

PART V

Informal Arctic Governance Mechanisms

6. Listening to the voices of Non-Arctic Ocean governance¹

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SORTING OUT THE ROLE OF NON-ARCTIC STATES IN ARCTIC OCEAN GOVERNANCE PRESENTS A PUZZLE

An increasingly important puzzle confronting those concerned with Arctic Ocean governance centers on the search for an effective means to pay attention to the legitimate concerns of non-Arctic states, without interfering with or disrupting the work of existing cooperative arrangements like the Arctic Council. The problem here is easy to identify but difficult to solve. The Arctic states—acting either as members of the Arctic Council or as members of the group of five Arctic coastal states—wish to maintain a position of preeminence when it comes to dealing with matters of Arctic Ocean governance. Major non-Arctic states (e.g. Brazil, China, India, Japan, Korea, and several European states) and intergovernmental bodies (e.g. the European Union), on the other hand, have growing interests in the Arctic Ocean relating to activities like commercial shipping, oil and gas development, industrial fishing, ship-based tourism, and environmental protection and feel that they have a legitimate claim to be consulted when it comes to addressing matters relating to the governance of such activities. The trick is to find a way forward that satisfies the essential concerns of both groups. The impacts of the transformative changes now occurring in the Arctic lend an air of urgency to this issue. The Arctic is already experiencing the effects of climate change on a large scale; increasing accessibility is almost certain to lead to growth in economic activities in the region in the coming years. It will not do simply to adopt a watching brief regarding this matter on the assumption that we can come to terms with the substance of the problem at some future time when the way forward seems clearer.

This chapter addresses this puzzle, explaining why some apparent solutions will not work and suggesting alternative procedures for solving the puzzle. The first section provides a brief account of what may be described as the new Arctic policy agenda; it underlines the policy implications of the transformative changes now occurring in the circumpolar Arctic. The next section describes the stance of the Arctic states regarding Arctic Ocean governance and argues that this stance does not constitute a solution to the puzzle under consideration here. The follow-

ing section then considers several suggestions for solving the puzzle that seem superficially appealing but that will not work in practice. This clears the ground for an analysis in the penultimate section of alternative ways forward that hold more promise. Two distinct but not mutually exclusive strategies emerge from this analysis. One centers on roles that issue-specific international forums (e.g. the International Maritime Organization, the International Arctic Science Committee) can play in addressing specific matters relating to Arctic Ocean governance; the other emphasizes the value of informal mechanisms that can provide a means for effective communication without running into the political difficulties that impede efforts to devise more formal solutions. The concluding section proposes a practical way forward that all parties concerned may want to pursue in the near future.

A NEW ARCTIC POLICY AGENDA IS EMERGING

Policy agendas in all settings are both crowded and fluid. Numerous actors engage in strategic efforts to advance their own interests by influencing the ways in which major issues are framed for consideration in policy forums and by seeking to push the issues that matter most to them to the top of the agenda. Policy agendas are therefore moving targets; it is important to be alert to shifting priorities at all times. Still, it is possible to discern broad patterns of change and major points of inflection in the contents of policy agendas in most settings.

From the 1950s into the 1980s, the core issues of the cold war dominated the Arctic agenda (Osherenko and Young 1989). Starting with the decision in 1954 to proceed with the construction of the Distant Early Warning Line (DEW Line) across the North American Arctic, the region was divided into two armed camps, with the Soviet Union occupying nearly half the region on one side and the remaining Arctic coastal states (Canada, Denmark, Norway, and the United States) allied with each other as NATO members on the other side.³ Classical security issues occupied the center stage in Arctic politics. The region was heavily militarized. The Arctic Basin served as a prominent theater of operations for nuclear-powered submarines and manned bombers equipped with cruise missiles. Arctic territories offered prime locations for the deployment of increasingly sophisticated early-warning systems.

The collapse of the Soviet Union led to a sharp reorientation of the Arctic agenda, giving rise to a variety of initiatives aimed at fostering regional cooperation among the eight Arctic states (the five Nordic states plus Canada, Russia, and the United States). Often traced to President Gorbachev's "Arctic zone of peace" speech in October 1987 (Gorbachev 1987), this new era led in short order to the creation of the

International Arctic Science Committee (1990), the launching of the Arctic Environmental Protection Strategy (1991), and the establishment of the Arctic Council (1996). Sub-regional and sub-national initiatives in such forms as the Barents Euro-Arctic Region (1993) and the Northern Forum (1991/1993) reinforced this sense of the Arctic as a more-or-less self-contained region with a distinctive policy agenda of its own. The result was a conscious effort to focus on matters of environmental protection, the health and welfare of the region's permanent residents, and, increasingly, the broader concerns of sustainable development, with a clear preference for avoiding issues relating to military security and the deployment of armed forces.⁴

The center of gravity of the Arctic policy agenda has shifted again in the wake of the dramatic recession of sea ice in the Arctic Basin in 2007 and the resultant rise in expectations—warranted or unwarranted—regarding the accessibility of globally significant shipping routes and valuable natural resources in the region (Anderson 2009, Howard 2009, Sale and Potapov 2010, Young 2011, Astill 2012, Young 2012).⁵ Once again, the Arctic has become an area of interest to various outside actors. But this time the driving forces involve economic/commercial considerations rather than the imperatives of national security. Four propositions capture the essential features of the new Arctic policy agenda.

