



# The Reflection of Multilateral Environmental Agreements (MEAs) in the Barents Environmental Cooperation

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**Abstract:** The Barents Euro-Arctic Region (BEAR) which was founded in 1993 is a dual-layered forum of cooperation between governments and regions in the Barents Region. It is based on the legally non-binding Kirkenes Declaration, whose overarching aim is to promote sustainable development in the region. To this end, the protection of the environment is to be included in all its activities. This article analyzes the inclusion of the concept of sustainable development in the cooperative structure of the BEAR based on the 1992 Rio Declaration and Agenda 21. Several selected Multilateral Environmental Agreements (MEA) are analyzed against the background of their reflection in the BEAR working procedures. In the case of some MEAs, different statuses of ratification in Russia and the Nordic Barents states aggravate their implementation in the BEAR context. Notwithstanding, the forum has developed different strategies which enable their successful application for the Barents Region.

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**Keywords:** Barents Euro-Arctic Region; Barents Environmental cooperation; Multilateral Environmental Agreements; Soft-law cooperation; Sustainable Development; Russian non-ratification.

## 1. Introduction

The collapse of the Soviet Union marked the new beginning of cooperation in the Arctic. Formerly an arena of the Cold War, Mr. Mikhail Gorbachev's speech in 1987 in Murmansk marked the turning point in Arctic politics and opened the door for cooperative dialogue.<sup>2</sup> While the new cooperative environment yielded the Arctic Environmental Protection Strategy (AEPS) 1991 which resulted in the establishment of the Arctic Council (AC) in 1996, also another Arctic area – the Barents Region – was affected by the new political ecology and several states<sup>3</sup> launched a cooperative initiative to mitigate the pressing issues at hand – the Barents Euro-Arctic Region (BEAR) in 1993. Parallel to the end of the Cold War, international environmental law became subject to new standards, in particular since the United Nations Conference on Environment and Development in Rio de Janeiro 1992 (henceforth referred to as the Rio Conference) and the conclusion of several groundbreaking international environmental agreements.<sup>4</sup>

Since the early 1990s, both international environmental law and cooperation under the BEAR have undergone significant developments, and its Member States have managed to cooperate deeply and to improve the environmental conditions in the Barents Region under the umbrella of the BEAR.

Although there is no specific international treaty governing the Barents Region, the Barents states have committed to and shaped a framework of governance for the region, and in particular on the environmental level<sup>5</sup> by becoming parties to international treaties and endorsing legally non-binding agreements. Therefore, by reflecting international standards of environmental governance through its working structure, the BEAR can serve as an example for a sophisticated and effective

2. Heinen, Lassi. 2004. Chapter 12 – “Circumpolar International Relations and Geopolitics.” In: Arctic Human Development Report, Stefansson Arctic Institute, Akureyri, pp. 207–225, p. 208.
3. Norway, Russia, Finland, Sweden as those states located in the Barents Region, as well as Denmark, Iceland and the European Commission representing the EU.
4. Both legally binding and legally non-binding agreements that have increased the environmental standards in international law have been concluded in Rio. Two legally-binding conventions, the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC) as well as the legally non-binding Agenda 21; the Rio Declaration on Environment and Development; and the Statement of Principles for the Sustainable Management of Forests constitute the outcome of the summit.
5. Ibid.





NIKOLAS SELLHEIM

mode of multilayered soft-law cooperation yet implementing both hard- and soft-law Multilateral Environmental Agreements (MEA). Furthermore, the reflection of MEAs in the Barents environmental cooperation becomes important in the context of its legitimacy, as “what is legitimate is what the law ordains,”<sup>6</sup> yet taking into account also the social structure and normative community, creating a type of institutionalization that creates its “aura of legitimacy”<sup>7</sup> through its degree of adhering to the provisions of international law manifested in rules, procedures and discourse as well as the BEAC Members’ rights to interpret, implement and apply these rules, discourses and procedures.<sup>8</sup>

This article examines to what extent the Barents environmental cooperation manages to implement international environmental standards in its working structure also in light of different statuses of ratification. This article argues that although there is no regional environmental agreement for the Barents Region, the BEAR provides efficient implementation of MEAs making environmental protection a key concern and outcome of the cooperation. Since the Barents cooperation is a soft-law forum for cooperation its efficiency is based on the voluntary commitment of its members. Therefore, it is crucial that the members follow common goals. But since the status of ratification differs from the Nordic states and Russia, this article reviews the BEAR’s strategies to effectively incorporate these MEAs into the Barents environmental cooperation in light Russian non-ratification of several protocols of the LRTAP Convention and her former non-ratification of the POPs Convention.<sup>9</sup> Several selected MEAs<sup>10</sup> are presented against the background

6. Clark, Ian. 2005. *Legitimacy in International Society*, Oxford University Press, Oxford, p. 9.
7. Bernstein, Steven. 2004. *The Elusive Basis of Legitimacy in Global Governance: Three Conceptions*. McMaster University, Hamilton, p. 9.
8. Abbott, Kenneth W. et al. 2000. “The Concept of Legalization.” In: *International Organization*, Vol. 54 (3), pp. 17–35, p. 17.
9. It must be noted that the findings presented in this article primarily deal with the intergovernmental level of the Barents cooperation. Furthermore, in case of the POPs Convention, which Russia ratified in November 2011, this article deals with the implementation strategies prior to Russian ratification, as at the time of writing it is too early to assess changes in implementation strategies in the post-ratification era.
10. For the purpose of this article six multilateral environmental agreements, i.e., the Ramsar Convention on Wetlands of International Importance, 1971; The World Heritage Convention, 1972; The Convention on Long-Range Transboundary Air Pollution, 1979; The Convention on Biological Diversity, 1992; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992; and Stockholm Convention on Persistent Organic Pollutants, 2002 and their relevance for and application in the BEAR will be analyzed. The status of ratification in the respective BEAC state is given in the relevant section.





of their reflection in different types of documents of the Barents environmental cooperation.

## 2. The Barents Euro-Arctic Region (BEAR)

The Barents Euro-Arctic Region was incepted in 1993 at a meeting of the Foreign Ministers or other High-level representatives of Norway, Russia, Sweden and Finland, in addition to the European Commission, Iceland and Denmark in Kirkenes, Norway. Based on the initiative of Norway's then-Foreign Minister Mr. Thorvald Stoltenberg a cooperative structure for the Barents Region took shape<sup>11</sup> in order to enhance security, stability and cooperation in the Barents Region, both on the intergovernmental and regional level.<sup>12</sup> To this end, based on the Declaration following the Cooperation in the Barents Euro-Arctic Region Conference of Foreign Ministers<sup>13</sup> held 11 January 1993 in Kirkenes, Norway, the intergovernmental Barents Euro-Arctic Council (BEAC) and the Barents Regional Council (BRC) were created, constituting the Barents Euro-Arctic Region (BEAR)<sup>14,15</sup> which now encompasses a land area of 1 755 800 km<sup>2</sup> with a population of about 6 million people.<sup>16</sup>

11. Rafaelsen, Rune. 2010. "The Barents Cooperation – New Regional Approach for Foreign Policy in the High North." In: Staalesen, Atle (ed.). 2010. *Talking Barents – People, Borders and Regional Cooperation*, Norwegian Barents Secretariat, Kirkenes, pp. 25–31, pp. 25–26.
12. See Barents Euro-Arctic Council official website, "Cooperation in the Barents Euro-Arctic Region," [http://www.beac.st/in\\_English/Barents\\_Euro-Arctic\\_Council/Introduction.iw3](http://www.beac.st/in_English/Barents_Euro-Arctic_Council/Introduction.iw3), accessed February 20, 2012.
13. Henceforth referred to as the Kirkenes Declaration. [http://www.barentsinfo.fi/beac/docs/459\\_doc\\_KirkenesDeclaration.pdf](http://www.barentsinfo.fi/beac/docs/459_doc_KirkenesDeclaration.pdf), accessed February 15, 2012.
14. Members of the BEAC are: Norway, Russia, Sweden, Finland, the European Commission, Iceland and Denmark with the Observer States Canada, France, Germany, Italy, Japan, Netherlands, United Kingdom and the USA; The 13 provinces constituting the BRC are: in Finland – Lapland province; in Norway – Troms, Finnmark and Nordland provinces; in Russia – Archangelsk and Murmansk Oblasts; and in Sweden – Norrbotten and Västerbotten län. Already in April 1993 the Republic of Karelia and up until 2002 the Finnish counties of Oulu and Kainuu as well as the Russian Komi Republic and Nenets Autonomous Okrug joined the BRC. The Finnish province of North Karelia was granted observer status in 2008.
15. BEAR. 2011 (a). Barents Comprehensive Information Paper. [http://www.barentsinfo.fi/beac/docs/Barents\\_Cooperation\\_information\\_English\\_August\\_2011.pdf](http://www.barentsinfo.fi/beac/docs/Barents_Cooperation_information_English_August_2011.pdf), accessed October 14, 2011, p. 1.
16. *Supra* note 11, p. 25.





