

# Participation as the Essence of Good Governance: Some General Reflections and a Case Study on the Arctic Council

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## Abstract

The present contribution explores aspects of good governance on the global dimension with participation as one of the key elements of a well-governed system, focusing on the Arctic Council's (AC) commitment to enhance indigenous peoples' participation in the environmental decision-making process.

The paper starts with a reflection on the revolutionary impact that new technologies have had on legal reasoning over the last three decades. A new revolutionary way of thinking based on easier access to information and enhanced interaction has increased the connectivity and complexity of relationships between actors in the global arena, by improving opportunities for them to be part of the decision-making process.

Part I, Section II provides a critical analysis of the global governance phenomenon. Global dynamics are analyzed from a historical perspective, from their origin in the communication realm to their application in administrative law. In Part I, Section III, the scrutiny shifts to the meaning of good governance and its core principles, in which participation plays the role of protagonist.

Part II investigates the role of the Arctic Council through the lens of good governance tools, with particular focus on recognition of the “permanent participant” status of indigenous groups as an example on non-State actors' engagement in decisions regarding the environment. Propositions on possible ways to re-launch the Arctic Council's role as a platform for new forms of participation, peaceful resolution and environmental protection conclude the article.

**Keywords:** *Environmental Protection; Global Arena; Good Governance; Civic Engagement; Arctic Council*

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## 1. Introduction

*“Mere good governance is not enough; it has to be pro-people and pro-active.  
Good governance is putting people at the center of the development process.”*  
(Narendra Modi)

The present contribution aims to illustrate some aspects of good governance applied to public law bodies with a focus on the participatory dimension of the phenomenon. The analysis is applied to the Arctic Council (AC) as an ideal platform where the dynamics of good governance at the global level seem to have found fertile ground to develop and consolidate.

The analysis will therefore touch on some crucial aspects connected to the globalization trend, as well as the need to shift paradigms from a hierarchical society to a fluid arena formed by a reticulate of relationships. The global implications in this continuously changing system of legal cultures have been triggered by the communication sciences, which have pioneered a new paradigm of expanded interconnections, in which space and time are complemented by other variables, at times opposite to them, such as the no-space (or cyber-space) and no-time (or a-temporal) dimensions. The actors involved in these new interactions have shifted from a flat conception of relationships to cyber-space, where new grounding factors have been established.

After the network of connections was established, parties had to shift from being mere spectators of a flat panorama to fully-engaged protagonists of a new scene, where information and knowledge could originate from and be transferred by the beneficiaries themselves.

In Part I of the present contribution, an expanded glossary of the terms “global” and “good governance” are provided respectively in Section 2 and Section 3, along with an overview of the main reflexes of such terminology in the legal realm.

Part II of the work analyzes the model of the Arctic Council to assess whether the AC’s development can follow the direction of a global regulatory system - that is to say a global arena governed by good administration principles - in which the traditional top-down approach is revised and complemented by a participative approach.

## Part I Global Arena and Good Governance

### 2. What is global?

#### 2.1 It all started with an embrace

Any speculation about the term “global” as applied to different sectors is necessarily indebted to the studies of its creator of the term and his followers. Marshall McLuhan used the term for the first time, namely in the field of communication and media:

“Today, after more than a century of electric technology, we have extended our central nervous system in a global embrace, abolishing both space and time as far as our planet is concerned.”<sup>1</sup>

McLuhan’s new reality had implications for forming social structures, so that the global embrace soon became none other than the blueprint of a village built on a foundation of newly-created interconnections:

“The new electronic independence re-creates the world in the image of a global village.”<sup>2</sup>

McLuhan’s theory has been thoroughly studied and discussed.<sup>3</sup> In particular, Mark Federman, in his keynote speech on the Global Village, described the growth of global interconnectedness in the decades that followed McLuhan’s visionary observation. Federman made this sagacious conclusion about the evolution of globalism:

“The challenge with which we are now faced is to begin to notice the world as it evolves, as it truly is. Globalism does not mean the end of indigenous culture, or the imposition of a mono-culture, but the emergence of new cultural forms.”<sup>4</sup>

As pointed out above, the term “global” has its origins in the communication realm and should always be faithfully linked to it. Even when talking about global dynamics applied to the social sciences and then to law, this connotation must always be vividly kept in mind. If interactions have become global, it is because the media - or means of communication - have changed, expanded, and acquired an inclusive attitude.