The Arctic has become a focus of global attention

The recession of sea ice in the Arctic Basin has fueled worldwide interest in the opening of commercial shipping lanes in the Arctic and in the exploitation of offshore deposits of oil and gas that are becoming increasingly accessible. Enhanced prospects for ship-based tourism and industrial fishing have come into focus as well. There can be no certainty about future developments in this realm. There are many hurdles to be overcome before commercial shipping on a scale that is significant in global terms becomes a reality (AMSA 2009, Fairhall 2010, Brigham 2011). Recoverable reserves of oil and gas in the Arctic may prove disappointing.⁶ In any case, Arctic oil and gas will always be expensive to produce and deliver to markets, a fact that makes their attractiveness highly sensitive to world market prices.⁷ Nonetheless, there is intense interest in many quarters in the prospects for commercial shipping and resource development in the Arctic. From the point of view of Arctic politics, two features of this trend stand out. The drivers of this development are global economic forces; the security issues of the cold war era are, for the most part, a thing of the past. But, second, this development has brought the Arctic to the attention of major powers around the world, including China, India, and the European Union, which are

interested in the region's natural resources, and Korea, Japan, and Singapore, which are interested in the prospects for commercial shipping in the region. The Arctic policy agenda for the foreseeable future will be populated with global concerns over and above the more limited regional concerns that have headed the Arctic policy agenda during the period since the collapse of the Soviet Union.

Marine issues have taken center stage

A look at the issues now rising to the top of the Arctic policy agenda makes it clear that we are witnessing a reorientation away from terrestrial issues and toward marine issues. The recent explosion of interest in the Arctic is linked to the prospects for developing commercial shipping and exploiting large offshore reserves of oil and gas in the region, with activities involving fishing and ship-based tourism rounding out the new Arctic agenda. It is not surprising, under the circumstances, that policy-makers have devoted increasing attention to matters like the preparation of the Arctic Council's Arctic Marine Shipping Assessment (AMSA 2009), the negotiation of the new Arctic search and rescue agreement (Arctic Council 2011), the effort to reach agreement on the terms of a legally-binding Polar Code covering the design, construction, and operation of ships operating in Arctic waters, and the preparation of the Arctic Ocean Review. There is nothing inherently wrong with this reorientation of the Arctic policy agenda. But the rise of these marine issues does tend to deflect attention previously devoted to matters like securing the health and well-being of the Arctic's permanent residents, dealing with the impacts of environmental contaminants (e.g. persistent organic pollutants, discarded nuclear reactors), and finding ways to enhance the sustainability of the small and often isolated communities of the circumpolar Arctic. It also has the effect of shifting the center of gravity in Arctic policymaking toward the five Arctic coastal states (the A5) in contrast to the full membership of the Arctic Council (the A8). Among other things, this is a development that could dilute the influence of indigenous peoples' organizations that have acquired considerable influence in their roles as Permanent Participants in the Arctic Council.

Managed development is overshadowing sustainable development

Those who are concerned with activities like offshore oil and gas development under Arctic conditions and the future of commercial shipping in the region are not insensitive to matters of environmental protection. They know that the Arctic is an environmentally sensitive region and that extra care is needed to avoid environmental disasters under the

harsh conditions characteristic of the region. But there is no escaping the fact that the rising pressure to develop the Arctic's resources is driven by global economic imperatives in contrast to the quest for sustainable development within the Arctic itself. The corporations drilling for oil in the Chukchi and Beaufort Seas and in the coastal waters around Greenland are prepared to accept relatively strict regulations. Much the same is true of German, Japanese, Korean, and Norwegian shipping companies desiring to inaugurate regular commercial operations using the Northern Sea Route. But it is apparent that what is at stake here is a form of managed development of a sort driven by the needs of advanced industrial societies and newly industrializing societies located to the south rather than an effort to reorient human/environment relations in a manner that is sensitive to the idea of the triple bottom line associated with the concept of sustainable development or the emerging concept of planetary stewardship. What is more, policymakers and corporate decisionmakers dealing with offshore oil and gas development and commercial shipping are, for the most part, located far outside the Arctic; they lack both deep knowledge of the conditions prevailing in the Arctic and a strong attachment to the goal of achieving sustainable development in the region. In terms of policy, this means that we are witnessing a shift from a focus on Arctic-specific issues to an emphasis on issues of interest to global players (e.g. shippers, energy companies) that happen to involve the Arctic. The current buzz regarding the Arctic could evaporate quickly if there is a shift in the locus of attention of energy companies or new shipping routes open up in other areas that seem more attractive than the Arctic routes in purely financial terms.⁸

Arctic policy is becoming a matter of high politics

Hard-nosed observers claim that we are witnessing a remilitarization of the Arctic and that "armed clashes" may occur in the region sooner rather than later (Borgerson 2008, Huebert et al. 2012). Both the logic of this argument and the evidence supporting it, however, are flimsy (Wezeman 2012). While proposals to turn the Arctic into a nuclear-weapons-free zone are not likely to gain traction during the foreseeable future, there is no reason to expect that matters relating to the remilitarization of the region will rise to the top of the Arctic agenda anytime soon. In fact, most observers have commented on the relative lack of serious conflicts in the region. Nonetheless, the integration of the Arctic into the global economy as a resource frontier and a locus for commercial shipping has brought the region to the attention of the world's great powers. China has demonstrated a clear desire to acquire a voice in Arctic affairs (Jakobson 2010, Yang 2012). The European