NIKOLAS SELLHEIM



Source: Arctic Centre – University of Lapland<sup>17</sup>

Apart from the intergovernmental and regional level, the BEAR also includes the three Barents indigenous peoples, i.e., the Sámi, Veps and Nenets who in the Working Group on Indigenous Peoples have advisory status for both BEAC and BRC.<sup>18</sup>

The Barents Euro-Arctic Region's fields of cooperation are diverse, taking *inter alia*: environmental, cultural, economic and climate change concerns into account.<sup>19</sup> The Barents cooperation's overall goal is to achieve sustainable development in the Barents Region, directly referring to the provisions of the Rio Declaration and Agenda 21. To this end, the Kirkenes Declaration highlights anticipated cooperation in the areas of the environment; economy; science and technology; regional infrastructure; indigenous peoples; human contacts and cultural relations; and tourism.

17. Arctic Centre, University of Lapland. 2010. <http://www.barentsinfo.fi/barentsmap.htm>, accessed March 14, 2012.

18. BEAC, Working Group of Indigenous Peoples. <http://www.beac.st/?DeptID=8852>, accessed February 20, 2012.

19. Hasanat, Waliul. 2010. "Cooperation in the Barents Euro-Arctic Region in the Light of International Law." In: Alfredsson, Gudmundur, Timo Koivurova and Natalia Loukacheva (eds.). *Yearbook of Polar Law*, Vol. II, Martinus Nijhoff Publishers: Leiden & Boston pp. 279–309; pp. 287–298; Sreejith, S.G. 2009. "Subjective Environmentalism: The Barents Euro-Arctic Council and its Climate Change Policy." In: Koivurova, Timo, E. Carina H. Keskitalo and Nigel Bankes (eds.). 2009. *Climate Governance in the Arctic*, Springer, New York, pp. 383–402; pp.391–399.





### 3. The Barents Cooperation, Sustainable Development and Arctic Governance

Cooperation under the auspices of the BEAR is based on the legally non-binding Kirkenes Declaration.<sup>20</sup> Yet, with their signature, the cooperating states do indeed commit politically to several international agreements and standards,<sup>21</sup> e.g., sustainable development set forth e.g., in the Rio Declaration and Agenda 21.

Under its subheading “The Barents Euro-Arctic Council and its Objectives” the Kirkenes Declaration reads that the “objective of the work of the Council will be to promote sustainable development in the Region, bearing in mind the principles and recommendations set out in the Rio Declaration and Agenda 21 of UNCED.” Both serve as the instrumental framework for the Barents cooperation as they foster environmental, human and cultural security. To this end, with their commitment to these two legally non-binding instruments, the Barents cooperation’s goal, i.e. to promote sustainable development, responds to the needs of the population in the Barents Region.<sup>22</sup> Although the Kirkenes Declaration and any other official document of the Barents’ cooperation abstains from a clear-cut definition of ‘sustainable development’ for its own purposes, it nevertheless frames the concept as “bilateral and multilateral cooperation in the fields of economy, trade, sci-

20. A development of a fairly recent origin is the conclusion of the legally binding “Agreement between the Governments in the Barents Euro-Arctic Region on Cooperation within the Field of Emergency Preparedness, Prevention and Response,” concluded on December 11, 2008. Although the Agreement has not yet come into force, it nevertheless shows the capability of the Barents cooperation to expand its framework into legally binding agreements.

21. See *supra*note 19 Hasanat: 300.

22. While there is no global definition of ‘sustainable development,’ the definition set forth in the 1987 World Commission on Environment and Development (WCED) report “Our Common Future” (henceforth referred to as the Brundtland Report) is widely spread. According to the Report, “(s)ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED (World Commission on Environment and Development). 1987. *Our Common Future*, Oxford University Press, Oxford; p. 43). While the notion of ‘needs’ in the Brundtland Report primarily aims at developing nations and encompasses “food, clothing, shelter, jobs” (*Ibid.*), the Barents cooperation has taken this concept further and takes economic development, customs issues, youth, transport, search and rescue, health, education, energy, culture and tourism into account (Barents Working Groups and Activities, [http://www.beac.st/in\\_English/Barents\\_Euro-Arctic\\_Council/Working\\_Groups.iw3](http://www.beac.st/in_English/Barents_Euro-Arctic_Council/Working_Groups.iw3), accessed February 13, 2012); While the notion of ‘needs’ in the Brundtland Report primarily aims at developing nations and encompasses “food, clothing, shelter, jobs” (*Ibid.*), the Barents cooperation has taken this concept further and takes economic development, customs issues, youth, transport, search and rescue, health, education, energy, culture and tourism into account (Barents Working Groups and Activities, [http://www.beac.st/in\\_English/Barents\\_Euro-Arctic\\_Council/Working\\_Groups.iw3](http://www.beac.st/in_English/Barents_Euro-Arctic_Council/Working_Groups.iw3), accessed February 13, 2012).





NIKOLAS SELLHEIM

ence and technology, tourism, the environment, infrastructure, educational and cultural exchange, as well as projects particularly aimed at improving the situation of indigenous peoples in the North,<sup>23</sup> reflecting the needs of the local population, in line with the overall objectives of the Rio Declaration and Agenda 21.

The Barents cooperation shows several traits for implementing sustainable development in reference to both the Rio Declaration and Agenda 21: firstly, the inclusion of the environment into all its activities corresponds to the overall purpose of Agenda 21<sup>24</sup> and Principle 4<sup>25</sup> of the Rio Declaration. Secondly, in line with the recognition of dynamic and changing needs,<sup>26</sup> the Barents cooperation is not static in its activities, but constantly adapts goals and working group composition to respond to these dynamics.<sup>27</sup> The Barents cooperation therefore constantly reassesses the needs for the region and its population, ensuring that ‘development’<sup>28</sup> is achieved in a way that is not limited to a fixed frame. Thirdly, the inclusion of local and indigenous people in the working procedure of the cooperation goes closely

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23. Kirkenes Declaration, Subheading “The Barents Euro-Arctic Council and its objectives.”
  24. The Preamble of Agenda 21 states in point 1.1: “However, integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future,” [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_01.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_01.shtml), accessed February 13, 2012.
  25. Rio Declaration, Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it, <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>, accessed February 13, 2012.
  26. Agenda 21 Preamble, 1.6: The programme areas that constitute Agenda 21 are described in terms of the basis for action, objectives, activities and means of implementation. Agenda 21 is a dynamic programme. It will be carried out by the various actors according to the different situations, capacities and priorities of countries and regions in full respect of all the principles contained in the Rio Declaration on Environment and Development. It could evolve over time in the light of changing needs and circumstances. This process marks the beginning of a new global partnership for sustainable development, [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_01.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_01.shtml), accessed February 13, 2012.
  27. The Committee of Senior Officials (CSO) holds the mandate to create new working groups and to disband those that have completed their appointed tasks, [http://www.beac.st/in\\_English/Barents\\_Euro-Arctic\\_Council/Barents\\_Euro-Arctic\\_Council/Committee\\_of\\_Senior\\_Officials.iw3](http://www.beac.st/in_English/Barents_Euro-Arctic_Council/Barents_Euro-Arctic_Council/Committee_of_Senior_Officials.iw3), accessed February 13, 2012.
  28. The Brundtland Report frames the term development in the following: “Development involves a progressive transformation of economy and society. A development path that is sustainable in a physical sense could theoretically be pursued in a rigid social and political setting. But physical sustainability cannot be secured unless development policies pay attention to such considerations as changes in access to resources and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies the concern for social equity between generations, a concern that must logically be extended to equity within each generation,” *supra* note 22, 43.