Again, Federman depicts this phenomenon using the effective example of the shift of consciousness imposed on the collectivity, when the media leapt from television to the Internet:

“The effect of the Internet is quite different from that of television. Via networked computers, instead of bringing the world into our homes, we transport ourselves from our homes, and indeed from our bodies, out into cyberspace.”<sup>5</sup>

As a matter of fact, the behavior of the beneficiaries of the new media shifted cataclysmically, since they had to become proactive actors in information collection and sharing. This revolutionary step in the field of communication triggered a domino effect in other fields, including the social sciences and law.<sup>6</sup>

## 2.2 Implications of going global: Global actors

While considering the players in the global arena, we must keep in mind Federman’s metaphor of the shift from television to the Internet, which has had the effect of broadening the audience and modeling active participation. This involvement of multiple parties has produced significant changes by helping to re-cast the actors’ roles in a global dimension.

Not only new interactions among actors, but also new actors have crossed the threshold into the global arena. In addition to states, inter-governmental organizations (IGOs), independent administrative authorities (IAAs), and non-governmental organizations

(NGOs)<sup>7</sup> are also interacting. This list is not exhaustive, since new formations also have access to this global arena. Among the most significant examples of new aggregations of actors are civic society movements and minority groups (e.g. indigenous peoples).

For the purpose of this paper, we provide a detailed analysis of the new actors, including civic society movements and minority groups, to introduce the discourse on the Arctic indigenous groups as an example of a represented minority in Part II.

### 2.3 Civil society

We are currently witnessing a growing integration of the world's economies, with economic and financial institutions and mechanisms that, despite operating across borders, are able to impact national policies. However, the contrast between their power to shape national policies and their lack of a democratic base or accountability has worked as a trigger for the formation of citizen activism at the transnational level. Of major interest within this resistance framework to globalization is the attempt to rebuild structures of global governance, not only through institutional reform but also, and mainly, through bottom-up participation mechanisms in transnational solidarity networks.<sup>8</sup>

With reference to the aforementioned bottom-up approach, this global civic space appears to be too wide and motley to be simply identified with the unique reality - complex and diversified - of the NGOs. In fact, such a liquid civic space forces us to consider movements that are less "professional", elitist and coordinated, and more connected with local communities and needs.

Indeed, new networks, associations and organizations have emerged in the past two decades from grassroots initiatives,<sup>9</sup> to address people's environmental priorities in specific areas. As a matter of fact, this attribute of "locality" is underpinned by two main elements: first of all, the banal fact that environmental concerns change depending on the part of the world considered, and second, the awareness that ecological issues are influenced by local cultural frameworks, traditions and history.

An element of strength of these kinds of social movements is that they remain lodged in the communities from which they derive, keeping both power and authority at the grassroots level, within the communities themselves. In contrast, NGOs are likely to be perceived as mere intermediaries.<sup>10</sup>

When talking about grassroots social movements, it is difficult to refer to the phenomenon as an entity, as not only do they operate in different locations but they also have different structures, functions and features. Moreover, their goals are highly diverse.

Social movements wield varying degrees of power to put their issues on the political agenda and shape the public debate. Nevertheless, something this "loose agglomeration of unelected activists"<sup>11</sup> has in common, regardless of their work, is the feeling of urgency of "organizing across borders and dealing with the range of international institutions that are increasingly influencing their local realities".<sup>12</sup> However, "going global" represents a hard challenge for these groups, as they do not usually have formal structures able to facilitate supra-national civic participation. International alliances need to be built up.

Therefore, grassroots movements must focus on ways to make civic participation more inclusive by aiming to reduce asymmetries among the different levels of local,

national and global involvement. Although the path is still long and unclear, a similar target is reachable only by creating networks based on “horizontal relationships among equals”,<sup>13</sup> bearing in mind that global campaigns represent a plus, while priority should be put on local activities, from which consensus and legitimacy are built. Moreover, trying to shape the described global civic space in a more structured place, a compromise is likely to be required between the fluidity of the network and the stability of the movement.<sup>14</sup> This perspective calls for a new type of institution based on cooperation among equals rather than hierarchies and is able to take advantage of modern communication technologies as a way to create “trans-local spaces in which communities operate to complement local places”.<sup>15</sup>