Union has taken steps to devise its own Arctic policy (Airoldi 2009, European Commission 2012). Other major players, including not only Japan and Korea but also Brazil and India, have begun to follow Arctic affairs with interest. What this means is that the Arctic is now being drawn into the global system of high politics. Arctic issues (e.g. the exploitation of oil and gas deposits in the region's offshore areas) will be influenced by both the economics and the politics of global energy markets. Great power rivalries, often driven by matters that have little or nothing to do with the Arctic, will manifest themselves in efforts to address Arctic issues, including the delimitation of the boundaries of coastal state jurisdiction over the seabed beyond the boundaries of exclusive economic zones and the development of the provisions of the proposed Polar Code designed to regulate Arctic shipping. None of this precludes the maintenance and even the enhancement of cooperative arrangements in the Arctic. But it does mean that the fate of such arrangements will often be affected by political dynamics that have little to do with the Arctic as such.

The developments outlined in the previous paragraphs will not drive issues like the health and well-being of the Arctic's permanent residents and the sustainability of the mixed economies of widely-dispersed Arctic communities off the region's policy agenda. Policy agendas can and often do encompass a wide range of discrete issues at the same time. But these developments are reordering the Arctic agenda and bringing new players into the game (Berkman and Young 2009, Berkman and Vylegzhanin 2013). A cursory examination of the explosion of newspaper articles and the flood of popular books dealing with the Arctic is sufficient to make this clear.⁹ Such publications focus almost inevitably on topics like the race to exploit the Arctic's natural resources, real or imagined jurisdictional conflicts among the Arctic states, and the prospects that the resultant competition could trigger armed clashes in the region. Whether or not the analyses these sources advance are well-founded is somewhat beside the point. The fact is that they reflect a marked shift in perceptions on a global scale regarding the content of the Arctic policy agenda in the wake of the dramatic recession of sea ice in the Arctic Basin in recent years.

THE STANCE OF THE ARCTIC STATES IS NOT TENABLE

The Arctic states and especially the A5 (Canada, Denmark/Greenland, Norway, Russia, and the United States) have taken vigorous steps to assert their control over all matters of governance relating to the Arctic Ocean and its marginal seas. The strategy they have adopted, articulated

with particular clarity in the language of the May 2008 Ilulissat Declaration, amounts to arguing simultaneously that others should acknowledge their preeminence with regard to Arctic Ocean governance and that they—the A5—can be trusted to handle this assignment in a manner that proves beneficial to the Arctic Ocean itself as well as to all those interested in the use of its resources (Ilulissat Declaration 2008). Noting the transformative changes now affecting the Arctic Ocean, the A5 assert that “[b]y virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address [the] possibilities and challenges” likely to arise in the foreseeable future. They note that the law of the sea provides a legal framework for dealing with emerging issues pertaining to the Arctic Ocean and state that they “... remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.” The conclusion to be drawn from these observations, they assert, is that there “... is no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.” The A5 “... will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures.” The clear implication is that others should acknowledge the dominance of the A5 in this realm and defer to their stewardship with regard to Arctic Ocean governance.

It will come as no surprise that the other members of the Arctic Council (Finland, Iceland, and Sweden), not to mention the Permanent Participants, found this initiative unacceptable. Although these states and indigenous peoples' organizations regard the council as the principal forum for addressing matters of Arctic policy, the A5 did not invite them to participate in the May 2008 Ilulissat meeting; they did not even consult them about the issues at stake or the language to be included in the Ilulissat Declaration. Not only did this leave these actors in the lurch regarding some of the most important issues arising in the Arctic today; it raised understandable concerns about the future role of the Arctic Council. The result was a period of inner turmoil in relations among the Arctic states and uncertainty regarding the implications of this development for the future of international cooperation in the Arctic. But what threatened to become a serious rift among the members of the A8 has now been resolved in favor of a reaffirmation of the primacy of the Arctic Council as the principal vehicle for addressing matters of common concern in the Arctic, including issues of Arctic Ocean governance (Pedersen 2012). Under the terms of the Nuuk Declaration, adopted at the council's ministerial meeting in May 2011, the eight Arctic states affirm the primacy of the council in dealing with Arctic affairs, agree on a number of measures to strengthen the council, and call on non-Arctic states “to accept and support the objectives of

the Arctic Council” and “recognize that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea.” In effect, what had been the stance of the A5 regarding relations with non-Arctic states has reemerged as the stance of the A8 in a move to draw a clear line between the Arctic states and the non-Arctic states in addressing issues on the Arctic policy agenda.

Understandably, the major non-Arctic states are not comfortable with this stance. They believe with some justification that they have both legitimate interests in the Arctic and certain rights stemming not only from historic involvement in the Arctic but also from economic, legal, and scientific considerations that are hard to ignore. Even more important is the fact that there is little prospect that the A8 can address current issues of governance relating to the Arctic Ocean (e.g. the development and implementation of a regime regulating commercial shipping) effectively without active participation on the part of key non-Arctic states. Why is this the case? The answer involves matters of rights, responsibilities, and resources together with some broader considerations relating to the place of the Arctic in international society.

