

# **The Arctic Council: Policy Recommendations and National Implementation**

Ida Folkestad Soltvedt and Svein Vigeland Rottem





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Ida Folkestad Soltvedt  
ifs@fni.no

and

Svein Vigeland Rottem  
svr@fni.no

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**Authors**

Ida Folkestad Soltvedt and  
Svein Vigeland Rottem

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**Abstract**

The Arctic Council has been widely criticized for its lack of legal bindingness and, consequently, the assumed low level of implementation among member states. This report investigates the extent to which Norway follows up the Council's soft-law recommendations – three from the 2004 Arctic Climate Impact Assessment (ACIA) and three from the 2009 Arctic Marine Shipping Assessment (AMSA). This report also examines certain characteristics of the recommendations – their precision, monitoring of state behaviour and stakeholder involvement – and whether they affect Norway's implementation outcomes. We conclude that Norwegian authorities have implemented several of the recommendations studied, and that these characteristics have importance. However, what appears most decisive is the nature of the problem – whether the issue-area in question is malignant or not.

**Key Words**

Arctic Council, international law, national implementation, Norway

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## 1 Introduction

In 2016 the Arctic Council celebrated its 20th anniversary. In that connection, the Council has frequently been described as a success story – and with good reason. During those 20 years it has significantly improved, and even helped establish, cooperation among the eight Arctic states. Moreover, thanks to its involvement in scientific research, the Council has published numerous assessment reports, paying attention to important issue-areas like the climate challenges facing the Arctic region, and the need for environmental protection and sustainable development. The information presented in these assessment reports has in several instances informed other, parallel international processes. However, there has been little focus on the extent to which the work of the Arctic Council has helped inform *national* processes.

In fact, scholars and politicians alike have questioned the Council's effectiveness, and some hold that its assessment-based recommendations are not implemented at the national level. In 2014, that issue was raised in the report of the Norwegian Auditor General on the Arctic Council. The report noted that the lack of information on member-state implementation made it difficult to determine the effect of the Council's work. The present report – intended both as a follow-up to the report of the Auditor General and as a contribution to the broader debate on effectiveness – investigates how recommendations from the 2004 *Arctic Climate Impact Assessment* (ACIA) and the 2009 *Arctic Marine Shipping Assessment* (AMSA) have been approached and dealt with by Norwegian authorities at the domestic level. Two questions form the starting point for this inquiry:

- What has been implemented?
- What have been the drivers of such implementation?

Here implementation is understood as being the causal translation of Arctic Council recommendations into national-level action, preferably through economic and/or administrative means. Three specific characteristics of the recommendations themselves are studied: whether they are *precise*, whether Norwegian national stakeholders have been *involved* in their development; and whether some sort of *reporting system* has been put in place. By maintaining this focus throughout the report, we aim to answer the above questions, while also commenting on the Council's established structure and its development. In addition to the three characteristics just mentioned, we take into consideration the nature of the problem – a factor closely related to the issue-area in question. More specifically referred to as '*malignancy*', this concept is used to describe how a certain issue-area is received at the national level, and whether challenges linked to political and economic costs may obstruct national implementation.

## 1.1 Methodology

These research questions are answered through data obtained from documents and interviews. The documents studied originate from the various Arctic Council processes – mainly meeting reports from the relevant working groups, reports of senior Arctic officials and Ministerial Declarations. Most of these documents were downloaded from the Arctic Council's online database. Also consulted were documents covering the domestic processes, including national Arctic strategies, national reports and White Papers. Of course, there exists a myriad of such documents. Those selected were chosen because they reflect the main elements and developments of Norwegian Arctic politics within the issue-areas and the period under study. Interviews were based on an interview guide, and included representatives from the following institutions:

- Arctic Monitoring and Assessment Programme (AMAP)
- Indigenous Peoples Secretariat
- Nordland Research Institute
- Norwegian Ministry of Climate and Environment
- Norwegian Polar Institute
- Protection of the Arctic Marine Environment (PAME)
- Saami Council
- Saami Parliament
- WWF

The two assessment reports and their recommendations that form the backbone of this study were selected according to various criteria. First, assessment reports had to contain policy recommendations – not necessarily always the case for those dating far back in time. Secondly, and equally important, was the temporal aspect: implementation entails the initiation of several processes where many actors are required to change their behaviour. Therefore, a considerable amount of time must pass before an evaluation can reasonably be made. The ACIA was issued in 2004 and the AMSA in 2009. For both assessment reports, the amount of time passed should allow observation of any effects unfolding at the national level. As for the six selected policy recommendations, three of these stem from the ACIA report, and concern climate-change adaptation. The remaining three recommendations originate from the AMSA report, and constitute measures that the member states were requested to follow up in their own national implementation processes. (See sections 4.1 and 5.1 below.)

In order to sift out national implementation measures likely to result from the Arctic Council's recommendations, as compared to those that are simply a natural continuation of pre-existing policies, we decided to study processes, at the Arctic Council level and at the national level, that ran from the mid-1990s until 2016.

## 2 The Arctic Council: Debating its Effectiveness

When it was formally established in 1996, the Arctic Council was mandated to address environmental protection and sustainable development through Arctic cooperation. Although starting as a relatively low-key forum for discussing the challenges facing a remote region, the Arctic Council has received increasing attention in the past few years. Today, it is recognized as the main body for regional cooperation, and as an important actor in Arctic governance.

This greater attention has, however, led to debates as to the effectiveness of the Council. In particular, the soft-law basis underlying the work of the Council has been criticized as being an obstacle to national implementation. Such criticism is largely rooted in the Council's lack of legally bindingness – it does not hold the power to contract or enforce legally binding agreements, nor to apply sanctions against its member states. Recommendations are only binding politically, and domestic follow-up is completely voluntary. Accordingly, it is claimed, few incentives for implementing the Council's recommendations exist amongst the member states.