#### 2.4 Minority groups and indigenous peoples

Minority groups are another declination of the diverse paradigm that encompasses civil society participation, and they serve a twofold purpose in the good governance-related discourse. On the one hand, they represent a further example of actors that can proactively be engaged in environmental decisions; on the other hand, they meet the need to balance scientific expertise with local knowledge to reach the common aim of tempering the public administration’s discretionary powers. The participation of minority groups implies that ethical values and social concerns are to be considered not as an alternative approach but as a way of enriching the scientific opinions that are needed to ground the final decision. Indeed, a different kind of environmental governance is based on principles of participation, representation and democracy.<sup>16</sup> Thanks to adequate forms of representation – especially when it comes to local knowledge-, the principles mentioned above are likely to increase public participation in science-based decisions, making environmental governance more democratic and inclusive.<sup>17</sup>

For the purpose of this work, since reference has to be made to the unique Arctic environment, the focus is on indigenous peoples, as an example of a minority group represented in the global arena. Therefore, from this perspective, a genus-species relationship can be identified, where minority groups constitute a general category and indigenous peoples (IP) a specific subgroup. Minority groups “democratize” the decision-making process through their ability to enhance scientific knowledge with social and ethical insights. Indigenous peoples are able to refine technical competence with their so-called “traditional knowledge”, as pointed out in section 4.4. This way, improved communication practices between minority and experts groups are likely to foster a deeper scientific awareness among the involved parties. Furthermore, considering IP’s distinctive expertise, the advantageous effects of traditional knowledge have mutually beneficial impacts on good governance. On the one hand, traditional knowledge can contribute to an identification of deficiencies in and side effects of an environmental decision and can contribute to finding solutions. On the other hand, it contributes to increasing local participation by means of social trust and legitimacy as the necessary conditions for the effective implementation of the final decisions.<sup>18</sup> To this extent, final decisions initiated by a local or minority group, end up being more impactful and deeply rooted in civic consciousness. In other words, the

perspective embraced in the environmental decision is likely to be centered on the values of mutual learning and reciprocal support between scientific and traditional experts.

Part II, Section 4.3 of this article addresses the participatory mechanisms of the Arctic indigenous peoples as one practical example of minority groups' participation and engagement in environmental decision-making.

### 2.5 Implications of going global: No borders in legal interactions

As stated above, the term "global" and its versatile application to a wide variety of sectors and circumstances has not delayed its transplantation into the realms of the social sciences and from there to the legal dimension.<sup>19</sup> This expansion of the globalizing trend reached its peak in the 1990s after the Cold War thaw in the late 1980s.<sup>20</sup>

The "consciousness-of-the-world-as-a-whole" started to catch on, and somehow the antonyms "central-local" changed their connotations. Local, national, and regional borders persist, although they have been re-configured. The phenomenon has been studied and defined as "de-territorialization" by David Newman:

"Notions of a "borderless world" and political "deterritorialization" are seen as signalling a new world order in which the territorial component in world affairs is of much reduced significance"<sup>21</sup>.

When applied to administrative law, it is notable how globalization changed perceptions of this legal phenomena. Before the advent of the global dimension, law was organized mainly within national boundaries; now, this dimension transcends borders, with the double effect, on the one hand, supranational systems influence the national and the local, and, on the other hand, local developments have pervasive repercussions on different parts of the world<sup>22</sup>.

The image used is the one of the hourglass, in which the upper and lower levels are reciprocally interconnected and relate to one another through the filter of an intermediate level. Both upper and lower levels can play a major role in influencing each other.

In tracing the new cross-border dimension, another image is often used by the scholarship to create a picture of the phenomenon - the image of a network.

The phenomenon is double-sided: on the one side, the emergence of new actors has influenced the rise of the network system; on the other side, the network system has encouraged the participation of target actors wider than merely nation states.<sup>23</sup> Manuel Castells extends the metaphor, suggesting that the global system, the network state, is actually a new form of state, "characterized by sovereignty and responsibility, flexibility in procedures of governance, and greater diversity in the relationship between governments and citizens in terms of time and space".<sup>24</sup>

Examining the problematic issues that this new network system generates also helps to identify its inner structure. Castells emphasizes that one of the major problems of the network system is coordination between old and new structures, in which the states that previously relied on territoriality to exercise their authorities are now confronted with agencies that do not have the same structure.<sup>25</sup> This coordination issue is also

reflected in communication problems, since the advent of internet and computer networks often destabilizes the old communication channels, pressuring bureaucracies to widen citizen participation.<sup>26</sup> But coordination is not the only crucial feature of an efficient network.

Here emerges what is probably the most relevant issue of the network: the need to establish a common core of values that works as a common language of communication. These values include opposition to market driven forces, acceptance of sustainable development in environmental law, and the prioritization of human rights over security issues. The common denominator of these values is that all of the decisions related to them shall involve all the interested parties; in other words, to implement the common core, it is necessary to set up good administration principles as guidance. Transparency and participation are therefore key to opening up dialogue between actors.