Non-Arctic states have acknowledged rights and interests in the Arctic

Regardless of the ultimate resolution of claims regarding the delimitation of coastal state jurisdiction over the seabed beyond the outer boundaries of their Exclusive Economic Zones in the Arctic, non-Arctic states will have rights to a variety of uses of the Arctic Ocean (e.g. rights to navigation, high seas fishing, laying submarine cables, overflight) under the provisions of the law of the sea (as codified in the 1982 UN Convention on the Law of the Sea), which all parties acknowledge as the constitutive foundation for Arctic Ocean governance. Under the circumstances, key non-Arctic states must play an active role in formalizing issue-specific regimes dealing with a variety of Arctic matters, such as the mandatory Polar Code for Arctic shipping now being developed under the auspices of the International Maritime Organization (IMO). Major non-Arctic states, including Brazil and India as well as China, Japan, Korea, and some of the European states are also in possession of resources and technological capabilities that Arctic states need or want in efforts to develop commercial shipping in the Arctic and to extract recoverable reserves of oil and gas located in Arctic waters. This is especially true in the case of Russia, which controls the Northern Sea Route, is expected to control the lion's share of recoverable reserves of natural gas located in Arctic waters, and is already entering into agreements with multinational corporations and one or another of the

non-Arctic states regarding such matters. A number of non-Arctic states are in possession of scientific capabilities that will be important to providing the knowledge needed to make informed decisions about Arctic Ocean issues. The Europeans have an impressive track record regarding Arctic research; the Chinese have established a research station at Ny Ålesund on Svalbard and will soon have a capacity to conduct seaborne research from icebreakers in polar waters that is second only to the capacity of Russia.¹⁰

Non-Arctic states also have Arctic responsibilities.

The transformative changes now occurring in the Arctic are tightening the links between this region and the Earth System in both biophysical and socioeconomic terms (Arctic Governance Project 2010). The forces of change affecting the Arctic (e.g. climate change, globalization) are driven increasingly by the actions of non-Arctic states. China alone accounts for about 23% of global greenhouse gas emissions and has become the global leader with regard to international trade. Almost 60% of the black carbon or soot and a large fraction of certain persistent organic pollutants that make their way to the Arctic are thought to originate in countries that are members of the European Union (Cavaliere et al. 2010). Similar observations are in order regarding the economic links between Arctic communities and the global system. The revenues available to Arctic states, counties, oblasts, and territories are heavily dependent on income derived from the extraction of natural resources (e.g. minerals, hydrocarbons) destined for world markets. Employment opportunities in many Arctic communities are closely tied to the activities of multinational corporations. The decisions of outsiders (e.g. the European Union's ban on the importation of seal products) can have devastating impacts on small Arctic communities. It follows that non-Arctic states not only have legitimate interests in Arctic affairs; they also have responsibilities regarding matters of environmental protection and sustainable development in the Arctic.

Geopolitical shifts are hard to ignore

More broadly, shifts that are geopolitical (or geoeconomic) in nature are making it harder and harder to ignore the concerns of non-Arctic states. This is obviously the case with regard to China. But rising powers like Brazil and India are not far behind in these terms.¹¹ This does not mean, as some commentators have suggested, that we are witnessing the beginning of a new cold war in the Arctic or that the region will become a scene of armed clashes in the foreseeable future. The forces at

work in the Arctic center more on global economic developments and exercises in the use of soft power that go with these developments (Nye 2011). Nevertheless, there is no avoiding the fact that the tightening of the links between the Arctic and the global system increases the sensitivity of the region to macro-scale shifts in the economic and political dynamics of the Earth System. Without going into detail on a case-by-case basis, it is apparent at this stage that the idea of separating the Arctic from the rest of the Earth System and endeavoring to establish an Arctic Ocean governance system that excludes participation on the part of key non-Arctic states will not work.

No one denies that the A8, and especially the five coastal states, occupy a special position regarding Arctic Ocean governance due to their status as Arctic states. They are entitled to exercise authority over activities taking place in their Exclusive Economic Zones and on the prolongation of the seabed extending beyond the outer limits of their Exclusive Economic Zones;¹² they have obligations to protect the rights of the Arctic's indigenous peoples relating to the use of marine resources (e.g. marine mammals); they are especially vulnerable to the possible effects of oil spills or extreme natural events occurring in the Arctic; they will be called upon to take the lead when it comes to matters of safety at sea or search and research in the Arctic. These considerations are sufficient to justify claims on the part of the Arctic states to a special status with regard to Arctic Ocean governance. But they are not sufficient to support claims on the part of these states to be allowed to call all the shots when it comes to matters of governance relating to the Arctic Ocean.¹³

SOME SUPERFICIALLY ATTRACTIVE SOLUTIONS ARE NON-STARTERS

What can be done to solve this puzzle in such a way that all legitimate stakeholders—the A5, the other Arctic states, key non-Arctic states, indigenous peoples' organizations—are satisfied with the resultant governance system for Arctic Ocean issues? Some of the most common ideas arising in discussions of this matter are non-starters. This is particularly true of proposals aimed at adjusting the character of the Arctic Council and especially those that would require changes in the terms of the 1996 Ottawa Declaration on the Establishment of the Arctic Council (Ottawa Declaration 1996).