in line with Section III of Agenda 21<sup>29</sup> and Principle 22<sup>30</sup> of the Rio Declaration. The operational dual-layered structure of the BEAR and the role of the Working Group on Indigenous Peoples show that the recommendations and aspiration of both Agenda 21 and the Rio Declaration are adhered to from the outset.<sup>31</sup>

The legally non-binding mode of governance is a trait of a circum-Arctic scope. The AEPS, launched under the initiative of Finland in 1991 in order to streamline environmental protection strategies for the Arctic, marks the beginning of post-Cold War Arctic cooperation.<sup>32</sup> Four working groups – the Arctic Monitoring and Assessment Programme (AMAP), Protection of Arctic Marine Environment (PAME), Conservation of Arctic Flora and Fauna (CAFF) and the Emergency Prevention, Preparedness and Response (EPPR) Working Group – were established under the AEPS, contributing to the introduction of an Arctic dimension also into Northern European politics.<sup>33</sup>

Since the 1970s Canada envisaged a forum on the Arctic which was to go beyond a single-handed initiative with a merely environmental character such as the AEPS and which was to serve as a region-building mechanism, including Arctic

29. Section III: Strengthening the Role of Major Groups, [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_00.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml), accessed February 13, 2012.

30. Rio Declaration, Principle 22: Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development, <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>, accessed February 13, 2012.

31. The rather weak wording in the Terms of Reference of the BEAC or the Joint Communiqués emphasizes the legally non-binding status of the cooperation and the lack of commitments for the BEAC member states. Only in the Agreement on the Establishment of an International Barents Secretariat (IBS Agreement) and other agreements following the IBS Agreement legal obligations are created (Hasanat, *supra* note 19 at pp. 300 and 301). Notwithstanding the Barents cooperation has managed to evolve in its scope and effectiveness in close adherence to international agreements, thus making it a crucial element in ensuring sustainable development for the Barents Region.

32. Tennberg, Monika. 2000. *Arctic Environmental Cooperation – A Study in Governmentality*, Ashgate, Burlington; p. 17.

33. For example, in 1992, the Council on Baltic Sea States (CBSS) was established between Estonia, Latvia, Lithuania, Finland, Sweden, Norway, Denmark, Iceland Germany, Poland and Russia in order to enhance democratization and economic development for the formerly Soviet states, while its mandate also includes environmental protection, labour issues, the fight against organized crime, nuclear safety and transport. Hønneland, Geir and Olav Schram Stokke, "Introduction." In: Stokke, Olav Schram and Geir Hønneland (eds.). 2007. *International Cooperation and Arctic Governance – Regime Effectiveness and northern Region Building*, Routledge, London & New York pp. 1–12; pp. 3 and 4.





NIKOLAS SELLHEIM

States, Arctic indigenous peoples, territorial governments, regional representatives and non-Arctic actors. Based on Canada's initiative the Ottawa Declaration was concluded in 1996, formally establishing the Arctic Council, including the eight Arctic States,<sup>34</sup> three indigenous organizations<sup>35</sup> as Permanent Participants, as well as Observers.<sup>36</sup> The AC furthermore became the coordinating body for the AEPS, which in 1998 was fully integrated into it making it fully operational<sup>37</sup> and which was expanded by two more Working Groups, i.e., the Sustainable Development Working Group (SDWG) in 1998<sup>38</sup> and the Arctic Contaminant Action Program (ACAP) in 2006.<sup>39</sup> The Barents Euro-Arctic Region closely cooperates with the AC's Working Groups, which is especially relevant for the environmental dimension of Barents co-operation<sup>40</sup> and in particular for environmental clean-up<sup>41</sup> and nature protection.<sup>42</sup>

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34. Canada, the United States, Norway, Finland, Sweden, Iceland, Russia and Denmark/Greenland.
35. The Inuit Circumpolar Conference (now Council), the Sámi Council, and the Association of Indigenous Minorities of the North, Siberia, and the Far East of the Russian Federation (now Russian Association of Indigenous Peoples of the North); Now, also the Aleutian Council, The Arctic Athabaskan Council and the Gwich'in Council are Permanent Participants of the AC the Gwich'in Council International.
36. Observership is granted to states and organizations. At the time of writing France, Germany, the Netherlands, Poland, Spain and the United Kingdom are state observers; additionally, nine intergovernmental and inter-parliamentary organizations as well as eleven non-governmental organizations, <http://www.arctic-council.org/index.php/en/about-us/partners-links>, accessed February 14, 2012.
37. *Supra* note 31, p. 3; Keskitalo, Carina. 2004. *Negotiating the Arctic – The Construction of an International Region*, Routledge, London & New York, p. 75.
38. <http://portal.sdwg.org/content.php?doc=12>, accessed February 14, 2012.
39. <http://www.arctic-council.org/index.php/en/acap>, accessed February 14, 2012.
40. See, for example, Ministry of the Environment of Finland. 2005. *Environmental Cooperation in the Barents Region – 10-Year Review*, Ministry of the Environment of Finland, Helsinki; pp. 79–80.
41. The list of the 42 environmental “Hot Spots” in the Barents Region which serves as the guiding tool for the improvement of the environmental conditions in the Barents Region is based on the collaborative work of the Nordic Environment Finance Corporation (NEFCO) and AMAP; AMAP (Arctic Monitoring and Assessment Programme). 2003. *Updating of Environmental “Hot Spots” List in the Russian Part of the Barents Region – Proposal for Environmentally Sound Investment Projects*. Oslo: AMAP, <http://www.barentsinfo.fi/beac/docs/WGE+AMAP-NEFCO-Environmental+Hotspotlist.pdf>, accessed February 14, 2012, p. 7.
42. In the 2010 Tromsø Declaration the Barents Environment Ministers stress the importance of cooperation with CAFF in the context of the creation of a Barents Protected Areas Network. The AC's recommendations are of specific importance e.g. for the Working Group on Environment Subgroup on Nature Protection (BEAC WGE 2010: 4). But also other WGE subgroups can benefit from the experiences of CAFF and its numerous projects that have been carried out since its inception in the fields of protected areas, water management, or biodiversity assessments, <http://www.caff.is/assessments>, accessed February 14, 2012.





#### 4. Working Procedures of the BEAR

The overall direction of the cooperation is decided on the Foreign Minister level, the different sub-branches of the cooperation such as environmental cooperation are dealt with in the respective ministries. The Ministers convene every other year.<sup>43</sup> Between the meetings of the Ministers, the Committee of Senior Officials (CSO), a body consisting of civil servants representing the BEAC Member States and the European Commission, convenes 4–5 times per year in order to coordinate and organize the work of the BEAC. On the regional level, the 13 Member Regions convene every other year. The bi-annual meetings are accompanied by meetings of the Regional Committee, which holds responsibility for budget proposals; coordinates and organizes the work of the BRC; steers the direction of the activity plan; and which is to implement the decisions taken by the BRC.<sup>44</sup>

A crucial role in the construct of the BEAR play the numerous working groups, committees and task forces. The cooperative structure distinguishes between working groups under the intergovernmental level, the regional level, joint working groups and the Working Group of Indigenous Peoples. Due to the diversity of cooperation in the BEAR, its working groups *inter alia* comprise the Working Group of Economic Cooperation; Working Group on Youth Policy; Working Group on Environment; Regional Working Group on Communication; Regional Working Group on Investments and Economic Cooperation; Joint Committee on Rescue Cooperation in the Barents Region; or Joint Working Group on Culture.

The functioning of the BEAR is furthermore supported by the International Barents Secretariat (IBS) which was established in 2008 in Kirkenes and which provides the chair states of the BEAR with organizational and administrative support. Apart from the IBS, also national Barents Secretariats exist in Norway and Finland, while during the Russian chairmanship 2007–2009 a temporary assistant secretariat was established. Since the Swedish Chairmanship 2009–2011 the Swedish Barents Secretariat is located within the Eastern Europe and Central Asia division of the Swedish Foreign Ministry.