The lack of hard law has become a common criticism of the Council's efforts to tackle regional challenges. Yet, in parallel to this debate, and perhaps as a response to it, others have held that the Arctic Council is attempting to strengthen its position. The ACIA has been identified as a crucial contribution in that connection, paving the way for expanding the Council's agenda and enhancing its status.<sup>1</sup> Especially after 2009 – with the release of the 'second-generation' AMSA report – it has been noted how the Council has formulated increasingly concrete policy recommendations and follow-up actions. Moreover, following the 2009 AMSA release, one of the most frequent criticisms concerning the Council's effectiveness – the lack of a formal monitoring mechanism – changed. From 2011, the working group of PAME has biannually produced a status report, detailing the implementation actions carried out by the Arctic Council and by each of its individual member states.

These developments are all of relatively recent date. Otherwise, the Council has, ever since its establishment, appeared as a very inclusive body: 'As a pioneer in providing opportunities for non-state actors to participate in efforts to address policy issues'.<sup>2</sup> However, the Council's current evolution also seems to have a bearing on its stakeholders, their composition and their involvement. Of course, indigenous peoples' group, through the Permanent Participants, maintain an important role in the Council's policy work. Except for voting rights, these groups enjoy the same privileges as member states in political processes, including full consultation in connection with negotiations and decisions.<sup>3</sup> By contrast, rights are much more limited for the category of Observers. They are invited to attend meetings, but may only make statements at the discretion of the chair. Furthermore, taking into account the Council's

expanding agenda, as mentioned above, and the inclusion of new issue-areas, this group cannot be expected to include all relevant stakeholders. The extent to which other stakeholders have the opportunity to inform policy processes thus varies, and is likely (at least partly) to depend on more informal ways of inclusion.

Summing up, this shows that the *characteristics* in focus throughout this report – precision, monitoring and stakeholder involvement – are all highly relevant, in light of recent debates on the Council’s lack of effectiveness and, on the other hand, the Council’s development into a potentially stronger institution. Most importantly, the presence of these characteristics is expected to have a positive impact on national implementation, as explained below.

### **3 Drivers of National Implementation**

#### **3.1 Precision**

Precision refers to ‘rules that unambiguously establish the conduct they require, authorize, or prescribe.’<sup>4</sup> As such, a precise recommendation should specify what is expected of the member states with regard to both the objective and the measures to be taken to achieve it.<sup>5</sup> In terms of impact, precision is considered important principally because it reduces states’ and actors’ leeway related to interpretation and discretion. Hence, domestic implementation is facilitated by clear and definite messages, keeping the possibilities for misinterpretation to a minimum.<sup>6</sup>

#### **3.2 Monitoring of State Behaviour**

Monitoring of state behaviour concerns states’ obligations to report back on national measures taken to meet a certain recommendation.<sup>7</sup> Through such mechanisms, the parties are made more accountable, particularly if failure to fulfil obligations is publicly revealed.<sup>8</sup> Accordingly, where some sort of monitoring exists, states will take action to avoid potential shaming. Furthermore, with repeated reporting exercises, monitoring serves to keep the issue on the national and international agendas. The presence or absence of progress may in turn be subject to scrutiny at both levels, for instance enabling NGOs and other actors to challenge governmental positions and exert pressure.<sup>9</sup>

#### **3.3 Stakeholder Involvement**

Stakeholder involvement deals with ‘those actors [stakeholders] who are affected by the institution or are capable of influencing its performance’<sup>10</sup> and, further, who are invited to partake in norm-development processes. In terms of outcome, such involvement is held to be positive, not least because stakeholders may seek to persuade their national decision-makers to implement the norms that they themselves helped create, therefore contributing to the internalization of international norms by linking them

to domestic policies. Or the national authorities may invite stakeholders involved in international norm-development processes – persons/organizations knowledgeable about the matter in question – to participate in subsequent domestic processes. Also this may provide opportunities to influence relevant decision-makers at the national level.

### **3.4 And the Nature of the Problem?**

Although not considered a characteristic of the recommendations themselves, the *nature* of the problem should also be recognized as a premise for national implementation. In this respect, it is common to speak of benign and malign types of problems. Whereas the former concerns situations of congruent individual and collective interests and, therefore, seldom represents any real challenges, the latter is far more complex in nature. The extent to which a problem is deemed *malignant* depends on the composition of actor interests and the preferences generated by it.<sup>11</sup> Although usually applied at the international level, the concept of malignancy is in this report used to describe how a certain issue-area is received at the national political level, and whether challenges linked to political and economic costs may obstruct national implementation.

Within that context, *political costs* refer to divergent preferences amongst relevant actors, which in turn may act to obstruct implementation efforts. In Norwegian High North politics, there is often congruity between the parties in the national parliament, the Storting.<sup>12</sup> Therefore, opposition is more likely to come from other groups, presenting less of a challenge. For this reason, we place more emphasis on the *economic dimension* – the strain implementation would place on financial resources – in determining whether an issue can be deemed malignant.

### **3.5 The Way Forward**

Having defined and explained the conceptual framework, we now proceed to the main part of this report. Regarding both the ACIA and the AMSA, we first present the national context and the selected recommendations included in this analysis, and then move on to the individual recommendations: We discuss the extent to which they have been implemented, and whether the three characteristics – precision, stakeholder involvement, and monitoring of state behaviour – in addition to malignancy, have influenced any of the outcomes.