Arctic Council membership is not negotiable

One possibility would be to alter the terms of Paragraph 2 of the

Ottawa Declaration, which deals with membership and the status of the Permanent Participants. This paragraph in its present form simply lists the A8—the A5 plus Finland, Iceland, and Sweden—as the members of the Arctic Council and creates the status of Permanent Participants for indigenous peoples' organizations. There is no provision for reevaluating or adjusting the membership of the council, and it is worth noting that the provision regarding membership represents the resolution of a somewhat contentious debate going back to the 1980s and the negotiations that led to the adoption of the 1989 Rovaniemi Declaration and the creation of the Arctic Environmental Protection Strategy (Rovaniemi Declaration 1989; Young 1998). The recent tension between the A5 and the A8 and its resolution with a clear reaffirmation of the primacy of the Arctic Council has had the effect of entrenching the membership provisions of Paragraph 2 further. The main innovation of the Ottawa Declaration is the creation of the status of Permanent Participants, a status that is highly valued by the indigenous peoples of the Arctic and that is widely viewed among students of international law and politics as the most innovative feature of the Arctic Council. Any adjustments that would have the effect of diluting the role of the Permanent Participants would be resisted vigorously by all the indigenous peoples' organizations; the A8 would support them regarding this issue.¹⁴

A common suggestion worth considering in this context is that the Arctic Council could follow the lead of the 1959 Antarctic Treaty, which draws a distinction between Consultative Parties and Non-consultative Parties. Any country can accede to this treaty but only those able to pass a specific test can become Consultative Parties. As set forth in Article IX(2) of the treaty, signatories are eligible for Antarctic Treaty Consultative Party (ATCP) status during such time as they “demonstrate [an] interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition” (Antarctic Treaty 1959). All signatories can attend Antarctic Treaty Consultative Meetings, but only ATCPs have the right to vote on measures considered at the meetings. Today, 50 states are parties to the Antarctic Treaty; 28 of these are ATCPs. Applying this distinction to the Arctic would lead to a situation in which the Arctic Council would have full members and associate members as well as Permanent Participants.

Appealing as this two-tiered system is in some respects, it will not work for the Arctic. What criterion could be developed to separate full members and associate members? Clearly, the criterion used in the Antarctic Treaty would not work; it is far from clear whether there is any alternative that would make sense under the conditions prevailing in the Arctic. In any case, the criterion articulated in Article IX(2) has

been watered down over time, allowing a number of countries to become ATCPs, even though their claims to fulfillment of the stated condition are tenuous at best. Combining this observation with the fact that the Arctic Council does not make use of voting in arriving at decisions, it seems clear that the two-tiered system would be likely to have the de facto effect of enlarging the membership of the council over time. Both the A8 and the Permanent Participants would be sensitive to this concern; there is virtually no chance that they would be willing to embrace some version of the Antarctic Treaty's distinction between Consultative and Non-consultative Parties during the foreseeable future.

The bottom line is clear. The provisions of Paragraph 2 of the Ottawa Declaration are untouchable in political terms. Having recently dealt with the tension between the A5 and the A8, the members of the council have no interest in entering into a debate now about who should be accepted as members of the Arctic Council. The Permanent Participants would regard any expansion of the council's membership, including the introduction of a two-tiered system, as a development that would have the effect of diluting their role. Any move to revisit the terms of Paragraph 2 of the Ottawa Declaration will not gain traction at this stage. Such an initiative might well engender controversy that would be counterproductive.

Permanent observership is not the solution

The situation with regard to Paragraph 3 of the Ottawa Declaration, which deals with observer status in the Arctic Council, is somewhat different but ultimately no more conducive to solving the puzzle under consideration here. Why is this the case? The Arctic Council, by action of the biennial ministerial meeting authorized in Paragraph 3, can accord the status of permanent observer to non-Arctic states, intergovernmental organizations, and nongovernmental organizations. Currently, six European states (France, Germany, the Netherlands, Poland, Spain, and the UK) are recognized as permanent observers; intergovernmental organizations that are observers include the Nordic Council of Ministers, UNDP, and UNEP. Among the non-governmental observers are the International Arctic Science Committee, the International Union for Circumpolar Health, the University of the Arctic, and the Worldwide Fund for Nature.

The problem with this idea for solving the puzzle under consideration here is twofold. To begin with, observer status under the best of circumstances is unsatisfactory from the point of view of non-Arctic states as a means of getting their concerns taken seriously in discussions of Arctic policy issues. All six states that are currently permanent ob-

servers have found this status unsatisfactory and generally frustrating in terms of providing opportunities for substantive engagement regarding issues now emerging on the Arctic policy agenda. Representatives of the observer states are seldom allowed to speak in meetings of the Arctic Council managed by the chair of the Senior Arctic Officials, much less in the biennial ministerial meetings of the council. Nor do they have access to discussions among the Senior Arctic Officials themselves or in meetings of the deputy ministers, a recent innovation in the practice of the council. Observers can interact with representatives of member state delegations on an informal basis. But there is no established practice that provides opportunities for meaningful engagement regarding matters of politics and policy, and the environment of council meetings is not conducive to real dialogue. To the extent that the recent shift in the Arctic Council from an emphasis on policy shaping to an interest in policy making continues, the force of this reasoning will become even stronger (Kankaanpää and Young 2012).

The permanent observers are often allowed or even encouraged to contribute to the efforts of the Arctic Council's working groups, especially if they are sufficiently interested to consider providing material support for specific projects. This is an important opportunity, especially since the reports of the working groups are among the council's most influential products. Useful as they are, however, the working groups do not provide an effective venue for policy dialogues regarding a range of politically sensitive issues now arising on the Arctic agenda. Representatives of all the non-Arctic state observers regard this situation as highly unsatisfactory. If anything, attendance at Arctic Council meetings serves to remind those representing observer states of the lack of efficacy of this status.