To sum up, networks have the great peculiarity of transferring information smoothly to the actors and guaranteeing a high level of transparency. This safeguard of procedural and judicial principles grants a high standard of good administration. Transparency, access to information, and the right to participate are examples of the first series. The right to be heard and the right to a fair trial are examples of the second series.

The system depicted above seems to have all of the ingredients required to show how *de facto* global governance has emerged without a global government.

### **3. What is good governance?**

#### **3.1 Origins of a successful formula**

The global arena has proved fertile ground for cross-contamination, encompassing and facilitating a wide specter of actor relations. This new world, shaped on networking connections, is based on bonds between parties rather than spatial-temporal coordinates. As such it is necessary to track the ruling principles that govern such a platform. The parallel to the private law domain here comes naturally: a sound society is established on statutory provisions, in the same way that a private company is built around the statutes or by-laws that define its scope. Municipal governments, as the earliest form of civil societies, are established by statutes and pursue the objectives of public interest that these statutes identify. In a similar way, private companies are established and governed by statutes and by-laws, in which the objectives and governing rules are explicitly identified and described<sup>27</sup>.

Even from a linguistic perspective, the parallel between public and private bodies is self-evident. The Latin word *societas* and the use of such a word in the majority of Roman languages to refer to both a local community (traditionally belonging to the public law domain) and to a company (traditionally ruled by private law) testifies to the long lasting connection between public and private entities. The words *société* in France, *società* in Italy, *sociedad* in Spain, *sociedade* in Portugal, and *societate* in Romania are still used to define both private and public entities.<sup>28</sup>

Considering the parallel structure between primary private and public bodies, it is evident that the similarities between private and public entities are, in many ways,

greater than the differences between them. Although there are different opinions on and classifications of the main principles of good governance, even in one of its simplest aggregations such as the municipality, for the purpose of this study we will focus on the list provided by the United Nations as the most complete and exhaustive: 1. Participation; 2. Rule of Law; 3. Transparency; 5. Responsiveness; 6. Consensus oriented; 7. Equity and inclusiveness; 8. Effectiveness and efficiency; and 9. Accountability.<sup>29</sup>

These nine principles are inter-related and grounded on the common matrix of an effective and inclusive decision-making process. This matrix ensures optimal actor relations and prevents the conflicting interests of the parties from becoming obstacles to the pursuit of the entity's common interest.<sup>30</sup>

Participation, openness and transparency can be considered the synecdoche of good governance and ultimately the master-key to open up the doors to a sound and well-governed system with a long-term orientation. The reason for such a choice lays in the idea that a blended system in which top-down and bottom-up approaches effectively work to benefit the public body is the most ideal structure to pursue sustainable development and growth, which are both in the general public interest.

In both the private and public realms, participation mechanisms enable stakeholders, rather than citizens, to make their voices heard and to make decisions in accordance, guaranteeing a degree of legitimacy and stability over time. To reach this goal, this perspective considers the development of formal practices of participation to be crucial in so far as it allows for the exchange of ideas through, for instance, advocacy groups and civic associations.

Particularly within the private realm, workers' participation in company decision-making has two main objectives, which are to promote social rights that strengthen democracy and social understanding and to help companies achieve economic competitiveness and ecological sustainability. These considerations lie in the general principle of corporate governance according to which a company should not be defined by the sole interest of its shareholders and managers but also by its stakeholders. In this way, workers are enabled to defend their own interests to the same extent as shareholders. Similarly, when it comes to global environmental governance, management plans have traditionally been developed by highly trained experts, who are hired for a specific task by governments without regard to citizens' needs. However, this kind of approach, despite being technical and usually based on a strong scientific background, is likely to fail to understand local issues and to generate "community support for policy changes".<sup>31</sup> As a result, it is of great importance for policy makers to find efficient ways to bring together local knowledge and scientific expertise to reach deeper consensus among communities and to progress toward sustainability. Interestingly, this more open model of private and public governance has been triggered by grassroots initiatives. Indeed, consider, for instance, the case of the European Union. The first European Directive on workers' information and consultation<sup>32</sup> was a result of employee initiative. Therefore, it represents a case of bottom-up EU integration.<sup>33</sup> In the same way, social

movements, spontaneously arise from groups of people with shared values and ideals, who try to promote change from within their local reality.