## **4 Implementing the Arctic Climate Impact Assessment**

When it was launched in 2004, the *Arctic Climate Impact Assessment* (ACIA) represented a milestone in the Council's history. As the first regional climate-change assessment, the ACIA dramatically challenged the global understanding of the Arctic as a 'frozen desert', and shed light

on the vast and complex transformations underway in the region.<sup>13</sup> To combat the ongoing climate changes revealed through the ACIA project, recommendations based on two sets of actions were put forth: *mitigation*, to reduce greenhouse gas (GHG) emissions; and *adaptation*, to limit the adverse impacts of climate change, by developing greater resilience.<sup>14</sup>

#### 4.1 National Context and Selected Recommendations

At the beginning of the ACIA project in 2000, mitigation already featured on many national and international agendas. Through global regimes like UNFCCC, and the Kyoto Protocol in particular, Norway was legally committed to reducing its GHG emissions. Therefore, any change in state behaviour concerning mitigation must be viewed within the established context of these frameworks, not the Arctic Council.<sup>15</sup> However, serious discussion on adaptation had yet to emerge – in fact, some critics saw adaptation as a highly problematic measure that would compromise efforts at reducing emissions.<sup>16</sup> Nonetheless, a shift in priorities within the climate regime and the media discourse can be traced, drawing largely on the new information produced by the ACIA.<sup>17</sup> The ACIA revealed how climate change had already caused severe problems for ecosystems and human communities in the Arctic. Moreover, it recognized that climate change had become inevitable, making adaptation vital. With its unique focus on the Arctic region, the ACIA succeeded in putting adaptation on the global agenda – as well as on the national agenda of Norway.

The first Norwegian White Paper on climate change, released in 1995, focused on GHG emissions, to be accompanied by *mitigation* measures aimed at reducing them.<sup>18</sup> Only when a new White Paper came in 2001 did *adaptation* gain momentum.<sup>19</sup> With regard to the Arctic, adaptation was viewed in the context of the ongoing ACIA process, where Norway had a central role. That same year, the Norwegian Ministry of the Environment established a steering committee responsible for the country's ACIA work. In the course of 2001 and 2002, four meetings were held on climate change and its consequences for the Norwegian North, and the conclusions were forwarded to the international process and the Norwegian state authorities.<sup>20</sup> As Arctic climate adaptation had received very limited attention until the turn of the century, it appears that the ACIA managed to make the topic more central in Norwegian politics, even before it was finalized. Hence, the focus on adaptation and the national measures to implement the following ACIA recommendations:

<b>Table 1: The ACIA recommendations</b>
<p><b>Help Arctic Residents Adapt:</b> Work closely with Arctic residents, including indigenous and local communities, to help them to adapt and manage the environmental, economic and social impacts of climate change and ultraviolet radiation change. Adaptation needs will vary. Arctic residents may need inter alia enhanced access to information, decision-makers, and institutional capacity building to safeguard their health, culture and well-being.</p>
<p><b>Adaptive Management, Nature Conservation, and Reduction of Risks:</b> Implement as appropriate, adaptive management strategies for Arctic ecosystems, making use of local and indigenous knowledge and participation, review nature conservation and land and resource use policies and programmes, and to the extent possible reduce risks related to infrastructure damage, permafrost degradation, floods and costal erosion, taking into account costs and benefits.</p>
<p><b>Develop the Arctic in a Sustainable Manner:</b> Recognize that opportunities related to climate change, such as increased navigability of sea routes and access to resources, should be developed and managed in a sustainable manner, including through the consideration of environmental and social impacts and taking appropriate measures to protect the environment, local residents and communities.</p>

Source: Arctic Council 2004b

## 4.2 National Implementation and Possible Causes

### 4.2.1 Recommendation: Help Arctic Residents Adapt

The first recommendation, ‘help Arctic residents adapt,’ focused on the need for adaptation in the North through better access to information, decision-makers, and institutional capacity for those living in the Arctic.<sup>21</sup> Of the various Norwegian initiatives related to this recommendation, one national programme – NorACIA – is particularly important as an implementation measure. NorACIA was introduced in 2005, with responsibility for domestic follow-up of ACIA.<sup>22</sup> Its mandate was to generate and disseminate knowledge, and to provide the Ministry of the Environment with advice concerning relevant national processes.<sup>23</sup> Thus, a central information platform was created for Arctic residents and for decision-makers. Several seminars focused on the consequences of climate change related to infrastructure, shipping, Saami industries and societal aspects.<sup>24</sup> Involved in these meetings were actors from research communities, Saami institutions, and the government administration – both national and regional levels.<sup>25</sup> The most striking feature of Norwegian implementation measures in this period was the focus on indigenous peoples in the design of adaptation policies. For instance, the 2006 High North Strategy stated: ‘The Arctic Climate Impact Assessment (ACIA) documents how indigenous peoples have adapted to earlier climate change’ and that ‘the climate change currently taking place may

have major impacts on the way of life of indigenous peoples (...).<sup>26</sup> The indigenous dimension of the High North Strategy was further elaborated in the 2007 White Paper, *Norwegian Saami Policy*, where indigenous knowledge and observation of climate-change adaptation were mentioned as central to following up the ACIA.<sup>27</sup>

How, then, can we explain the positive implementation outcome? In the following discussion (and with the other ACIA recommendations), the characteristic of ‘monitoring’ has been omitted, as a reporting system was not established for the ACIA. The focus is therefore on *precision*, *stakeholder involvement* and the potentially *malignant* nature of the issue.

First of all, the recommendation is *precise*. It states the objective – ‘to help Arctic residents adapt’, with possible measures for achieving it – ‘enhance access to information, decision-makers, and institutional capacity building’. As precision is considered to reduce states’ use of interpretation and discretion, it may well be that these aspects helped in identifying the necessary measures to be taken. As for *malignancy*, the recommendation would not entail significant political costs. There was already widespread agreement in Norway on the importance of the ACIA and its findings. Moreover, access to information and decision-makers are not measures that require great financial resources. The absence of malignancy *may* thus too have facilitated follow-up actions. Thirdly, the Arctic Council processes in which the recommendation was developed had *involved stakeholders*. Particularly indigenous peoples’ groups, as permanent participants, were involved in all aspects of the ACIA process, including policy work.<sup>28</sup> From the start, the focus was therefore directed towards the human dimension of climate change, framed largely as the impacts of climate change on indigenous peoples, their lives and livelihoods.<sup>29</sup> In the implementation of this specific recommendation, the Saami Council, an Arctic Council permanent participant representing the Saami population, played a role at the national level. Together with the other permanent participants, the Saami Council issued statements urging national governments to act.<sup>30</sup> Moreover, during initial NorACIA meetings, Saami Council representatives stressed the need for participation and inclusion of Saami interests.<sup>31</sup> The Saami Council, thereby, affected the national process by lobbying the national authorities and identifying possible representatives and experts from Saami communities.<sup>32</sup> Similarly, environmental organizations were included as stakeholders in the Arctic Council norm-development processes. The WWF participated in several ACIA meetings at the international level and, subsequently, in certain lobbying activities nationally. Shortly after the release of the ACIA report, a letter was sent to the Norwegian Minister of Foreign Affairs, encouraging national decision-makers to develop and implement adaptation strategies.<sup>33</sup> Later, the WWF received funding from NorACIA for a factsheet series on the impacts of climate change. Thus, the WWF was involved in implementing the recommendation as well. In total, although the exact effect of *precision* is difficult to determine, both *stakeholder involvement* and the *absence of*