Over the last several years, moreover, the status of permanent observer has become even less satisfactory from the point of view of the non-Arctic states. In essence, the issue of permanent observer status has become a political football, handled badly by all parties concerned and resulting in a morass that is not conducive to solving the puzzle under consideration in this chapter. For reasons having to do with factors such as understandable dismay over the European Union's ban on the importation of seal products and China's treatment of human rights activists, the last two ministerial meetings of the Arctic Council (in Tromsø in 2009 and in Nuuk in 2011) have set aside applications for permanent observer status on the part of non-Arctic states and intergovernmental organizations, including China, Japan, Korea and the European Commission applying on behalf of the European Union, without action. The result has been to politicize the issue of observer status in the council. The 2011 ministerial meeting not only failed to approve pending

applications for permanent observer status; it also adopted a new set of criteria and rules of procedure applicable to all permanent observers and including such provisions as a requirement that permanent observers “... recognize Arctic States’ sovereignty, sovereign rights and jurisdiction in the Arctic” and demonstrate “... a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples.”¹⁵ In addition, the new rules provide for a review of “permanent” observer status every four years. Taken seriously, the effect of these new rules is to tighten the grip of the Arctic states over interactions taking place under the auspices of the council and to further restrict the opportunity for representatives of non-Arctic state observers to engage in serious dialogue regarding matters of policy with representatives of the A8.

Understandably, those non-Arctic states that are already permanent observers, like France, Germany, and the UK, have found these changes offensive. They certainly do not bode well for the use of permanent observer status as a mechanism for communicating the concerns of non-Arctic states like China, Japan, and Korea with regard to policy issues being handled through the Arctic Council. Ironically, the net effect of these developments has been to translate the somewhat exclusionary tone of the Ilulissat Declaration from a contentious pronouncement on the part of the A5 to a settled practice of the A8. Although it is pointless to assign blame for the muddle regarding the role of permanent observers, the overall conclusion seems clear.

Nothing in this analysis is intended to suggest that non-Arctic states should refrain from applying for permanent observership in the council. There are benefits to be gained from the status of permanent observer that are unrelated to the puzzle under consideration in this chapter. But the mechanism of permanent observership does not provide a solution to the puzzle. Given Canada’s role in these developments, there is little reason to expect this conclusion to change once Canada assumes the chairmanship of the council following the next ministerial meeting in May 2013.

BUT THERE ARE OTHER WAYS FORWARD

If adjusting the terms of the Ottawa Declaration does not offer a way forward in efforts to solve the puzzle, what is the alternative? In responding to this question, it is important to be clear on the nature of the issue at stake. For the Arctic states, the major concerns are acknowledgement of their primacy in dealing with Arctic affairs and maintenance of the effectiveness of the Arctic Council as the principal mechanism for addressing Arctic issues that have trans-boundary or interna-

tional implications. From the perspective of the non-Arctic states, the essential need is to have their voices heard at the policy level when it comes to addressing matters of Arctic Ocean governance. This is not a matter that requires obtaining formal membership, much less voting rights, in a body like the Arctic Council. But it is more than a matter of being allowed to participate in various projects undertaken by the council's working groups (e.g. the 2004 Arctic Climate Impact Assessment, the 2009 Arctic Marine Shipping Assessment, the ongoing Arctic Ocean Review), useful as some of these projects undoubtedly are. What is critical for the non-Arctic states is to obtain an acknowledged voice at the policy level in addressing matters of Arctic Ocean governance.

Two ways forward seem worthy of serious consideration in efforts to solve this puzzle. One strategy involves focusing on the development of a regime complex as a means of addressing a variety of specific issues relating to Arctic Ocean governance. The other strategy features the development of an informal consultative mechanism that allows for non-Arctic voices to be heard without undermining or detracting from the work of the Arctic Council. These strategies are distinct but by no means mutually exclusive. The best recipe for making progress in Arctic Ocean governance is likely to be to pursue the two strategies together.

An Arctic Ocean regime complex is emerging

One promising approach is to boost the development of what is known as a regime complex for the Arctic Ocean in which a number of issues are addressed through differentiable yet related governance arrangements. Regime complexes are collections of non-hierarchically related governance arrangements (often called elements or elemental regimes) that deal with various aspects of a recognized issue domain or a spatially-defined area, such as plant genetic resources, climate change, or Antarctica (Raustiala and Victor 2004, Keohane and Victor 2011, Orsini, Moran, and Young forthcoming). In the case of Antarctica, for instance, the arrangements governing the conservation of seals and the management of commercial fishing are handled under the provisions of conventions (the Convention on the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources) that are not subordinate to the 1959 Antarctic Treaty, although they obviously deal with matters of Antarctic governance broadly defined. The management of ship-based tourism in Antarctic waters is handled through the efforts of the International Association of Antarctic Tour Operators (IAATO), a non-governmental organization that has succeeded in establishing and implementing well-defined regulations covering the activities of owners

and operators of ships carrying tourists in Antarctic waters. Other elements of the Antarctic regime complex deal with functional concerns that are not limited to Antarctica (e.g. the International Convention on the Regulation of Whaling, the Agreement of the Conservation of Albatrosses and Petrels) or that are global in scope (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer). Taken together, this collection of elements constitutes what can be characterized appropriately as an Antarctic regime complex.

