those in the South Orkney Islands and the Ross Sea adopted so far. Norway has been an outspoken critic of various proposals, pointing to inadequate scientific rationale, excessive spatial scope, inattention to fisheries interests, open-ended duration, and underdeveloped research and monitoring plans. However, Norway has also shifted from opposition to support when subsequent versions of an MPA proposal have been adapted to accommodate Norwegian criticism. In a consensus-based system like CCAMLR, such accommodation is in fact the rule rather than the exception.

The authors then relate these various positions to Norwegian interests pertaining to Antarctic MPAs, based on a set of themes that emerge from content analysis of government documents and interview transcripts. Protection of Norway's sovereignty claims is one such interest, and Apelgren and Brooks draw a connection between Norway's rising engagement in the Wedell Sea MPA proposal, including a partial takeover, and its historical claim to the adjacent Dronning Maud Land.

Another important Norwegian interest derives from its role as a major fishing state in the Southern Ocean and elsewhere. Other CCAMLR members engaged in fisheries, in particular China and Russia, have articulated rising concerns that spatially extensive MPA proposals might undermine the rational-use part of the regime's objective, laid out in the provision that '[f]or the purposes of this Convention, the term "conservation" includes rational use'.[25] On the opposite side of this debate, a group of members with few or no stakes in Antarctic fisheries have expressed frustration at the lack of progress, noting the CCAMLR commitment to creating a representative system of MPAs, as well as the potential role of MPAs in providing scientific reference areas for monitoring natural variability, long-term change in ecosystems, and the effects of fisheries on human activities.[26]

In this controversy, as Apelgren and Brooks show, Norway has taken an intermediate position: it stresses that sustainable fishing is a legitimate activity in the Southern Ocean but it is open in principle to reasonably sized, scientifically argued, and fisheries-sensitive MPA proposals. That position links up to a third national interest with a long track record in Norwegian Antarctic policy – indeed, in its foreign policy more generally: the aspiration to support international collaboration by serving as a bridge-builder between competing camps.[27]

In view of Norway's substantial stakes in the krill fisheries, with total catches now approaching an interim catch-limit that can be raised only by consensus,[28] efforts to reduce tensions between the resource-use and the preservation camps within CCAMLR align well with all three main interests pursued by Norway under that regime – science-based, sustainable resource use; the protection of sovereignty claims; and the promotion of international collaboration within the ATS.

National posturing, Svalbard research, and Arctic security

Torbjørn Pedersen's contribution focuses on developments in international research in Svalbard that could be perceived as a security concern to Norway. According to Pedersen, some nations, politically emboldened by their research presence on Svalbard, have increasingly come to portray their research facilities as national enclaves inside Norwegian territory. Hence, tensions have been building up over the organisation of scientific research in Svalbard. At issue is the extent of autonomy that foreign research facilities should have with respect to their scientific activities in Ny-Ålesund, a former mining settlement with extensive Norwegian research infrastructure, where most of the foreign research facilities are also located. A Norwegian research strategy for Ny-Ålesund published in 2019, calling for greater coordination of research and clearer standards for data management and sharing, was officially dismissed by Chinese research authorities as undue interference in matters that should be left to the operators of the research facilities Also research organisations from some other countries were negative.

[25].Convention on the Conservation of Antarctic Marine Living Resources (Canberra, 20 May 1980, in force 7 April 1982), Article II. On Russia's position, see Lukin 'Russia's current Antarctic policy'; on China's position, see Liu and Brooks, 'China's changing position towards marine protected areas in the Southern Ocean.'
[26].Stokke 'Climate Change and Management of Antarctic Krill Fisheries.'
[27].Stokke 'The Making of Norwegian Antarctic Policy'; on Norwegian bridge-building on Southern Ocean MPAs, see also Sykora-Bodie and Morrison, 'Drivers of consensus-based decision-making in international environmental regimes,' p. 9.
[28].McBride et al. 'Antarctic krill Euphausia superba.'

The larger issue, according to Pedersen, is a creeping challenge to Norwegian jurisdiction over research activities in Svalbard, which may encourage broader challenges to Norway's sovereignty over the archipelago. Such a development, he notes, might even feed into the view that sovereign rights in the Arctic, like those in the Antarctic, are somehow less firm than in other regions – thereby potentially undermining regional stability and security.

Pedersen backs up this argument by documenting the tendency to increased national posturing at foreign research facilities in Svalbard, which often fly national flags and feature national symbolic artefacts, like Chinese lions and Dutch wooden clogs. The buildings, leased from a Norwegian state company, have been renamed in ways that give connotations to governments rather than to the research organisations that operate them, and are often referred to as 'national stations' on websites, information material, and governmental white papers. Conversely, Ny-Ålesund is described as 'an international science village' by the UK Arctic Office, and China holds that the Ny-Ålesund Science Managers Committee (NySmaC), originally a forum for sharing information among the various research groups in the area, is the appropriate body for an 'international decision-making process' on matters related to Svalbard research.[29]

According to Pedersen, the dual purpose states have for engaging in Arctic research – not only scientific knowledge but also geopolitical presence – and the fact that Norway, until the 2019 Strategy, had made few attempts to guide or coordinate research activities in Svalbard, have resulted in suboptimal allocation of research funds as well as – more seriously, in his view – a pervasive perception in many national capitals that Norway's regulatory competence over scientific research activities is constrained by the 1920 Svalbard Treaty.