*malignancy* would appear to have had positive impacts on implementation.

#### 4.2.2 Recommendation: Adaptive Management, Nature Conservation and Reduction of Risks

The second ACIA recommendation, ‘adaptive management, nature conservation, and reduction of risks,’ involved the following objectives: implementation of adaptive management strategies in cooperation with indigenous peoples; review of nature conservation and land use policies and programmes; and reduction of risks related to infrastructure damage, permafrost degradation, floods and coastal erosion.<sup>34</sup> Also in this case, national measures have been implemented, but principally under NorACIA. As regards nature conservation and the review of such policies, an evaluation of key habitats in Northern Norway and on Svalbard was conducted in 2009, assessing whether current conservation practices were sufficient, or whether greater efforts were necessary to safeguard biodiversity.<sup>35</sup> These assessment reports have continued to provide an important framework for the management of protected areas on Svalbard.<sup>36</sup> In addition, several reports on infrastructure damage, as well as the vulnerability of Norway’s northernmost counties and municipalities to floods and coastal erosion, were prepared under the umbrella of NorACIA.<sup>37</sup>

What then can be said of the effects of the chosen characteristics, plus malignancy, on the outcome? As the recommendation merely states the objectives of adaptive management, nature conservation and risk reduction, without specifying any measures for achieving them, it is *imprecise*. However, this imprecision need not have a negative bearing on national implementation – indeed, the vague formulation may have made implementation less challenging. The positive effect that imprecision may have on implementation is closely linked to the concept of *malignancy*. By being imprecise, the recommendation does not impose economic costs; likewise, formulations like ‘review’ and ‘reduction of risks’ do not invite significant political disagreement. Therefore, it is possible that the lack of precision served to reduce malignancy, in turn easing the implementation process. *Stakeholder involvement*, on the other hand, seems to have had limited effect on the positive implementation outcome here. Although the Saami Council and the WWF were actively involved in Arctic Council processes, we find no indications of their involvement in subsequent national processes. One explanation may be that the assessment reports were of a scientific character and were prepared exclusively by specialists. Briefly, then: the *imprecision* of this recommendation seems to have had a positive bearing on the implementation outcome, by lowering the political and economic costs, and thereby *malignancy*. However, we find nothing to indicate that *stakeholder involvement* affected the outcome.

#### 4.2.3 Recommendation: Develop the Arctic in a Sustainable Manner

The third recommendation, ‘develop the Arctic in a sustainable manner,’ encouraged the member states to develop the Arctic sustainably – particularly in relation to the increased navigability of sea routes and access to resources – by protecting the environment, local residents and communities.<sup>38</sup> However, it did not result in any additional implementation measures nationally. To some extent, this can be explained by already-initiated measures that were consistent with the recommendation, in particular the *Management Plan for the Barents Sea and Lofoten Area*. Still, that plan came to exclude the human dimension of ecosystem-based management – an important deviation from what was stated in the recommendation.<sup>39</sup> By extension, the interests of the coastal Saami, who are heavily dependent on productive marine ecosystems and their resources, were not taken into account. This is an important point, as it indicates that further action might have been taken in order to accommodate the recommendation.

Why, then, was nothing done? Firstly, the recommendation is *imprecise*. It only states objectives – not measures for achieving them. Of course, when it comes to precision, or the lack of it, the findings have already proven ambiguous, and it is therefore difficult to determine any specific effect. Regarding *malignancy*, however, we see a more distinct pattern. Although the recommendation would entail few specific economic costs, resource exploitation does involve conflicting interests, especially among industrial and environmental groupings. In the Arctic, indigenous peoples add a further dimension. Political costs are thus present and, therefore, also a certain degree of malignancy. As for *stakeholder involvement*, the same applies as with the first two recommendations. Indigenous peoples as well as environmental organizations were involved in the Arctic Council norm-development process – but we find no traces of their attempting to influence national processes in relation to this recommendation. In summary, it is possible that these aspects combined – the *lack of precision*, the *presence of malignancy*, and *no indications of stakeholders* attempting to affect national processes – had an obstructive effect on implementation.

## 5 Implementing the Arctic Marine Shipping Assessment

A main finding of the ACIA report concerned the opening of the Arctic Ocean, with a possible increase in Arctic marine activity.<sup>40</sup> To follow up this finding, the AMSA project was launched in 2004, aimed at mapping the volumes of shipping in the Arctic marine regions.<sup>41</sup> When this work was finalized in 2009, the need for uniform international standards appropriate to Arctic conditions and for greater member-state coordination had been identified.<sup>42</sup> To meet these challenges, member states were given recommendations centring around three themes:

enhancing Arctic marine safety; protecting the Arctic peoples and the environment; and building Arctic marine infrastructure.<sup>43</sup>

## 5.1 National Context and Selected Recommendations

As a leading maritime nation, Norway had already paid great attention to these issues, and AMSA can hardly be seen as an agenda-setter at the domestic level. Norwegian objectives and measures were already in line with the AMSA recommendations, focusing on safety, emergency preparedness and environmental protection. Despite this, the AMSA findings quickly gained momentum.<sup>44</sup> As regards Arctic shipping, however, Norway was ahead of other member states. Therefore, promoting Norwegian standards and greater cooperation within the Arctic Council became an important objective in national implementation.<sup>45</sup> It is these aspects – the promotion of Norwegian standards and cooperation – that are the focus of the AMSA analysis below. Here we can note a slight difference: while the ACIA generated national implementation measures aimed at national actors, Norway's objectives related to the AMSA recommendations focused on influencing the policies of other member states.