Data shows that strengthening workers' rights regarding information, consultation and participation has led multinational companies to better performance.<sup>34</sup> Likewise, participation, openness and transparency can enhance the decision-making process in the public law realm. In the public and private sectors, bottom-up initiatives are combined with top-down regulation to provide "basic security, economic, social and political goods to the population".<sup>35</sup> A well-governed system envisages an integrated approach of centralized regulation and decentralized<sup>36</sup> practices that enhance "new spheres for grassroots political participation"<sup>37</sup> and fosters democratic development through political awareness of and commitment to providing public goods tailored to local populations. Nonetheless, the main shortcoming is that decentralization can be easily exploited by national governments to spread their control over a territory,<sup>38</sup> and may increase the opportunity for corruption<sup>39</sup> at the local level. Striking a balance between decentralized action and the risk of public misconduct, information and dissemination processes plays a pivotal role in monitoring bureaucrats' work and, thus, in decreasing the risk of corruption. As a result, greater transparency and improved access to information are complementary to accountability mechanisms.<sup>40</sup>

### 3.2 Expanding the discourse of global governing principles: Global administrative law

We have followed the development of the global system and the media communication system, and the process has revealed many points of contact between the two worlds, namely: 1) they are both governed by the idea of inclusivity evident in the wide variety of participants; 2) they have abandoned a rigid structure to include a more flexible concept through which boundaries have dissolved and relationships have developed in a multidimensional way; and 3) they are ruled by new principles, which have the good administration rule as their foundation pillar.

The structure of global governance and its principles as reflected in the media communication system has developed dramatically and has found its application in the realm of administrative law to the extent that those emerging patterns in the global governance that were little-noticed when one of the most famous articles on Global Administrative Law (GAL) was published have now become part of a bigger picture, as well as one of the most recognizable landmarks in the panorama of comparative administrative law.<sup>41</sup> During the summer of 2005, Benedict Kingsbury, Nico Krisch and Richard B. Stewart identified and masterfully assembled "some patterns of commonality and connection sufficiently deep and far reaching as to constitute an embryonic field of global administrative law".<sup>42</sup> Since then, it is undeniable that globalization and the development of a global governance system have been transforming the structure of international law. GAL has now become a well-known brand signifying the study of administrative law applied beyond the State.

Analysis through the GAL lens lends itself to both a subjective and an objective perspective. Both actors and principles can respond to dynamics that in many respects can

be defined as global, since they have an infra and supra-national dimension, and they are common to a diverse group of consociates. Examples of global tools include non-hierarchical order and the idea of dialogue between authorities, technical bodies and agencies through a network structure. The global administrative order is not in the traditional shape of a hierarchical pyramid but rather a stratification of different interwoven layers, like the colored fibers of a carpet.

### 3.3 How does the environmental governance fit into the global system?

Protecting the environment is a paramount concern of global regulation, along with human rights. Environmental governance reflects all of the above-mentioned activities. It is global by definition, since it is impacted by the close interdependencies (alias networks) between human population growth, affluence and technological capacity. The phenomenon of the so-called “Great Acceleration” has been masterfully described by Oran R. Young:

“[T]his development is responsible for a dramatic rise in the frequency and intensity of environmental side effects. Whereas small and widely dispersed bands of hunter-gatherers could pursue their own livelihoods in a manner that did not greatly affect the wellness of others, even modest actions in highly interdependent systems can produce side effects that impinge significantly on the welfare of others.”<sup>43</sup>

Hence, the urge is to identify a common toolbox that can be used as a strategy to address the problems resultant from this acceleration.

Common terms of reference for global environmental governance have been clearly identified in a regulatory perspective, and include: flexibility, inclusiveness, transparency, and a shift from hierarchy to networking cooperation.<sup>44</sup>

Virtuous models of environmental governance have not been long in coming. Part II will analyze the role of the Arctic Council, as the cooperative platform where states and non-state actors cooperate in a global dynamic, and where plenty of room for new forms of cooperation and engagement is left, especially thanks to its flexible structure and its ability to accommodate new collaborative mechanisms.

## **Part II The Arctic Council: a Global Public Entity Governed by Good Governance?**

### 4.1 Establishment and developments

In the second part of this work, the Arctic Council’s boundaries will be delimited to assess whether its structure and functions can be subsumed into the category of global actor.