A central premise in Pedersen's article on the politics of research presence in Svalbard is that little or no such legal constraints on Norway's regulatory competence over scientific research can be derived from the Svalbard Treaty. That premise is the subject of a small-scale international law symposium in this special issue, with contributions from Erik Molenaar and Geir Ulfstein, followed by Pedersen's response to their interventions and comments.

No disagreement exists among the debaters on the equal right of access and entry to Svalbard for all nationals of the signatories; such access is explicitly provided for in the Treaty and applies no less to researchers than to other nationals. Nor do any of them claim that research is among the activities that the Treaty explicitly prohibits Norway from regulating in a discriminatory manner – as are, for instance, fishing in the territorial sea and hunting, mining, and commerce on the archipelago.

Instead, the debate here revolves around two issues. The first is whether certain provisions in the Treaty, interpreted in the light of its negotiation history as well as state practice preceding and following its adoption and entry into force, imply a right to conduct scientific research on Svalbard. On this question, Molenaar leans towards an affirmative answer, whereas Ulfstein and Pedersen answer in the negative.

[29].Chinese official response to the Research Strategy for Ny-Ålesund, cited by Pedersen in this issue.

A second, related issue is whether such a right for nationals of signatories to conduct research (if it exists) also implies that their respective governments have a right to be involved in the development of any regulation of research activities. Again, Molenaar is more convinced by the arguments in favour of an affirmative answer than are Ulfstein and Pedersen, who clearly reject that proposition.

Conclusions

The contributions to this special issue on polar regions and multi-level governance speak to three important themes in the study of institutional complexity: interplay management; the influence exerted by global institutions or processes on regional governance; and the ways in which states and other actors pursue their interests within complexes of institutions. This concluding section relates the findings from these studies to certain core issues in the research field of institutional complexity: the means available for improving coherence among regimes, and the need to include actor interests and power analysis.

On interplay management, one set of findings concerns the relationship between the strength of an institution and the two means for improving coherence or alignment among the institutions co-governing activities in an issue-area – coordination or adaptation. Coordination involves cross-institutional communication and adjustment of governance activities. Adaptation requires only awareness of the rules or programmes of other institutions, and preparedness to take those into account in own decisions.[30] Because interplay management by means of one-sided or mutual adaptation does not interfere with the competences held by the interacting institutions, it is often the more feasible avenue towards better coherence.[31]

None of the interplay managers examined in this issue can be said to aspire to more than inducing adaptation on the part of other institutions in the complex. The Arctic Council does this by soft-power means such as policy-oriented knowledge-building and best-practice compilations, reinforced by the legitimacy deriving from its network of world-leading expertise and its extensive involvement of indigenous peoples' organisations.

The EU has broader as well as harder means available in its portfolio – but its extraterritorial regulatory aspirations concerning, for instance, Arctic hydrocarbon development is also a far more ambitious alignment mark than anything which those operating the Arctic Council might have contemplated regarding coordination of activities relevant to the Arctic Ocean. The resistance expected from Arctic states to this EU policy item will be reinforced by the legitimacy deriving from the sovereignty and sovereign rights accorded to coastal states under international law.

The third case of interplay management studied here, on CCAMLR and the BBNJ process, falls into an intermediate category as to the ambitiousness of the alignment mark and is much stronger than the other two regarding relevant institutional capacities for pursuing that aim. If what's past is prologue, the adaptation that CCAMLR is likely to

30. Stokke, 'Interplay management.'
31. Young and Stokke, 'Why is it hard to solve environmental problems?'; on the prevalence of adaptation over coordination in environmental governance, Oberthür and Stokke, 'Conclusions.'

request from a possible UN-based newcomer regarding the conservation of marine biodiversity will be the insertion of provisions that will prevent a new institution from adopting definitions or regulatory measures directly applicable to the Southern Ocean – for instance regarding controversial matters like MPAs – unless the CCAMLR is in favour of them. Its membership, which largely overlaps with the ATCPs and includes all the world's most powerful states, provides institutional overcapacity for obtaining an outcome that is satisfactory in this respect. That is because a BBNJ agreement must be adopted by consensus, and because subsequent decisions by the Conference of the Parties are also highly likely to require consensus.[32] Indeed, the ATCPs have a long tradition of fending off unwanted regulatory initiatives in UN or other forums.