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43. In the case of the Barents environmental cooperation, the Environment Ministers frame their scope and focuses of the cooperation in the bi-annual Ministerial Declarations which mirror ongoing developments in international (environmental) law and their relevance for the environmental dimension of the BEAR. Since the BEAR was created as a soft law forum, the ministerial declarations do not state legal obligations and the BEAR member states are not required to implement the recommendations set forth in them under international law.
44. Supra note 19, Hasanat p. 286 and Sreejith p. 389.





NIKOLAS SELLHEIM

## 5. The Environmental Dimension of the BEAR

Since the inception of the BEAR, the environment has been a crucial element for cooperation. In the Kirkenes Declaration, the fragility of and threats towards the Barents environment are identified as key concerns for the region and for its people, and therefore initiatives from all players involved are required.<sup>45</sup> The Kirkenes Declaration therefore includes the international framework in which the environmental dimension is to operate, i.e., it recalls the 1993 Joint Declaration from the meeting of the Ministers of Environment of the Nordic Countries and the Russian Federation and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention),<sup>46</sup> while at the same time stressing the importance of cooperating with other Arctic monitoring initiatives and bodies such as the AEPS<sup>47</sup> and the AMAP.

The Kirkenes Declaration therefore calls for “expanded monitoring of ecology and radioactivity in the Region; enhanced work on the operational safety of nuclear facilities; Rehabilitation of areas that have been polluted as a result of the operation of nuclear Facilities.”<sup>48</sup> It does not treat the environment as a separate field of cooperation in the Barents Region, but calls for an integration of the environmental dimension into *all* other spheres of cooperation also by making direct reference to the Rio Declaration and Agenda 21 as standard setting instruments for cooperation in the Barents Region.

The Barents environmental cooperation was officially brought to life in 1994 with the adoption of the Barents Environment Action Programme (BEAP)<sup>49</sup> at the first Barents Environment Ministers meeting.<sup>50</sup> The Programme was to deal *inter alia* with the prevention of radioactive and oil pollution; emission reduction; environmental impact assessments; or biodiversity preservation; and with the promotion of implementation of international environmental agreements and conventions in the Region.<sup>51</sup> Four conventions are highlighted in the Programme, but as will be shown, the application of environmental conventions in the Barents environmental cooperation goes beyond those four listed: the Convention on Biological

45. Kirkenes Declaration, subheading “The Environment.”

46. See the Convention and its four Annexes at: [http://www.ospar.org/content/content.asp?menu=0148120000000\\_000000\\_000000](http://www.ospar.org/content/content.asp?menu=0148120000000_000000_000000), accessed February 15, 2012.

47. See the AEPS at: <http://www.arctic-council.org/index.php/en/about/documents/category/4-founding-documents>, accessed February 15, 2012.

48. Kirkenes Declaration, subheading “The Environment.”

49. <http://www.unep.org/dewa/giwa/areas/barenv94.htm>, accessed February 12, 2012.

50. See also Ministry of the Environment of Finland 2004: 9.

51. Barents Environment Action Programme, subheading “The Objectives of the Barents Environment Action Programme.”





Diversity (CBD);<sup>52</sup> the Berne Convention on the Conservation of European Wildlife and Natural Habitats;<sup>53</sup> the Bonn Convention on Migratory Species;<sup>54</sup> and the Ramsar Convention on Wetlands<sup>55</sup> played an integral part of the environmental dimension of the Barents cooperation.<sup>56</sup>

The Kirkenes Declaration also recalls the provisions of the OSPAR Convention 1992 which takes pollution from land-based sources into account. Several other MEAs find application in the working procedures of the cooperation or have been 'added' to the working procedure over time, exemplified by those MEAs analyzed in this article.

The intergovernmental Working Group on Environment (WGE) was formally established in 1999 while due to the diversity of the issues, a more focused approach was chosen and several subgroups – Subgroup on Cleaner Production and sustainable consumption; Subgroup on Nature Protection (NPS); Subgroup on Water issues and Transboundary Cooperation; and Subgroup on “Hot Spots” Exclusion – were established corresponding to the environmental needs in the region and “in order to develop concrete projects.”<sup>57</sup>

## 6. MEAs in the Barents Environmental Cooperation

Due to the complexity of the BEAR working structure, the analysis provided in this article primarily takes the intergovernmental Working Group on Environment and its subgroups into consideration. Apart from those MEAs mentioned in the Kirkenes Declaration and the BEAP also others are set into the BEAR context. Due to the Russian non-ratification of the Berne and Bonn Conventions, these two MEAs are not considered.

The MEAs presented here are ordered chronologically based on the year of their conclusion.<sup>58</sup>

52. <http://www.cbd.int/doc/legal/cbd-en.pdf>, accessed February 7, 2012.

53. <http://conventions.coe.int/treaty/en/Treaties/Html/104.htm>, accessed February 7, 2012.

54. [http://www.cms.int/documents/convtxt/cms\\_convtxt.htm](http://www.cms.int/documents/convtxt/cms_convtxt.htm), accessed February 7, 2012.

55. [http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0__), accessed February 7, 2012.

56. The Barents Environment Action Programme also highlights the importance of the AC's CAFF Working Group.

57. BEAC WGE. 2008. Working Group on Environment (BEAC WGE) – Annual Report 2008, [http://www.barentsinfo.fi/beac/docs/Annual\\_report\\_WGE\\_2008\\_English.pdf](http://www.barentsinfo.fi/beac/docs/Annual_report_WGE_2008_English.pdf), accessed December 20, 2011, p. 1.

58. The United Nations Framework Convention on Climate Change (UNFCCC) has intentionally been left out of this discussion, because it is the author's opinion that climate change policy goes beyond the mere scope of environmental governance. For climate change-related activities in the BEAR, see Sreejith 2009 *supra* note 19.





NIKOLAS SELLHEIM

## 6.1. The Ramsar Convention on Wetlands of International Importance, 1971

The Ramsar Convention constitutes an early multilateral environmental agreement and has been in force since 1975. All members of the Barents cooperation have ratified the Convention and it has been an underlying element of the Barents environmental cooperation, as under subheading “Protection of Habitats and Conservation of Flora and Fauna” the BEAP highlights the relevance of the Ramsar Convention for the Barents Region. Although the vague wording of the Ramsar provisions makes them prone to uncertainty of interpretation,<sup>59</sup> its application can be found in the WGE Subgroup on Water Issues and Transboundary Cooperation.<sup>60</sup> While the Subgroup does not deal with the protection of waterfowl habitats,<sup>61</sup> it exclusively deals with the protection of waterways in a transboundary context. The mandate of the Swedish Chairmanship of the Subgroup 2010–2011 emphasized the anthropogenic application of the Ramsar provisions, since the improvement of the quality of drinking water and the utilization of water resources are not referred to in an overall ecological context, but rather for improving the living conditions in the Barents Region.

The BEAP refers to the protection of biodiversity in the Barents Region as a key concern. To this end, the Ramsar Convention plays an integral part. Also in the NPS, which “co-ordinates co-operation on biodiversity and habitat protection,”<sup>62</sup> the Ramsar Convention is an important tool for biodiversity protection on a na-

59. Birnie, Patricia, Alan Boyle and Catherine Redgwell. 2009. *International Law and the Environment*. 3rd Ed., Oxford University Press, Oxford, p. 673.

60. While the mission of the Ramsar Convention is the “the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world” (Ramsar Convention Official Website, “The Ramsar Mission,” [http://www.ramsar.org/cda/en/ramsar-about-mission/main/ramsar/1-36-53\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-about-mission/main/ramsar/1-36-53_4000_0__), accessed February 20, 2012), the Subgroup on Water Issues is given the mandate to “to work on sustainable management of water resources and water use, on transboundary water bodies, on improvement of drinking water quality, on study of correlation of the climate change and condition of water bodies and wet-lands [...]” BEAC 2010. Work Programme – Subgroup on Water Issues. Swedish Chairmanship 2010–2011, [http://www.barentsinfo.fi/beac/docs/WGE\\_Petrozavodsk\\_9\\_10\\_Nov\\_2010\\_Work\\_Programme\\_Subgroup\\_on\\_Water\\_Issues\\_Final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_Petrozavodsk_9_10_Nov_2010_Work_Programme_Subgroup_on_Water_Issues_Final.pdf), accessed February 4, 2012, p. 4.