The Arctic Council originated from Gorbachev’s Murmansk speech on the 1 October 1987.<sup>45</sup> It is not a coincidence that the seeds of the Arctic Council were sown at the beginning of the thawing season in the relationship between the Soviet Union and the rest of the world. We have seen above how the global discourse started speeding up after the end of the Cold War, and the Arctic Council marked a milestone in this process.

On that occasion, Gorbachev pointed out the importance of establishing a platform of peace in the Northern regions with the aim of facilitating cooperation among the interested parties:

“The Soviet Union attaches much importance to peaceful cooperation in developing the resources of the North, the Arctic. Here an exchange of experience and knowledge is extremely important. Through joint efforts it could be possible to work out an overall concept of rational development of northern areas.”<sup>46</sup>

And furthermore, with a specific focus on environmental protection and on the role of non-state actors, and especially on indigenous peoples’ engagement in the Arctic decisions:

“Questions bearing on the interests of the indigenous population of the North, the study of its ethnic distinctions and the development of cultural ties between northern peoples require special attention. [W]e attach special importance to the cooperation of the northern countries in environmental protection. The urgency of this is obvious.”<sup>47</sup>

From Gorbachev’s wording it seems clear that the foundational purpose of the Arctic Council was to create a platform upon which peace had to be granted, and the fundamental rights of all populations living in the Arctic area had to be protected. The effects of the Arctic policies were not long in reverberating outside of the Arctic region.

Indeed, since its creation under the lucky star of the Gorbachev attempt to create a zone of peace, the AC has consolidated its structure through the establishment of the 1991 Arctic Environmental Protection Strategy (AEPS), primarily concerned with addressing pollutants and environmental protection in the Arctic<sup>48</sup>. The AC was established on September 19, 1996 to strengthen regional cooperation among the Arctic countries, with the Declaration adopted in Ottawa.<sup>49</sup>

The intention of the signatory parties, eight in total, was to establish

“a mechanism for addressing the common concerns and challenges faced by their governments and the people of the Arctic... refer[ing] particularly to the protection of the Arctic environment and sustainable development as a means of improving the economic, social and cultural well-being in the North.”<sup>50</sup>

As stated, the Arctic Council is composed of eight member states, and its innovative structure includes indigenous organizations as permanent participants and observers. Andrew Jenks recalls this in the Introductory Note to the Declaration on the Establishment of the AC:

“A key feature of the Council initiative is the involvement of the Arctic region’s indigenous peoples. Permanent participation is open to other Arctic organizations of indigenous peoples not currently represented by the existing three organizations and who meet the criterion set out in the Declaration.”<sup>51</sup>

In this sense, the AC can be regarded as a platform with both flexible and permanent features, since it facilitates the conclusion of binding agreements by keeping a ductile

structure in which all of the interested parties are granted a role, as decision-makers, participants or mere observers.

The mandate of the Declaration on the Establishment of the Arctic Council includes the duty to provide:

“A means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection.”<sup>52</sup>

So far, the AC has played a major role as the facilitator of intergovernmental negotiations and fora. All land areas within the Arctic territories fall under the uncontested sovereignty of one or another of the eight Arctic states, as a result of which national domestic laws have primary legal control over the environment.

However, international environmental laws and principles play an increasing role in this legal regime, somehow fulfilling the requirement expressed in Art. 37(1) of the UNDRIP on the importance of reaching a comprehensive approach to fundamental rights protection. The connection between environmental decisions and community engagement is crucial. Any environmental issue that affects the Arctic region is of paramount importance and can be solved only through a multilateral approach, which must involve all interested parties, not only the nation states, but at global, regional and local levels.

#### 4.2 The role of the arctic council in advancing environmental scientific knowledge: How to turn threats into opportunities

As stated above, several factors contribute to successful globalization, especially when thinking about the “opportunities” that a cooperative space, with the recognition of cross-border needs, is likely to create.<sup>53</sup>

A proactive approach in the analysis of the global phenomena contributes to identify potentialities in the process of globalization, namely: actor flexibility and openness, cross-boundaries remedies, common good governance principles, and a participative attitude among all of the interested parties.

The challenge for any global actor consists of identifying the most effective strategies that, at a global level, can be beneficial to both people and the environment into the long-term future.<sup>54</sup> Theodore Panayotou connected such a challenge with the need to promote both environmental sustainability and equitable human development.<sup>55</sup>

This approach, according to Panayotou, should to be twofold. On the one side, long-term plans must be initiated by nation-states through innovative policies. On the other side, there must be a mobilization of collective action to create a transnational environmental policy network<sup>56</sup>. With respect to the latter and for the purpose of this work, the Arctic Council enters the stage as a paladin of environmental sustainability at the global level.