The three AMSA recommendations under scrutiny are included, as the member states were specifically requested to initiate appropriate follow-up measures within their national implementation processes.<sup>46</sup> These are shown in Table 2.<sup>47</sup>

<b>Table 2: The AMSA recommendations</b>
<p><b>Reduce Air Emissions:</b> That the Arctic states decide to support the development of improved practices and innovative technologies for ships in port and sea to help reduce current and future emissions of greenhouse gases (GHGs), nitrogen oxides (NO<sub>x</sub>), sulphur oxides (SO<sub>x</sub>) and particulate matter (PM), taking into account the relevant IMO regulations.</p>
<p><b>Arctic Marine Traffic System:</b> That the Arctic states should support continued development of a comprehensive Arctic marine traffic awareness system to improve monitoring and tracking of marine activity, to enhance data sharing in near real-time, and to augment vessel management service in order to reduce the risk of incidents, facilitate response and provide awareness of potential user conflict. The Arctic states should encourage shipping companies to cooperate in the improvement and development of national monitoring systems.</p>
<p><b>Survey of Arctic Indigenous Marine Use:</b> That the Arctic states should consider conducting surveys on Arctic marine use by indigenous communities, where gaps are identified, to collect information for establishing up-to-date baseline data to assess the impacts from Arctic shipping activities.</p>

Source: PAME 2009a

## 5.2 National Implementation and Possible Causes

### 5.2.1 Recommendation: Reduce Air Emissions

'Reduce air emissions' requested member states to reduce their current and future emissions of greenhouse gases (GHGs), nitrogen oxides (NO<sub>x</sub>), sulphur oxides (SO<sub>x</sub>), and particulate matter (PM) from ships.<sup>48</sup> However, reduction of ship emissions to the atmosphere had long been on the Norwegian agenda – the 2007 heavy fuel oil (HFO) ban is an illustrative example.<sup>49</sup> As regards implementing the AMSA recommendation, an important national measure appears to be promotion of this ban to other member states. In 2010, the Norwegian Maritime Authority (NMA) was requested to assist the Norwegian delegation to PAME and the Ministry of the Environment in following up the AMSA report. The NMA was specifically instructed to participate in PAME's workings, and to promote the Norwegian standpoint regarding an early ban on the use and carriage of HFO in Arctic waters. The final objective was to promote a joint proposal to the International Maritime Organization.<sup>50</sup> The same message was repeated in the following years and appears to have set the stage for a Norwegian initiative within the Arctic Council.<sup>51</sup> Before the end of 2010, the Norwegian delegation to PAME had proposed a project for compiling existing knowledge on the use and carriage of HFO in the Arctic.<sup>52</sup> The project would investigate the consequences of HFO in terms of potential spills and air pollution, including the formation of black carbon.<sup>53</sup> This resulted in three reports, the last one issued in 2013.

Considering the implementation measure just reviewed, how can the characteristics and malignancy of this AMSA recommendation help explain the outcome? Firstly, the recommendation is not *precise* – it does not specify any measures for achieving the objective of reducing emissions. By allowing for interpretation and leeway, such lack of precision could be expected to hamper national implementation. In this case, however, imprecision appears to have worked in favour of Norwegian preferences. Given the disagreement among member states, it would have been unfeasible to specify a ban on HFO within the recommendation,<sup>54</sup> whereas vagueness may have facilitated the promotion of a ban regardless of divergent member-state preferences. Neither is the recommendation *malignant* – at least not within the national context of Norway. An HFO ban, characterized by broad consensus, had been established. Norway had also played an important role in the establishment of such a ban in the Antarctica,<sup>55</sup> which indicates that arriving at the subsequent decision to promote a similar ban within the Arctic Council was relatively easy. Concerning *stakeholder involvement*, the norm-development process within the Arctic Council was marked by broad participation, including indigenous peoples' groups through the permanent participants, environmental organizations, and actors from the industrial sector. Some of these stakeholders also played a role in subsequent processes initiated by Norway. By evaluating cargo flows, risks and the environmental impacts of shipping, Det Norske

Veritas GL (DNV GL) – a renowned international classification body – helped to define the initial problem of atmospheric emissions during the AMSA process.<sup>56</sup> When the Norwegian HFO project was accepted by the member states in 2010, DNV GL was approached as a consultant and tasked with conducting the assessment reports.<sup>57</sup> This shows how DNV GL, which was involved in the AMSA process, was accorded a role in Norwegian follow-up activities; thus, DNV GL may be seen as a contributor in implementing the recommendation. Also involved in developing the AMSA recommendations was the WWF, which emphasized the need to identify vulnerable areas.<sup>58</sup> After the AMSA process, WWF stressed how HFO could damage sensitive areas within the Arctic.<sup>59</sup> Moreover, WWF directly criticized the Norwegian government for inadequately promoting such a ban among the Arctic Council member states.<sup>60</sup> Finally, *monitoring* proved influential in terms of implementation, but not in line with the ‘naming and shaming’ paradigm. Rather, the AMSA report system helped keep the issue on the agendas of Norway and the Arctic Council. By extension, it became easier to propose solutions on how best to deal with the recommendation.<sup>61</sup> In summation: the positive implementation outcome seems to have been facilitated by the involvement of stakeholders, the reporting system, and the absence of malignancy. Moreover, the very imprecision of the recommendation appears to have had a positive effect on implementation.