61. Waterfowl Habitats in the European Union are protected under the Habitats, Water and Birds Directives.

62. BEAC WGE. 2010 (a). Work-Programme – Subgroup for Nature Protection, [http://www.barentsinfo.fi/beac/docs/WGE\\_Petrozavodsk\\_9\\_10\\_Nov\\_2010\\_Work\\_Programme\\_Subgroup\\_on\\_Nature\\_Protection\\_Final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_Petrozavodsk_9_10_Nov_2010_Work_Programme_Subgroup_on_Nature_Protection_Final.pdf), accessed December 20, 2011, p. 3.





tional and international level, complementing the CBD<sup>63</sup> – not least manifested in the Memorandum of Cooperation between the CBD and the Ramsar Secretariats.<sup>64</sup>

The Ramsar Convention is integral to the nature and biodiversity protection elements of the Barents environmental cooperation. While Sweden and Finland are bound to implement the Convention under the EU Directives and thus have harmonized provisions for implementation, the highlighting of the Ramsar Convention under the BEAC Working Groups and Subgroups thus constitutes a streamlined approach for implementing the Convention in the Barents Region.

## 6.2. The World Heritage Convention, 1972

Another convention of relevance to the Barents Region, yet which goes un-referred to in both the Kirkenes Declaration and the BEAP, is the 1972 UNESCO World Heritage Convention. Except for Iceland as a BEAR founding state, all Barents littoral states are party to the convention. Art. 4 of this Convention sets out that each member state recognizes that “the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage” is in the duty of the respective member state. The article furthermore reads that the state will do so “to the utmost of its own resources and, where appropriate, with any international assistance and co-operation [...]” When taking the Barents Region into consideration, under the World Heritage Convention further development of protected natural, cultural or mixed sites is encouraged. Although the Convention or protected areas are not referred to in the Kirkenes Declaration directly, under subheading “Indigenous Peoples” it nevertheless points to the “restoration and preservation of Nenets and Sámi cultural monuments” as an indirect indicator towards the World Heritage Convention.

The issue of protected areas has gained momentum under the Swedish Chairmanship 2010–2011. In the Work Programme of the NPS, the necessity to designate protected areas also under the World Heritage Convention is emphasized.<sup>65</sup> The Work Programme gives an overview on anticipated and completed projects of the Subgroup which allows for the conclusion that the application of especially natural criteria has gained importance for the Barents cooperation. The designation and further establishment of a Barents Protected Area Network

63. The Subgroup has the mandate “to work with projects on biodiversity conservation, ecosystem approach, protected areas, con-servation of natural and cultural heritage [...]” (BEAC WGE 2010 (a): 4). To this end, the Ramsar Convention is included into the international framework of operation of the Subgroup (*Ibid.*, 5).

64. See *supra* note 59, p. 672

65. See *supra* note 62, p. 5.





NIKOLAS SELLHEIM

(BPAN)<sup>66</sup> as well as partnerships between already existing World Heritage sites shows that the cooperative approach under the World Heritage Convention is becoming increasingly relevant for the Barents environmental cooperation. The designation of the Pyoza River as a protected area because of its significant natural value can be considered a manifest of this relevance.<sup>67</sup>

### 6.3. The Convention on Long-Range Transboundary Air Pollution, 1979

The LRTAP Convention has been ratified by all Barents founding states before the BEAR was incepted. The actions taken by the Barents environmental cooperation can well be located within the “policies and strategies which shall serve as a means of combating the discharge of air pollutants” (LRTAP Art. 3). Although the Kirkenes Declaration makes no reference to the dangers of long-range and transboundary air pollution, it nevertheless takes air pollution and transboundary environmental problems into account. The BEAR Member States ratified the LRTAP Convention already in the inchoate phase of the BEAR, but initiatives directly related to LRTAP have started in 2002 with the launch of the Task Force on Cleaner Production which in 2003 was turned into the Subgroup for Cleaner production and Environmentally Sound Production (CPESC) whose mandate highlights *inter alia* the need for “projects on prevention and reduction of the pollution of environment by dangerous and harmful substance.”<sup>68</sup> The development of projects related to LRTAP under the CPESC may be related to the coming into force of five protocols to the convention between 1991 and 1999, of which Russia has merely signed one.<sup>69</sup> It seems unlikely that Russia changes its stance on the LRTAP protocols judging from the official documentation accompanying the CPESC. Personal communication with the then (Temporary) Subgroup on “Hot Spot” Exclusion, whose contact point overlaps with that of the CPESC, has shown

66. Although there is no Memorandum of Understanding between BEAR and CAFF, in the context of protected areas cooperation with CAFF is close. (Personal communication, Working Group on Environment, February 23, 2012).

67. See *supra* note 62, p. 8.

68. BEAR. 2011 (b). Report 2010–2011 of the Barents Euro-Arctic Council (BEAC) Working Group on Environment (WGE) and the Regional Working Group on Environment (RWGE) to the 10th meeting of the Ministers of the Environment Umeå, November 9, 2011, <http://ruscp.ru/attachments/article/115/Report%202010-2011%20of%20the%20BEAC%20WGE%20and%20the%20Regional%20Working%20Group.pdf>, accessed February 7, 2012, 6.

69. <http://www.unece.org/fileadmin/DAM/env/lrtap/status/Status%20of%20the%20Convention.pdf>, accessed March 14, 2012.





that the normative effect of LRTAP plays a crucial role in influencing the work of the Barents environmental cooperation.<sup>70</sup>

#### 6.4. Convention on Environmental Impact Assessment in a Transboundary Context, 1991

Of the BEAR Members, the EIA or Espoo Convention has been ratified by Finland, Sweden, Norway, Denmark and the EU, whereas Russia and Iceland have merely signed the Convention. Although the regional Nordic Barents States are parties to the Espoo Convention, Timo Koivurova<sup>71</sup> points out that the fragile environment and the sparse population in the region aggravate the implementation of e.g., the participation rules as set out under the Convention.

Notwithstanding, in the Kirkenes Declaration direct reference to the Espoo Convention is made in the context of economic cooperation, highlighting the “particular importance of observing the provisions of the [Espoo] Convention.”<sup>72</sup> Despite the weak formulation in the Kirkenes Declaration, EIAs have played a role in the WGE at least since the development of the BEAP when common practices for environmental management in the Barents Region were initiated. Both the Ministerial Meetings and the meetings of the WGE show a trend towards effective implementation of EIA procedures. While reference in earlier meeting documents, both from the Ministerial and working group meetings, is made to EIA procedures and the Arctic Council Guidelines for Environmental Impact Assessment in the Arctic, the early 2000s show concrete steps in implementing sustainable EIAs in the Barents Region. Especially under the Finnish Chairmanship of the WGE 2003–2005, EIAs have become an important element of the activities to be carried out under the WGE.<sup>73</sup>

It must be noted that EIA emerges as an agenda item or an item of special reference in the Barents documentation in an unstable manner. It cannot be assessed which processes lead to EIA procedures being of relevance in the WGE or Ministerial Meetings and which lead to the contrary. It can nevertheless be assumed that preferences by the chair countries or the meeting chairs shape the

70. Personal Communication, (Temporary) Subgroup on “Hot Spot” Exclusion, January 10, 2011.

71. Koivurova, Timo. 2001. “Environment Impact Assessment in the Arctic – Study of the International Legal Norms applicable to the Planning State of Environmentally Harmful Activities.” Rovaniemi: Acta Universitatis Lapponiensis, No. 42, pp. 134–138.

72. Kirkenes Declaration, subheading “Economic Cooperation.”

73. BEAC WGE. 2004 (a). Action Programme for the Finnish Chairmanship 2003–2005, [http://www.barentsinfo.fi/beac/docs/WGE\\_actionprogramme\\_final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_actionprogramme_final.pdf), accessed December 21, 2011, 4–5.