The centrality of the Arctic area to tackle climate change issues has been widely acknowledged. In the Discussion Paper on Climate Change Activity in the Arctic Council, delivered on 16-17 March 2016, in Fairbanks, Alaska, the major questions for discussions that were raised dealt with the need to increase the visibility of the Arctic's role in climate change.<sup>57</sup>

Common ground for reflections on the role of the Arctic Council is based on its nature as an inter-governmental forum. The main challenge is that the AC has never been a self-standing actor with its own physiognomy.

The best option would be to give a specific role to the Arctic Council as a promoter of a new form of governance and as a guardian of environmental protection in the Arctic and elsewhere because of the great relevance of climate change issues on the Arctic and how these issues impact the rest of the world.

It is advisable to restructure the role of the Arctic Council as a pivotal player in environmental governance and as a model of participatory rights and openness for other global actors.

#### 4.3 Revising the arctic council: Steps

A first step to an improved model of good environmental governance with the Arctic Council at its core consists of a revision of AC's structure in the light of effective implementation of the participatory approach, since participation is considered a core principle in a well-governed entity.

This major structural change is promoted by Timo Koivurova, who supports the idea of a "strong institution" created via an international treaty with strong decision-making powers.<sup>58</sup> The idea is to strengthen the legal approach to "shield the Arctic issues from changing government agendas and respond to the growing challenge from the broadening group of citizens and NGOs concerned about the state of the Arctic environment".<sup>59</sup>

An Arctic treaty that establishes binding Arctic laws over the signatories is certainly a good starting point, though it is necessary to consider many hampering factors, such as the effects of decisions on the Arctic over non-Arctic states and more generally the need for extra coordination activity between pre-existent binding and nonbinding agreements in and outside the Arctic.

The second step in the process of building a system of good governance must apply leverage on the global actors and in particular on the participation mechanisms that allow them to be part of the environmental decision-making process.<sup>60</sup> In particular, the participation of indigenous groups must be regarded as the flagship of the Arctic Council, as this good governance tool is unique, and for this reason, extra effort must be firmly fostered to support the conscious financial involvement of indigenous groups such as one of the indigenous communities.

A central role in such a process is to be played by engaging indigenous peoples and allowing their voices to be heard in environmental decisions aimed toward achieving the ambitious objective of the sustainable development of natural resources.

#### 4.4 Minority interests as an asset for environmental decision-making

In Part I, Section 2.3.3, emphasis was given to the open category of minority groups as a way of enhancing participation by giving voice to local groups with traditional knowledge of environmental issues. With regards to the management of natural resources, organizations that are tightly bound to local communities should be considered more capable than the central authorities when it comes to local knowledge about environment-related issues, since they have a stake in protecting those resources, and they are free from many of the conflicting demands that governments experience.<sup>61</sup> This is especially true of indigenous people, namely:

“[...] peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present states boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”<sup>62</sup>

One of the greatest assets of such groups is the knowledge permeated with culture and spirituality that they preserve and transfer from generation to generation, commonly referred to as “traditional knowledge”. So-called “traditional ecological knowledge”<sup>63</sup> - defined as indigenous people’s values that guide their relation with the ecosystem - allows a proactive and fruitful engagement of the minority groups and therefore must be considered in the policy-making process.

Even though indigenous groups are numerous and diversified, they usually share a spiritual relationship with the land and the environment in which they live. Consequently, local communities care for the natural resources that are essential to their survival and from which future generations will benefit as well.<sup>64</sup> Human beings and natural landscapes are connected; the intrinsic value of natural resources is *per se* a unit of measurement of the human impact on the ecosystem. The more invasive the anthropogenic footprint on the environment, the more depleted the natural resources. Traditional ecological knowledge serves as a database of scientific information and of ethical principles to measure the effect of human actions on the ecosystem’s preservation.