### 5.2.2 Recommendation: Arctic Marine Traffic System

As with the recommendation discussed above, the recommendation ‘Arctic marine traffic system’ did not introduce policies that were new to Norway. Council member states were requested to support the development of an Arctic marine traffic system, but the Norwegian framework was already extensive. Particularly Norway’s use of AIS and its security measures were superior to the situation in the other Arctic states.<sup>62</sup> However, the recommendation does appear to have led to the idea of developing a *common* system, where member states could share information and gain a holistic picture of Arctic shipping. In 2013, the Ministry of Foreign Affairs published a report on the consequences for Norway of increased Arctic shipping. The report pointed out that data on Arctic ship traffic were not collected systematically, nor regularly shared among the Arctic states.<sup>63</sup> The government was therefore advised to develop a joint monitoring and warning satellite-based system for the Arctic Ocean. BarentsWatch – a northern-placed monitoring and information system – was proposed as one platform for developing such Arctic cooperation.<sup>64</sup> In 2014, this advice was presented to the Arctic Council: during a PAME meeting, Norway offered to provide raw and processed satellite AIS data to the Council.<sup>65</sup> That same year, PAME initiated a new project, Arctic Shipping Data Service (ASDS), aimed at updating Arctic ship-traffic data for use in assessments and trend analysis.<sup>66</sup> Norway and the USA were appointed lead countries. Under the ASDS project, Norway informed the member states of its own

political measures, including extensive presentations of BarentsWatch and Havbase – another system based on AIS data.<sup>67</sup> Norway also presented an update on ship traffic in the high seas areas of the Central Arctic Ocean, in line with its 2014 proposal.<sup>68</sup> Then, in 2016 ASDS was reframed; the USA took charge, with project completion expected in 2017.<sup>69</sup>

We may now ask: how did the three characteristics of precision, stakeholder involvement and monitoring, plus malignancy, affect the implementation outcome? This AMSA recommendation was *precise*. However, its precision did not have any effect on implementation activities: measures were specified for achieving the objective of a ship-traffic system, but such measures had already been implemented by Norway. On the other hand, the *absence of malignancy* may have helped national implementation. As Norway had basically fulfilled the recommendation already, there must have been broad national consensus on the importance of traffic monitoring. Moreover, the recommendation would entail few additional expenses. Such a situation is likely to have eased the role that Norway assumed within the Arctic Council. Further, the *involvement of stakeholders* – indigenous peoples, environmental organizations and industry – in the AMSA norm-development process does not seem to have affected the outcomes of national implementation. At least we find no traces of their participation in the national processes. However, *monitoring* did matter. By 2014, all AMSA recommendations had gained momentum within the Arctic Council, and the PAME agenda had become governed and structured by them.<sup>70</sup> That made it easier to provide suggestions on how to implement the recommendation. In summary, then, the positive implementation outcome on this recommendation appears to have been influenced only by the existence of a reporting system and the absence of malignancy.

### 5.2.3 Recommendation: Survey of Arctic Indigenous Marine Use

Unlike the two foregoing AMSA recommendations, the third one, ‘survey of Arctic indigenous marine use’, did not result in any national implementation measures. Here it was argued that a survey had been conducted in 2008, when the Coastal Fishing Committee investigated the rights of the Saami people and Arctic residents to fish in the coastal areas of Finnmark county.<sup>71</sup> That argument, however, is a source of disagreement. Although the Coastal Fishing Committee concluded that Saami and other residents had such rights, little was done by the government to ensure a proper follow-up,<sup>72</sup> nor did the Coastal Fishing Committee conduct an actual survey on Saami’s traditional marine use of the area. Despite the absence of implementation measures, this case – like the recommendations discussed above – still shows that the three characteristics and malignancy do have explanatory power.

First of all, this third recommendation was not *precise*: It merely stated the objective of conducting surveys on Arctic indigenous marine use –

without specifying the measures necessary to achieve this. Imprecise recommendations allow for leeway and discretion and, therefore, run the risk of not being implemented. Norwegian authorities apparently took advantage of the recommendation's imprecise formulation, using it to justify the Coastal Fishing Committee's activities as implementation – thereby obviating the need to initiate other additional measures. Moreover, the recommendation touched on a rather sensitive issue: Whereas the national authorities claimed that a survey had been conducted, the Saami Council – a permanent participant of the Arctic Council – contested this. According to the Saami Council, the lack of additional implementation measures was rooted in the question of indigenous peoples' rights – an issue the government was unwilling to address.<sup>73</sup> Although it is difficult to determine the economic costs such a survey would entail, this disagreement shows that political costs were present. Thus a certain level of *malignancy* existed, obstructing the national implementation process. As for *stakeholder involvement*, the Saami Council contributed actively to the AMSA project, resulting in recommendations that reflected the views of the Council.<sup>74</sup> Moreover, the Saami Council played an active role in promoting this recommendation to the national authorities. When attempts to persuade national decision-makers failed, the Saami Council pursued an alternative direction. Together with the Aleut International Association (AIA),<sup>75</sup> the report 'Development of an Arctic Marine Use Survey Process' was submitted to PAME.<sup>76</sup> The report was intended as a study on which later measures could be based and as a way of approaching the topic without inflicting a politically uncomfortable situation on Norway.<sup>77</sup> However, due to lack of resources, the Saami Council was unable to continue its participation in the project.<sup>78</sup> All the same, the course of events shows how stakeholders involved in Arctic Council processes may attempt to influence national implementation processes. As regards the implementation measures pursued by the Saami Council, monitoring – the reporting system – was important. The recommendation was already part of the PAME agenda and was therefore difficult to overlook.<sup>79</sup> In total, we find that both *stakeholder involvement* and *monitoring* were of importance in this case, even though implementation did not come about. Both the *imprecision* of the recommendation and its *malignancy* are likely to have hindered such implementation processes in unfolding nationally.