NIKOLAS SELLHEIM

importance of EIAs in the meetings. Moreover, it can be assumed that the normative importance of the Espoo Convention in international law and international relations has found its way into the Barents environmental cooperation. This hypothesis is backed by the fact that although for instance the AC's 1997 EIA Guidelines are legally non-binding,<sup>74</sup> in the context of the Baltic Sea Gas Pipeline even Russia, as a non-party to the Espoo Convention, implements an EIA procedure.<sup>75</sup>

## 6.5. The Convention on Biological Diversity, 1992

The CBD constitutes the backbone of global, domestic and regional biodiversity protection strategies and has been ratified by all BEAR members. Concluded at the Rio Conference 1992, it manifests a watershed in international environmental law and while aiming at the protection of biodiversity also takes “the sustainable use of biological resources, access to genetic resources, the sharing of benefits derived from the use of genetic material, and access to technology, including biotechnology”<sup>76</sup> into account.

The CBD has become a fundamental element of the Barents environmental cooperation and thus does not need explicit mentioning in the environmental context of the Barents cooperation as its provisions are applied in project development and the political direction of the cooperation. Yet, it could be assumed that the Kirkenes Declaration makes reference to the CBD, which, however, is not the case. This is due to the fact that the Kirkenes Declaration was crafted in January 1993, whereas the CBD came into force only in December 1993. But by referring to Agenda 21 and the Rio Declaration, which both make the protection of biological diversity a core issue, the Kirkenes Declaration makes the protection of biological diversity a key concern for the Barents cooperation.

With the adoption of the BEAP, the protection of biodiversity has formally found its way into the Barents environmental cooperation. Since then, extensive bi- and multilateral cooperation for nature and biodiversity protection both on an intergovernmental and regional level has emerged in the Barents Region. For example, under the BEAR, the Habitat Contact Forum (HCF) was brought to life in 1999. The HCF unites several stakeholders of the Barents Region under one

74. Koivurova, Timo. 2008. “Transboundary Environmental Assessment in the Arctic.” In: *Impact Assessment and Project Appraisal*, Vol. 26, No. 4, 2008, pp. 265–275, pp. 265–266.

75. Koivurova, Timo and Ismo Pölönen. 2009. “Transboundary Impact Assessment in the Case of the Baltic Sea Gas Pipeline.” In: *German Yearbook of International Law*. Vol. 52. Duncker & Humblot, Berlin pp. 293–325, pp. 304–309.

76. See *supra* note 59, p. 612.





umbrella in order to establish nature reserves and management strategies.<sup>77</sup> The work on creating a Barents Protected Areas Network can be considered the latest step in efficiently implementing strategies for nature and biodiversity protection also in unison with e.g. CAFF<sup>78</sup> or the Natura 2000 network<sup>79</sup> established under the Habitats Directive of the European Union.<sup>80</sup>

On a functional level, the CBD has become integral to the working procedures of the environmental dimension of the Barents cooperation. On multiple instances biodiversity plays a role in the cooperation, both in the WGE as well as other working groups. The annual reports of the working groups provide a good overview on the role of protection of biodiversity in the Barents cooperation.

## 6.6. Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992

The Watercourse Convention was signed in 1992 by most BEAR Member states while ratification occurred between 1993 and 1996. Iceland, however, has not signed the convention. Being a UNECE Convention, Birnie et al. state that it “is now the principle multilateral treaty governing environmental protection of European watercourses.”<sup>81</sup> The convention makes cross-reference to several elements of international environmental law, i.e., the polluter pays principle, the precautionary and ecosystem approach, EIA procedures and cooperation in research, governance and common standards for transboundary waterway protection.

Both the Kirkenes Declaration and the Barents Environment Action Programme do not make the protection of watercourses in the Barents Region a primary issue. In fact, transboundary watercourses are not mentioned in neither of the documents. Notwithstanding, transboundary watercourses can be located in the overall protection of the Barents environment. The Kirkenes Declaration reads under the section “The Environment” “that solving the existing major transboundary envi-

77. Ministry of the Environment of Finland 2005: 41.

78. *Ibid.*

79. BEAC WGE. 2011. Agenda Item “Barents Protected Area Network” at the 10th meeting of the Ministers of the Environment in the BEAC, [http://www.barentsinfo.fi/beac/docs/10th\\_Environment\\_Ministers\\_Meeting\\_Umea\\_8\\_9\\_Nov\\_2011\\_Background\\_doc\\_BPAN.pdf](http://www.barentsinfo.fi/beac/docs/10th_Environment_Ministers_Meeting_Umea_8_9_Nov_2011_Background_doc_BPAN.pdf), accessed February 7, 2012, p. 1.

80. Article 3.1 of the Habitats Directive reads: “1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.”

81. *Supra* note 59, p. 538.





NIKOLAS SELLHEIM

ronmental problems will be important in realising the potential for broader cooperation in the Region.” Similarly, in the context of biodiversity protection and the protection of the Barents environment in general, the Barents Environment Action Programme states that “[t]he Barents Council regards it as important to involve the local and regional authorities in the execution of the Action Programme, in particular in the fields of: [...] fresh water quality, including drinking water [...].”

Also in the later years of the Barents cooperation water issues have not been on the forefront of its activities. But the significance of tackling water-related problems in the Barents Region has become prominent at least since the creation of the WGE Subgroup on Water Issues in 2007; although the problems were known earlier.<sup>82</sup> According to its mandate the subgroup’s task is to “work on sustainable management of water resources and water use, on transboundary water bodies, on improvement of drinking water quality, on study of correlation of the climate change and condition of water bodies and wet-lands, on other projects on mitigation and adaptation to climate change as well as projects on prevention and reduction of the pollution of water bodies and marine environment from land based sources.”<sup>83</sup> In the Declaration of the Ministers of the Environment following the ninth meeting of the Working Group on Environment held in Tromsø in 2010, water has been made a distinct issue in the Barents environmental cooperation. The Declaration highlights that further cooperation is needed for the management of transboundary watercourses, pollution prevention and reduction, knowledge exchange as well as for the development of common criteria for monitoring and research.

Although water and the protection of transboundary watercourses is now an integral part of the Barents environmental cooperation and therefore the implementation of the Watercourse Convention within the Barents framework is guaranteed, it has nevertheless been of fairly recent origin in the BEAR context. It can only be speculated why this is the case: either, the problems related to polluted water have increased in the latter years, or the functioning and trust within the Barents environmental cooperation allowed for a diversification of the cooperation in general; thus enabling a multilateral approach towards tackling transboundary water issues.

82. See, for instance, BEAC WGE. 2004 (b). Barents Euro-Arctic Council – Meeting of the Working Group on Environment. March 18, 2004 – Vuokatti – Minutes, [http://www.barentsinfo.fi/beac/docs/WGE\\_minutes.pdf](http://www.barentsinfo.fi/beac/docs/WGE_minutes.pdf), accessed January 12, 2011, p. 2.

83. BEAC. 2010 (b). Work Programme – Subgroup on Water Issues. Swedish Chairmanship 2010–2011, [http://www.barentsinfo.fi/beac/docs/WGE\\_Petrozavodsk\\_9\\_10\\_Nov\\_2010\\_Work\\_Programme\\_Subgroup\\_on\\_Water\\_Issues\\_Final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_Petrozavodsk_9_10_Nov_2010_Work_Programme_Subgroup_on_Water_Issues_Final.pdf), February 4, 2012, p. 2.