The need to consider traditional ecological knowledge descends from the awareness that indigenous peoples, as dependent as they are on natural resources for their survival, are likely to suffer the worst impacts of climate change without having played a crucial role in causing it.<sup>65</sup> In addition, the basic idea is that those people whose livelihoods heavily rely on environmental management decisions should have a say on how those decisions are made. These claims of “environmental self-determination”<sup>66</sup> might be better understood by adopting the perspective of “environmental justice”,<sup>67</sup> which focuses on the unfair exposure of disadvantaged minorities to climate change impacts correlated with prevalent decision-making and economic processes. Thus, from a legal perspective, environmental justice highlights the need to consider the stance of “marginalized communities, groups and individuals” when shaping the norms that are likely to affect “their environmental rights and interests”, such as those dealing with food security rather than the protection of biodiversity.<sup>68</sup>

The international community has widely acknowledged the need to ensure the effective engagement of indigenous peoples in policy-making,<sup>69</sup> admitting their traditional knowledge as a crucial element in the political debate, especially regarding climate change. Therefore, adaptation strategies to climate change call for co-management practices<sup>70</sup> that can also foster equity and justice issues.<sup>71</sup> Co-management is not only a matter of handling resources in a more inclusive and efficient way, since it also involves human relationships<sup>72</sup>. Hence, a similar system not only relies on forms of cooperation between policy-makers and technical experts, it looks at the link between governments and user groups, sharing both power and responsibility.<sup>73</sup>

From a legal perspective, negotiation and conflict resolution practices are at the very core of environmental governance, which is based on three main pillars: transparency, openness and participation.<sup>74</sup> Thus, the legal structure erected is supported by improved access to information; more effective rights – even conceivable as duties – to participate in government decision-making; access to legal remedies before courts and tribunals, and access to independent investigation of instances of maladministration in government agencies.<sup>75</sup>

In this regard, indigenous participation in environmental governance covers two different areas: 1. control over the lands they are settled in, and 2. participatory rights in both the national and international political arenas. As for the first element, it stems from the connection that indigenous peoples maintain with their physical surroundings, which represents the only place where they are able to carry out their lifestyles and religious practices. As for the second element, and more precisely participation opportunities, indigenous peoples, due to their familiarity with their native territories, can offer a unique contribution to environmental decisions on sustainable development.<sup>76</sup>

## **5. Concluding remarks**

This article has illustrated the different features that a global actor must have when aiming to engage in good governance in the global dimension. It has shown how characteristics of the global dimension and the taxonomy of good governance are respectively rooted in communication science advancement and in the foundational principles of private company law. In the good governance dimension, the participatory-based approach is considered crucial, so that private and public actors are integrated and actively engaged in the decision-making process, with the common aim of pursuing challenges of common interest, such as the protection of the environmental ecosystem. In such a scenario, the case study on the Arctic Council shows, on the one hand, the importance of solving historical diplomatic deadlocks (as in the case of the Cold War) via the rule of law and participation; on the other hand, it shows how fundamental it is to legal discourse to keep the debate open on effective ways to implement and ameliorate working models to protect the environment, a pursuit that is clearly in the public interest. Participation requires that effective rules be implemented.

Establishing a permanent position in public debates for non-state actors represents a remarkable milestone in this regard.

In line with the importance of prioritising strategies that improve global governance is the Arctic Council's attempt to follow a novel and unique approach, opting to establish a permanent position for IP and to grant these indigenous groups a toolbox of participatory rights in all the environmental decisions that might affect them.

Their status as Permanent Participants of IP groups in the Arctic Council marks the official entrance of these groups to a global multi-layered platform in which environmental decisions are approved via international provisions (Ottawa Declaration<sup>77</sup>). One virtuous application of this role of Permanent Participants comes from IP groups' participation in the decision-making processes in the approval of the Arctic Search and Rescue (SAR) Agreement adopted in May 2011, followed by the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic in 2013.<sup>78</sup> It is remarkable that these two agreements are actually the first legally binding instruments negotiated under the auspices of the Arctic Council, and, in both cases, IP groups played active roles in making their voices heard and consequently their participatory rights included in the text of the agreements<sup>79</sup>.

The IP role in the AC has increasingly developed, although there is still plenty of scope for improvement on two fronts. On the one hand, there is a need to combine the rule-of-law driven interests of the international community and the ancestral and traditional motivations that trigger IP participation; on the other hand, funds must be allocated at the government level to support IP engagement in the decision-making process.

This new perspective helps to root the decision-making process on a strong ethical basis. The interplay between rule making, science and ethics is likely to determine the success or the failure of sustainability goals in an era of climate change, starting from the development of mutual respect between scientific, as the Western World conceives it, and traditional knowledge<sup>80</sup>.

The ultimate goal of going global from a good governance perspective is to identify co-management strategies that preserve natural resources and human diversity, by ensuring open dialogue and reciprocal trust among the involved parties. Likewise, good governance core values can contribute to creating a baseline strategy for the Arctic Council to support more inclusive sustainable development in the Arctic region.

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