## 6 Main Findings and Discussion

From this review of six Arctic Council recommendations, what are the main findings? Have we found any specific patterns? This analysis has shown how Norway, as a member state of the Arctic Council, devoted considerable effort to implementing several of these recommendations. However, implementation has been pursued in two distinct ways. Whereas the ACIA, in large part, led to putting adaptation on the national agenda, the domestic context surrounding the AMSA was very different. Consequently, the ACIA process caused Norway to initiate national measures that were carried out within its borders, and that were directed

towards national actors. In this regard, the NorACIA has been highlighted. Norway constituted a leading maritime power in the AMSA process, and several of the measures mentioned in the AMSA recommendations had already been implemented. Consequently, an important objective in implementation became the promotion of national standards and greater cooperation within the Arctic Council.

Overall, of the six recommendations studied here, four generated specific implementation measures in Norway. Two of these stemmed from the ACIA policy document, and two from the AMSA report. Additionally, we have found indications that certain characteristics of the recommendations – precision, stakeholder involvement, and monitoring of state behaviour – as well as malignancy, affected some of the implementation outcomes. Table 3 sums up the findings from the analysis.

<b>Table 3: Overview of Findings</b>					
	<b>Precision</b>	<b>Stakeholder Involvement</b>	<b>Monitoring</b>	<b>Malignancy</b>	<b>Implementation</b>
<b>ACIA recommendations</b>					
Help Arctic Residents Adapt	X	X	–	–	X
Adaptive Management, Nature Conservation, and Reduction of Risks	–	X	–	–	X
Develop the Arctic in a Sustainable Manner	–	X	–	X	–
<b>AMSA recommendations</b>					
Reduce Air Emissions	–	X	X	–	X
Arctic Marine Traffic System	X	X	X	–	X
Survey of Arctic Indigenous Marine Use	–	X	X	X	–

Table 3: Overview of findings. X = present, – = absent.

As regard the three characteristics, we found no clear-cut pattern in relation to *precision*. On the one hand, the presence of precision could clarify the necessary measures to take and, thereby, also facilitate national initiatives. This effect was mentioned in connection with our review of the recommendation ‘help Arctic residents adapt’. However, in some cases, the measures suggested by precise recommendations had already been implemented by the Norwegian authorities. In such instances – as illustrated by the recommendation ‘Arctic marine traffic system’ – precision could hardly have any noteworthy effect. On the other hand, and more surprisingly, the lack of precision may, in some

cases, have had positive effects on implementation. When few political and economic costs were involved, imprecise recommendations could help lessen malignancy. The lack of precision could also – as shown by the recommendation ‘reduce air emissions’ – provide leeway and, thus, the possibility of promoting, within the Arctic Council, national standards not necessarily in line with the preferences of other member states.

As regards *stakeholder involvement*, the findings indicate that national actors who were involved in the international processes also participated in some of the subsequent domestic implementation processes. In relation to the ACIA, we saw how both the Saami Council and the WWF had a role in implementing the recommendation ‘help Arctic residents adapt’. Likewise, the Saami Council attempted, although unsuccessfully, to implement the AMSA recommendation ‘survey on Arctic indigenous marine use’. In connection with the AMSA recommendation ‘reduce air emissions’, both the WWF and the international classification body DNV GL played a part in promoting the Norwegian ban on heavy fuel oil. In all these cases, it appears that the stakeholders were either directly affected by the recommendations, or had exceptional knowledge on how to best accommodate them.

Also *monitoring* of state behaviour stood out as an important characteristic connected to the implementation of the AMSA recommendations. As highlighted repeatedly in the analysis above, the reporting system entailed an ‘agenda-setter function’, which made it easier to follow up recommendations within the Arctic Council. Additionally, the reporting system served to keep the issue in question on the national agenda. As seen with the ACIA recommendations, implementation may also come about independently of this characteristic – but its value should not be dismissed. Indeed, the reporting system is likely to have accommodated the active role Norway assumed within the Arctic Council. Considering the national context and the Norwegian authorities’ choice of following up the AMSA recommendation within this forum, it is by no means certain that the implementation outcomes would have remained the same without such a reporting system.

Despite positive indications that the characteristics matter (at least to some extent), the most interesting finding concerns *malignancy* and its effect on national implementation. Overall, the characteristics appeared to have effect mainly when the relevant issue-areas were non-malignant – when the recommendations did not entail any considerable political or economic costs. Indeed, the total absence of malignancy seemed to be the most decisive condition for national implementation to occur. In fact, a highly consistent pattern with regard to malignancy, implementation, and the connection between them arose: In cases where malignancy was absent, national implementation followed; by contrast, when malignancy was present, implementation measures were not enacted.

## 7 Concluding Remarks

The main objective of this report was to examine whether Norway, as a member state of the Arctic Council, implements the recommendations of the Council. Additionally, we examined whether certain characteristics of the recommendations – precision, monitoring of state behaviour, stakeholder involvement – and malignancy could help to explain the variation in implementation outcomes. Of the four recommendations that *were* implemented, our analysis revealed that the characteristics in general, and malignancy in particular, were of importance.

Of course, these findings constitute only a lesser part of a greater picture. The processes examined here are of great complexity, and other factors not included in this study are highly likely to play a role. However, as regards effectiveness, this report shows how the use of soft law is not necessarily a weakness. Rather, soft-law recommendations may have certain characteristics that are also found in hard-law commitments – the exception, of course, being legally bindingness. As has been shown, when such characteristics are present and when the issue at hand is relatively undemanding, implementation may well take place – also in a soft-law situation.

## 8 Notes and Bibliography

### 8.1 Notes

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<sup>1</sup> Graczyk, Koivurova, 2015, 313

<sup>2</sup> Young, 2009, 79

<sup>3</sup> However, this highly unique feature of the Arctic Council has been threatened by lack of resources, so the permanent participants are at times marginalized.