## 6.7. The Stockholm Convention on Persistent Organic Pollutants, 2002

Persistent organic pollutants (POPs) constitute a major threat to life in the Arctic – both wildlife and human – but for their largest part originate in areas outside of the Arctic as a byproduct of agricultural and industrial activities.<sup>84</sup> Due to the great harm to environmental and human health in the Arctic, the AMAP launched a first comprehensive assessment in 1997/98 on POPs, which significantly contributed to the crafting of the Stockholm Convention on Persistent Pollutants (POPs Convention), which was concluded in 2001 and entered into force in 2004. While all Barents countries have ratified the convention in its early stages, Russia has not ratified it until November 15, 2011.<sup>85</sup>

Reference to POPs or the POPs Convention is made on several occasions in the accessible documents of the BEAR. For instance, already in 2001 the Ministers of the Environment of the Barents Euro-Arctic Council “stressed the need to strengthen implementation of Multilateral Environmental Agreements to safeguard the environment in the Barents Region, such as the UNEP Convention on Persistent Organic Pollutants, the Kyoto Protocol and the Convention on Biological Diversity.”<sup>86</sup> Shortly after the coming into force of the Convention on May 17, 2004, the WGE September 2004 meeting minutes reflect POPs as a matter of concern for the Barents Region with direct relevance for the work of the WGE. While not referred to under the BEAR umbrella directly, projects carried out under ACAP dealing with the elimination of POPs as a priority field for ACAP are based on the POPs Convention.<sup>87</sup> These projects themselves are based on the NEFCO/AMAP Hot Spot List which has been an integral part of the Barents environmental cooperation while cooperation with ACAP has been made a prime concern of the BEAR in the Kirkenes Declaration. In a similar vein, also the 2005 WGE January meeting makes reference to POPs in the context of Hot Spot elimination

84. AMAP (Arctic Monitoring and Assessment Programme). 2009. Arctic Pollution 2009, AMAP, Oslo, pp. 5–6.

85. See also Russian Presidential Executive Office. 2011. Ratification of Stockholm Convention on Persistent Organic Pollutants, <http://eng.kremlin.ru/acts/2474>, accessed January 4, 2012.

86. BEAC (Barents Euro-Arctic Council). 2001. Joint Statement of the Environment Ministers of the Barents Euro-Arctic Council, [http://www.barentsinfo.fi/beac/docs/WGE\\_Kirkenes\\_statement.pdf](http://www.barentsinfo.fi/beac/docs/WGE_Kirkenes_statement.pdf), accessed January 5, 2012, p. 1.

87. BEAC WGE. 2004 (c). Barents Euro-Arctic Council, Meeting of the Working Group on Environment (WGE), 13–14 September, 2004, Helsinki, Finland, [http://www.barentsinfo.fi/beac/docs/WGE\\_2004September\\_minutes\\_final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_2004September_minutes_final.pdf), accessed January 5, 2012, p. 2.





NIKOLAS SELLHEIM

and a source for project financing.<sup>88</sup> The phasing out and the ultimate destruction of PCBs in Russia was raised by the ACAP representative at the WGE 2005 May meeting in St. Petersburg, Russia. While not expressed under BEAR auspices, the Russian representative in the meeting linked the development of such legislation in Russia to the ratification of the POPs Convention in the same meeting and noted that “[a]ctive preparations for ratification are going on.”<sup>89</sup>

Both on the political and the implementing side the POPs Convention finds reference in the Barents environmental cooperation up to the time of writing. While for instance the environment ministers declared in 2005 that they “welcomed the entry into force of the Stockholm Convention on Persistent Organic Pollutants,”<sup>90</sup> they also highlight the “progress on implementation of the Stockholm Convention on Persistent Organic Pollutants [...]” and “the importance of each country establishing and putting into force a National Plan for Implementation of the Convention.”<sup>91</sup> Yet, also the Regional Working Group on Environment makes POPs a primary concern for its activities<sup>92</sup> while the Subgroup on Water Issues and Transboundary Pollution in its Action Program 2008–2009 identifies POPs as a major threat to the Barents Region<sup>93</sup> with concrete assessment results as reflected in its 2010–2011 Work Programme.<sup>94</sup>

The POPs Convention has become an integral part of the work of the Barents environmental cooperation in spite of an absence of direct reference to the convention in e.g. the context of the Subgroup on Cleaner Production and Sustainable Consumption in relation to the phasing-out of the production of POPs in Russia or in the work programme of the Subgroup on “Hot Spot” Exclusion for the destruction of POPs. This is

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88. BEAC WGE. 2005 (a). Barents Euro-Arctic Council, Meeting of the Working Group on Environment (WGE). 26–27 January 2005, Oulu, Finland, [http://www.barentsinfo.fi/beac/docs/WGE\\_Oulu\\_Januaryminutes\\_final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_Oulu_Januaryminutes_final.pdf), accessed January 5, 2012, p. 3.
  89. BEAC WGE. 2005(b). Barents Euro-Arctic Council, Meeting of the Working Group on Environment (WGE). 26–27 May 2005, St. Petersburg, Russia, [http://www.barentsinfo.fi/beac/docs/WGE\\_2005\\_Mayminutes\\_final.pdf](http://www.barentsinfo.fi/beac/docs/WGE_2005_Mayminutes_final.pdf), accessed January 5, 2012, p. 3.
  90. BEAC. 2005. Seventh Meeting of Environment Ministers – Declaration. October 19, 2005, <http://www.ymparisto.fi/download.asp?contentid=42538>, accessed January 5, 2012, p. 1.
  91. BEAC (Barents Euro-Arctic Council). 2007. Eight Meeting of the Ministers of the Environment – Declaration. November 9, 2007, Moscow, Russian Federation, <http://www.barentsinfo.fi/beac/docs/WGE+MinisterialDeclaration+9+November2007.pdf>, accessed January 5, 2012, p. 1.
  92. RWGE. 2007–2010 Action Program, [http://www.barentsinfo.fi/beac/docs/RWGE\\_Action\\_Program2007-2010.pdf](http://www.barentsinfo.fi/beac/docs/RWGE_Action_Program2007-2010.pdf), January 5, 2012, pp. 7–8.
  93. BEAC WGE. 2008–2009. Subgroup on Water Issues. Strategy and Action Program 2008–2009, [http://www.barentsinfo.fi/beac/docs/EAnnex-6\\_WGE\\_Sub\\_group\\_on\\_water\\_issues\\_strategy\\_and\\_action\\_plan\\_final-English.pdf](http://www.barentsinfo.fi/beac/docs/EAnnex-6_WGE_Sub_group_on_water_issues_strategy_and_action_plan_final-English.pdf), accessed January 5, 2012, p. 4.
  94. BEAC WGE. 2010 (b): 9.





surprising, and a reason for this absence cannot be given based on the available documents. Yet, personal communication with the Subgroup on Cleaner Production and Sustainable Consumption and the Subgroup on “Hot Spot” Exclusion<sup>95</sup> has shown that there is no need for direct reference to POPs or the POPs Convention as it has been integral to the subgroups’ work and the close cooperation with ACAP on eliminating the environmental hot spots is a way to implement the POPs Convention on a BEAR level while the objectives of both the POPs Convention and the LRTAP Convention are integrated in the creation of projects of the two subgroups.

## 7. Dealing with Russian non-Ratification

An effective functioning of the Barents environmental cooperation and implementation of MEAs is not possible without Russian participation, due to the soft-law nature of the Barents cooperation. As can be seen from the above, Russia is not a party to several multilateral environmental agreements which are of relevance for the Barents environmental cooperation and therefore of significance for the environmental integrity of the Barents Region. Yet, a non-ratification of a convention by the Russian side which has been ratified by the Nordic states does not mean that certain conventions or provisions cannot be applied under the umbrella of the BEAR. There are several ways and strategies that the Barents environmental cooperation has either applied from the outset or applies now in order to prevent a lack of implementation due to Russian non-ratification.

The Russian status of ratification is particularly relevant when looking at the protocols to the LRTAP Convention 1979. The Convention has been extended by so far eight protocols.<sup>96</sup> Russia has accepted three protocols, i.e., until 1988, while she has also signed the 1994 Sulfur Protocol. This means that neither signature nor ratification has occurred for four protocols, thus severely compromising their implementation status in the Barents context. In spite of this adverse effect on the efficacy of the Barents environmental cooperation to tackle air-borne pollution in the Region, the BEAR closely cooperates with the ACAP as also set out in the

95. Personal Communication. (Temporary) Subgroup on “Hot Spot” Exclusion. January 10, 2011.

96. 1984 Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP); 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent; 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes; 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes; 1994 Protocol on Further Reduction of Sulphur Emissions; 1998 Protocol on Heavy Metals; 1998 Protocol on Persistent Organic Pollutants (POPs); 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone.





NIKOLAS SELLHEIM

Kirkenes Declaration. Under ACAP, air pollution and the tackling of their sources and consequences plays a major role and is manifested in its seven Steering Groups which *inter alia* deal with Mercury, Pesticides, Dioxins/Furans or Community Action Initiative. Thus, while Russia as a Barents state has not ratified certain protocols, through the close cooperation with ACAP provisions of these protocols find their ways into the Barents environmental cooperation and thereby become relevant for Russia as well. Furthermore, as is the case with the POPs Convention, the normative role of the LRTAP Convention in international environmental law and its relevance for the effective functioning and development of the Barents environmental cooperation place a certain degree of political pressure on Russian adherence to all LRTAP Protocols, also to those to which she is not a party. Therefore, under e.g. the Subgroup on Cleaner Production and Sustainable Consumption all spheres of cooperation are strongly affected by the Convention.