Such attention to power in its various forms – ideational, relational, structural, and institutional – is highly relevant also for the set of articles examining global influences on regional governance. Consider, for instance, the wider criteria that could be invoked in boundary disputes when the 1982 UNCLOS substituted 'equitable solution' for the considerably more determinate 'median line,' the default rule written into the 1958 Convention on the Continental Shelf. Reducing the determinacy of a legal rule, either in textual terms like here or because various legal sources specify it differently, expands the leeway for the exercise of power.[33] Accordingly, the subsequent narrowing of delimitation criteria relevant to equity, through state practice as well as international-court decisions, to a set of steadily more determinate geographic characteristics has the opposite effect.

Moreover, an important driver of the pragmatism demonstrated by Arctic coastal states when making boundaries and managing remaining disputes is their shared interest in maintaining the status and legitimacy of UNCLOS – especially its generous extension of coastal-state jurisdiction. Therefore, the conducive effect of global ocean law on regional peace, as documented in this special issue, rests partly on its being aligned with the material interests of the most powerful states in the region in focus.

Further, in Antarctic governance, the decision by the ATCM to grant consultative status to Poland, as the first among the acceding states, derived in part from a variant of structural power: 'fisheries power,' obtained by Poland by its demonstrated ability in the second half of the 1970s to engage in fisheries in the Southern Ocean. At that time, the ATCPs were ready to negotiate the Convention that created CCAMLR, and the prospect of a harvesting state outside the emerging regime was even less attractive than expanding the group of ATCPs.

The subsequent wave of new of acceding states, many of whom quickly obtained consultative status, resulted partly from a combination of structural and institutional power – derived from ATCP worries that the large majority of UN member states still outside the ATS might initiate the formation of a competing regime. Such worries, as noted, were fuelled by the expectation that those negotiating an external have neither incentives nor ability to tread as carefully around the underlying disputes over sovereignty as was the case with the Antarctic Treaty and CCAMLR.

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[32].Revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, (27 November 2019); Article 48.
[33].Drezner, 'The Power and Peril of International Regime Complexity.'

Also important was the applicants' normative power: throughout the 'Question of Antarctica' years in the UN General Assembly, critics of ATS exclusiveness dismissed it as unjustified differentiation that ran counter to the general principle of sovereign equality as well as certain principles which were becoming increasingly important – notably, those of equity and the Common Heritage of Mankind.[34]

This brief summary of key findings from the first two sets of articles in this special issue draws on facts, analyses and assessments contained in those articles, although it places the concept of power more centrally than those articles do. As evident from the summaries above, the third set of articles, on sub-state and state pursuance of interests in situations involving institutional complexity, are more explicit in their attention to the actors operating the institutions involved, the compatibility of their interests and the types and sources of the power they can wage.

In different ways, therefore, the contributions to this special issue provide a corrective to a reported trend in research on institutional interplay, involving a shift away from classical power-oriented approaches to scholarly traditions either less concerned with agency-bound power, such as discourse analysis or organisational ecology, or focusing on those power capabilities that are relevant to collective-action problems, as with interest-based regime analysis.[35]

A possible explanation for such reduced attention to actors and power in this field is that scholarly attention has moved on from its early focus on the origin and evolution of institutional complexity to concentrating on its consequences for governance and its legitimacy or effectiveness. This framing implies that the dyads or networks of interaction scrutinised in the first step of analysis are those involving institutions, which typically possess no more than modest amounts of actorness – that is, externally recognised capacity to act coherently and influentially.[36] Attention to the actors who operate these institutions, and to the compatibility of their interests and the power they can wage in the activity area governed, is only the second step; and one that is not always taken.

Another possible explanation for reduced attention to agency-based power in studies of regime complexity is the central position the idea of 'coherence' holds, as the desirable form of interplay and the main objective for interplay management. Closely associated with this is a focus on problems held to derive from fragmentation, including normative inconsistency or wasteful duplication, and of potential synergies derivable from coordination or at least adaptation of activities under the regimes in question.[37]

The quest for coherence shared by practitioners as well as scholars interested in regime interplay and complexity should not obscure an important reality: that institutions are generally created to promote distinct objectives, so that a lack of coherence may well reflect differing prioritisations of those objectives on the part of those who design and operate the institutions. In such cases, as this special issue

34. Beck, 'The United Nations and Antarctica, 2005.'
35. Hickmann et al., 'Institutional Interlinkages,' p. 126.
36. Bretherton and Vogler, 'The European Union as a Sustainable Development Actor'; see the elaboration and application by Chuffart et al. in this issue.
37. See e.g. Stokke and Oberthür, *Managing Institutional Complexity*; Gehring and Faude, 2014; Morin and Orsini 2014; also Young in this issue.

brings out, processes aimed at improving coherence, whether through coordination or adaptation, are political processes that sophisticated power analyses can help to elucidate.

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