<sup>4</sup> Abbott et al. 2000, 401

<sup>5</sup> Ibid., 412

<sup>6</sup> Franck, 1990, 52

<sup>7</sup> Mitchell, 1998, 109

<sup>8</sup> Shelton, 2003, 15

<sup>9</sup> Friedrich, 2013, 269

<sup>10</sup> Stokke, 2014, 770

<sup>11</sup> Underdal, 2013, 25

<sup>12</sup> As for instance shown by the White Paper ‘Opportunities and Challenges in the High North’, which sought to develop a new and comprehensive policy in terms of the rich resources the area holds, and the great support it received in the Norwegian Parliament (Norwegian Government, 2005a).

<sup>13</sup> Koivurova, 2010a, 149

<sup>14</sup> Arctic Council, 2004

<sup>15</sup> Keskitalo, Koivurova, Bankes, 2009, 10; Hoel, 2007, 114, 132

<sup>16</sup> Pielke et al., 2007, 597; Koivurova, 2010a, 149

<sup>17</sup> Koivurova, 2010a, 149

<sup>18</sup> Report No.41, (1994–95)

<sup>19</sup> Report No. 15 (2001–2002), 62

<sup>20</sup> Norwegian Polar Institute, 2003, 13

<sup>21</sup> Arctic Council, 2004, 5–6

<sup>22</sup> Norwegian Polar Institute, 2006a, 3

<sup>23</sup> Ibid., 4

<sup>24</sup> Norwegian Polar Institute, 2005a; 2005b; 2006b; 2007

<sup>25</sup> Ibid.

<sup>26</sup> Norwegian Ministry of Foreign Affairs, 2006, 37

<sup>27</sup> Report No. 28, (2007–2008), 41

<sup>28</sup> Interview, Permanent Participant, 2016

<sup>29</sup> Nilsson, 2009, 87; Interview, 2016

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- <sup>30</sup> Arctic Athabaskan Council, Gwich'in Council International, Saami Council, Russian Association of Indigenous Peoples of the North, Inuit Circumpolar Conference, Aleut International Association, 2004a; 2004b
- <sup>31</sup> Interview, Permanent Participant, 2016
- <sup>32</sup> Interview, Permanent Participant, 2016
- <sup>33</sup> WWF, 2004
- <sup>34</sup> Arctic Council, 2004, 6
- <sup>35</sup> Nybø et al., 2009, 3–4
- <sup>36</sup> Interview, Government Official, 2016
- <sup>37</sup> Groven, Satøen, Aall, 2009
- <sup>38</sup> Arctic Council, 2004, 6
- <sup>39</sup> Interviews, Permanent Participant, Government Officials, 2016
- <sup>40</sup> Hassol, 2004, 8
- <sup>41</sup> Koivurova, 2010b, 128
- <sup>42</sup> PAME, 2009a, 4
- <sup>43</sup> Ibid, 6–7
- <sup>44</sup> Norwegian Ministry of Foreign Affairs, 2009; Norwegian Ministry of Foreign Affairs 2011; Report No. 26 (2012–2013); Norwegian Ministry of Trade and Industry, 2013; Norwegian Ministry of Foreign Affairs, 2013
- <sup>45</sup> Interview, Government Officials, 2016
- <sup>46</sup> PAME, 2009b, 5
- <sup>47</sup> The category initially included seven recommendations, but several of these were excluded from the analysis: three of them – ‘engagement with Arctic communities’, ‘protection from invasive species’ and ‘addressing the infrastructure deficit’ – due to space limitations and to their being of less relevance to Norway. And ‘investing in hydrographic, meteorological and oceanographic data’, was excluded due to space limitations. However, it is included in the larger study on which this report is based. There, the findings indicated that implementation measures had been initiated, but that the characteristics had fewer bearings on the outcome.
- <sup>48</sup> PAME, 2009a, 6
- <sup>49</sup> The ban introduced in 2007 covered the nature reserves on the eastern side of Svalbard. In 2009 the ban was expanded to the reserves on the western side of Svalbard.
- <sup>50</sup> Norwegian Ministry of Environment, 2010, 9
- <sup>51</sup> Norwegian Ministry of Environment, 2011; 2012; 2013; 2014
- <sup>52</sup> PAME, 2010, annex II
- <sup>53</sup> Ibid.
- <sup>54</sup> Interview, Government Officials, 2016

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<sup>55</sup> Following a proposal by Norway, a chapter banning the use and carriage of HFO in the Antarctica was added to MARPOL in 2010.

<sup>56</sup> PAME, 2006, appendix V-1

<sup>57</sup> PAME, 2016a

<sup>58</sup> PAME, 2005, 8; 2006, 8

<sup>59</sup> WWF, 2012; 2013; n.d.

<sup>60</sup> WWF, 2013

<sup>61</sup> Interviews, Government Officials, Working Group, 2016

<sup>62</sup> Interviews, Government Officials, Working Group, 2016

<sup>63</sup> Norwegian Ministry of Foreign Affairs, 2013, 8

<sup>64</sup> Ibid.

<sup>65</sup> PAME, 2014, 5

<sup>66</sup> PAME, 2015, 2

<sup>67</sup> Røyset, Kleppe, 2015; Knudsen, 2015

<sup>68</sup> Hansen, 2015

<sup>69</sup> PAME, 2016b, 2, 3

<sup>70</sup> Interview, Government Official, 2016

<sup>71</sup> Interview, Government Official, 2016

<sup>72</sup> Interview, Permanent Participant, 2016; Ravna, 2012, 162

<sup>73</sup> Interview, Permanent Participant, 2016

<sup>74</sup> Interview, Permanent Participant, 2016

<sup>75</sup> The Aleut International Association is a permanent participant of the Arctic Council.

<sup>76</sup> Gofman, Retter, 2011

<sup>77</sup> Interview, Permanent Participant, 2016

<sup>78</sup> Interview, Permanent Participant, 2016

<sup>79</sup> Interview, Permanent Participant, 2016



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**Fridtjof Nansens vei 17, P.O. Box 326, NO-1326 Lysaker, Norway  
Phone: (47) 67 11 19 00 – Fax: (47) 67 11 19 10 – E-mail: [post@fni.no](mailto:post@fni.no)  
Website: [www.fni.no](http://www.fni.no)**