A similar strategy can be seen when dealing with POPs under the BEAR. As mentioned earlier, Russia has only very recently become a party to the convention and the BEAR needed to rely on the close cooperation with ACAP and the normative status of the convention in order to implement the convention in the Barents Region.<sup>97</sup> The relevance of the POPs Convention as reflected in the documentation of the Barents cooperation has contributed to the Convention as being an integral part of project design and development. Even during Russia's absence from the POPs Regime the Barents Environment Ministers were able to agree on certain wording in their Declarations. For instance, the 2007 Moscow Declaration of the Ministers for the Environment following the Eight Meeting of the Environment Ministers of the BEAC reads in paragraph 8 that the Ministers "*encouraged* further joint project activities and *stressed* the need to use already achieved results on PCBs, dioxins, obsolete pesticides and mercury. Further work should be coordinated with other activities in the field with the aim to reduce persistent organic pollutants and heavy metals in the Barents region through joint efforts with the ACAP and NEFCO" [original emphasis].<sup>98</sup> While Russia was certainly *not* forced by these wordings to

97. Since the Russian ratification of the POPs regime is of such recent origin, no reference can yet be made on the normative and procedural changes project development in the Barents environmental cooperation is undergoing due to this ratification.

98. The Moscow Declaration is the only ministerial declaration under the BEAC that highlights the importance of implementing national plans for the POPs Convention. While the 2005 Tromsø Declaration following the Seventh Meeting of the Environment Ministers of the BEAC under Section 2 a and d "welcomed the entry into force of the Stockholm Convention on Persistent Organic Pollutants in May 2004," the 2011 Umeå Declaration following the Ninth Meeting of the Environment Ministers of the BEAC "welcomed the recent ratification of the Stockholm convention on POPs by the Russian Federation" yet with no recommendations for implementing the Convention.





join the POPs Regime, one the hand she would not have consented to such wording if she would have been strongly opposed to the application of the POPs Convention's provisions, while on the other hand these wordings encouraged Russia even more to join the POPs regime in order to be able to adhere to international standards.

In the case of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context Russian non-ratification<sup>99</sup> does not challenge the effectiveness of the Convention in the Barents context: Firstly, Russia is party to the Vienna Convention on the Law of Treaties 1969<sup>100</sup> which to a large extent reflects customary law on treaties. It can be argued that although Russia has not ratified but signed the Espoo Convention, Article 18 of the Vienna Convention nevertheless provides the obligation not to defeat the object and purpose of a treaty, unless the intent not to become party to a treaty has been made clear. However, what this obligation requires in the end and/or whether it is a mere a soft law obligation is subject to scholarly debate.<sup>101</sup> Secondly, through her signature Russia herself has implemented EIA Procedures which go beyond domestic assessment efforts. For example in the case of the Baltic Sea Gas Pipeline, Russia opened its EIA mechanisms to the extent permitted by its domestic EIA to those of the other affected states.<sup>102</sup> It is thus a matter of specific considerations for Russia to consider in individual cases to apply the Espoo Convention.<sup>103</sup> Lastly, close cooperation with ACAP and NEFCO which both make effective use of environmental impact assessments, both in a domestic and transboundary context, make the Espoo Convention ap-

99. Russia is a signatory to the Convention, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&lang=en), accessed February 15, 2012.

100. [http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en](http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en), accessed February 15, 2012.

101. It must be noted that under the *pacta tertiis nec nocent nec prosunt* rule states cannot be forced to become a party to a Convention, also manifested in Article 34 of the VCLT. Fitzmaurice (pp. 41–44) highlights the difficulties of reconciling Arts. 18 and 34. The legal obligations for states set forth under these articles depend on the category in relation to a treaty the state belongs to, i.e. whether it is a party to the treaty; whether it is extraneous to the treaty; or whether it is a negotiating or contracting state or a state entitled to become a party. Fitzmaurice, Malgosa. 2002. "Third Parties and the Law of Treaties." In: *Max Planck Yearbook of United Nations Law*. Kluwer Law International; pp. 37–137, [http://www.mpil.de/shared/data/pdf/pdfmpunyb/fitzmaurice\\_6.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/fitzmaurice_6.pdf), accessed February 15, 2012; for a detailed analysis of the legal obligations under Art. 18 VCLT, see: Charme, Joni S. 1991. "The Interim Obligation under Article 18 of the Vienna Convention on the Law of Treaties: Making Sense of an Enigma." In: *George Washington Journal on International Law & Economics*. Vol. 25 (1), National Law Centre of George Washington University, Washington D.C., pp 71–114.

102. See *supra* note 75, p. 305.

103. This hypothesis is backed by the fact that the Kirkenes Declaration merely refers to "observing" the developments in regard to the Espoo Convention.





NIKOLAS SELLHEIM

plicable in the Barents environmental cooperation and create a standardized environment which Russia is embedded in.

## 8. Conclusion

This article dealt with the reflection of MEAs in the environmental dimension of the Barents cooperation. In conclusion can be said that the standards of international environmental policy are well adhered to in the Barents environmental cooperation. Fundamental MEAs can be found in the policy and working documents of the cooperation, i.e., Ministerial Declarations, Working Groups programmes, and the accompanying reports and documents such as meeting minutes. These reflect an active discourse on effective implementation of these MEAs. The ratification of the POPs Convention by Russia makes the more efficient application of the POPs regime in the Barents context more likely. However, the mere application of provisions of international environmental law in the Barents environmental cooperation does not necessarily mean an actual improvement of the environmental conditions. But certainly it elevates the overall legitimacy of the cooperation when it follows and implements international environmental standards.<sup>104</sup>

The article has shown that even in light of Russian non-ratification of certain environmental agreements the Barents environmental cooperation is nevertheless able to implement their provisions. While this is to a large extent based on the normative role these agreements play internationally, in the Barents context it is through specific projects and other activities which are designed in a certain way adhering to international standards. Evidently, in order to ensure the functioning of the Barents environmental cooperation and in the long-run to improve the environmental conditions in the Region, Russia does not object to these project designs, but makes these an integral part of project implementation.

It can be assumed that in case of a Russian ratification of those MEAs to which she is a not signatory state or to which she is a signatory, positive repercussions could be noted in the Barents environmental cooperation – further increasing the probability of an improvement of the environmental conditions in the Barents Region.

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104. For a detailed study on effectiveness, problem-solving capabilities and goal-attainment strategies of the Barents environmental cooperation, see: Sellheim, Nikolas, "Problem-solving Capabilities, Goal Attainment and Effectiveness of the Barents Environment Cooperation." In: Alfredsson, Gudmundur, Timo Koivurova and Md. Waliul Hasanat (eds.). *The Yearbook of Polar Law*, Vol. 4, forthcoming.





## **Экологическое сотрудничество в Баренцевом регионе в рамках многосторонних природоохранных соглашений (МПС)**

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### **Резюме**

Баренцевый Евро-Арктический регион (БЕАР), который был основан в 1993 году, является двухступенчатым форумом в рамках сотрудничества между правительствами и странами в этом регионе. Фундаментом Баренцева региона стало подписание Киркенесской декларации, главной целью которой является содействие устойчивому развитию в этом регионе. Защита окружающей среды должна быть включена во все сферы деятельности. В статье анализируется концепция устойчивого развития в кооперативной структуре БЕАР на основе Декларации Рио (1992 г.) и Конвенции ООН «Повестка дня на XXI век». Здесь также приведен анализ нескольких отдельных МПС в рабочих процедурах БЕАР. В ряде случаев, в силу различного уровня ратификации некоторых многосторонних природоохранных соглашений в странах России и Северных государств Баренцева региона, их реализация в рамках БЕАР довольно сложна. Тем не менее, форум разработал различные стратегии, которые позволяют их успешно применять на территории всего Баренцева региона.