Regime complexes vary along an integration-fragmentation spectrum in which one extreme features sets of elements that are so interconnected that they merge into a single governance system, while the other extreme involves collections of elements whose connections are tenuous at best. Location on this spectrum is a variable in the sense that regime complexes may become increasingly integrated over time or lapse into collections of arrangements whose linkages become weaker and weaker. To take the example of the regime complex for Antarctica again, integration has increased over time, especially in the aftermath of the negotiation and entry into force of the 1991 Environmental Protocol to the Antarctic Treaty. Yet this example also makes it clear that there is no basis for complacency regarding the integration of regime complexes. A number of issues now confronting the Antarctic regime complex, ranging from rising interest in bioprospecting to the impacts of climate change, will present significant challenges to those responsible for managing the complex.

What are the prospects for the development of a regime complex for Arctic Ocean governance in the coming years? Is progressive development in the sense of movement toward the integration end of the integration-fragmentation spectrum a realistic goal for this complex?

How might this development address the puzzle of listening to the voices of non-Arctic states in Arctic affairs? All parties concerned agree that the law of the sea as articulated in the 1982 UN Convention on the Law of the Sea (UNCLOS) provides the constitutive foundation for an Arctic Ocean regime complex (United Nations 1983). Like all constitutive arrangements, UNCLOS features general principles and procedures; it does not offer specific prescriptions for Arctic Ocean governance (with the limited exception of Article 234 on ice-covered waters). So, for example, Article 76 establishes a generic procedure for addressing the delimitation of jurisdictional boundaries on the seabed beyond the outer boundaries of the Exclusive Economic Zone. Currently, the Arctic coastal states are making use of this procedure as a key element in their effort to sort out issues relating to the delimitation of jurisdiction over the seabed in the Arctic Ocean. There are reasons for optimism regarding the success of these efforts, though it is important to

bear in mind both that Article 76 has nothing to say about the specifics of the Arctic case and that the findings of the Commission on the Limits of the Continental Shelf are recommendatory in nature.

A number of issue-specific regimes have developed over time to address functional and spatially defined issues of Arctic Ocean governance (Young and Osherenko 1993). The oldest is the management system for the Svalbard Archipelago established in the 1920 Treaty of Spitsbergen and featuring an arrangement under which the parties recognize Norwegian sovereignty over the archipelago in return for a Norwegian pledge to demilitarize the islands and to allow all parties equal access to the natural resources of the archipelago.¹⁶ Other relevant arrangements include the agreement among the Arctic coastal states regarding the conservation of polar bears, the Canada/US bilateral agreement relating to the management of the Porcupine caribou herd, the North Atlantic Marine Mammals Commission, and a variety of bilateral and multilateral agreements dealing with migratory birds that spend part of each year in the Arctic. Although each of these arrangements is self-contained, they are beginning to take on the character of elements of a larger regime complex for the Arctic Ocean.

Additional elements of this regime complex have emerged more recently or are currently under construction (Young 2012a). The International Arctic Science Committee, established in 1990, has grown into a body that has 21 members (the A8 plus 13 other countries) and provides leadership in identifying research priorities and coordinating the efforts of scientists located in many countries. The International Maritime Organization (IMO) adopted a set of Guidelines for Ships Operating in Arctic Ice-covered Waters in 2002 (revised in 2009). These guidelines are recommendatory, and the IMO is currently at work on the development of a Polar Code that will include mandatory regulations dealing with the design, construction, and operation of commercial ships in the polar regions. Negotiating the terms of such a code is not easy, but there are reasons for optimism regarding the completion and adoption of the Polar Code within the next 2-4 years. A non-governmental body known as the Association of Arctic Expedition Cruise Operators (AECO) has emerged in recent years. Because the activities of AECO focus on areas close to Norway and the Svalbard Archipelago, interest is growing in expanding this arrangement into something more like the International Association of Antarctic Tour Operators (IAATO). In 2011, the Arctic States adopted an Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic. Although the parties to this agreement are the A8, the terms of the arrangement accord with the provisions of the 1979 International Convention on Maritime Search and Rescue and the 1944 Convention on International

Civil Aviation. More broadly, a number of global arrangements, including the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1992 UN Framework Convention on Climate Change, and the 2001 Stockholm Convention on Persistent Organic Pollutants, are relevant to the Arctic and form elements in the Arctic Ocean regime complex.

The Arctic Ocean regime complex encompasses a mix of elements featuring regulation through the efforts of the Arctic states themselves and elements in which non-Arctic states are major players along with the Arctic states. The members of the 1973 agreement dealing with the conservation of polar bears are the A5, a configuration that makes sense given that they are the range states. The development of the Arctic search and rescue arrangement as an agreement among the A8 also seems appropriate in light of the fact that the Arctic states will be called upon to supply the lion's share of the capabilities required to carry out search and rescue missions in Arctic waters.

The Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic was signed at the Arctic Council ministerial meeting in May 2011. In formal terms, however, the council did not adopt this agreement (Arctic Council 2011).¹⁷ On the other hand, it makes sense to negotiate the Polar Code under the auspices of the IMO in which all those states with an interest in Arctic shipping are members, and there is a credible rationale for the development of an Arctic tour operators association as a nongovernmental body including ship owners/operators located in non-Arctic states. Mixed arrangements make sense in other cases. The Arctic Council's new initiative aimed at the development of guidelines covering Arctic marine oil pollution prevention, preparedness and response seems appropriate, given that oil spills in Arctic waters during the foreseeable future are almost certain to take place within the Exclusive Economic Zones of the Arctic coastal states. But it also makes sense to link this arrangement to the IMO's conventions on oil pollution prevention, preparedness and response and on prevention of pollution from ships, since energy production is a global concern in which all states have a clear interest.¹⁸ Overall, the hallmark of the emerging Arctic Ocean regime complex is the development and implementation of a collection of distinct but related governance arrangements that allows for differentiation regarding a variety of matters, including provisions for listening to the voices of the non-Arctic states.

A critical element in this complex is the Arctic Council itself. What the council does best is to identify emerging issues, frame them in ways that are conducive to consideration in policy forums, and take steps to highlight their importance to various constituencies (Kankaanpää and Young 2012). Sometimes the emphasis is on Arctic-specific issues, like

the need to enhance capacities to deal with emergencies in the Arctic (e.g. ship groundings, oil spills). In other cases, the Arctic Council has been able to play a role in moving issues upward on global agendas, as in the cases of persistent organic pollutants leading to the 2001 Stockholm Convention and short-term climate pollutants now emerging as a priority concern in connection with efforts to address the problem of climate change. What is particularly important in the context of this discussion, however, is the emerging role of the council as an integrative force in the development of the Arctic Ocean regime complex. Making use of concepts like ecosystem-based management and tools like coastal and marine spatial planning, the Arctic Council is particularly well-placed to address the need to connect the individual elements of this regime complex in such a way as to avoid conflicts, promote synergy, and identify gaps in the complex that deserve attention going forward. It would be a mistake to exaggerate the capacity of the council to play this role. The council lacks the authority to make formal decisions, and its access to material resources remains limited. Nonetheless, it is clear that interest in this role for the council is rising. The engagement of the council in the development of the search and rescue agreement signed at the ministerial meeting in May 2011 is a case in point; there is a rising interest in the future role of the council as a mechanism for moving the Arctic Ocean regime complex along the integration-fragmentation spectrum in other areas as well.¹⁹

An informal consultative mechanism could make a constructive contribution

Moving toward the creation of a regime complex for the Arctic Ocean is a step in the right direction. Yet by itself this strategy will not solve the puzzle under consideration in this chapter. What is needed, in addition, is an informal mechanism that will not seem threatening to the members of the A8 but that will seem appealing to key non-Arctic states as a means of gaining a serious hearing for their views about matters of Arctic Ocean governance that go beyond piecemeal concerns suitable for treatment in conjunction with the individual elements of a regime complex. No existing model provides a simple blueprint for such a mechanism. But there is a good deal of experience with matters of this sort that can offer guidance to those concerned with solving the puzzle of listening to the voices of non-Arctic states in Arctic Ocean governance. Pertinent examples include: (i) a working group along the lines of the Working Group on Arctic International Relations, (ii) a committee like the Standing Committee of Parliamentarians of the Arctic Region, (iii) the Commission on Security and Cooperation in

Europe, (iv) the North Sea Conferences operating within the ambit of the OSPAR Convention, (v) the World Economic Forum and the World Social Forum, and (vi) an Arctic caucus or a North Pacific Arctic caucus operating within a broader forum.

The Working Group on Arctic International Relations (WGAIR) arose in 1987 as an informal means to facilitate communication among members of the policy and academic communities of the eight Arctic states (Young 1996). Its principal goal was to allow for an ongoing exchange of views across the barrier created by the division of the Arctic between the (then) Soviet Union on one side and the United States and its Arctic NATO allies on the other. Although it is difficult to establish causal connections, the WGAIR played an acknowledged role in establishing and promoting the spirit of cooperation that fueled the creation of the International Arctic Science Committee (IASC) in 1990, the Arctic Environmental Protection Strategy (AEPS) in 1991, and eventually the Arctic Council itself in 1996. For its part, the Standing Committee of Parliamentarians of the Arctic Region (SCPAR) is an informal association of members of the legislative bodies of the A8. It has no official status and no authority to make formal decisions regarding matters of Arctic policy. Nevertheless, the SCPAR organizes periodic conferences on Arctic themes and has played a constructive role in identifying emerging issues and exploring innovative approaches to these issues in a manner that is free of the restraints imposed on the Arctic Council by virtue of the fact that it is a more formal body whose principal participants are government officials.

The Commission on Security and Cooperation in Europe (CSCE) came into existence in 1973 during the midst of the cold war as a mechanism for developing confidence-building measures to alleviate East-West tensions regarding matters of security in Europe. Over time, it became a forum for airing issues relating to human rights and played a role in the transformations occurring in the former Soviet Union and Eastern Europe during the 1980s. With the passage of time the CSCE morphed into a more formal intergovernmental body now known as the Organization for Security and Cooperation in Europe. In its initial incarnation, however, the CSCE exemplified the sort of informal mechanism under discussion here.

The World Economic Forum and the World Social Forum provide mechanisms of another type for informal consultation on matters of current interest at the international level. Neither forum has any official status. Both forums operate by organizing annual high-level but informal gatherings of members of the business community and economic policymakers in the case of the World Economic Forum and members of civil society and social policymakers in the case of the World Social Forum.

Neither forum seeks to arrive at any specific conclusions, much less to make any formal decisions. Both present opportunities for lively discussions regarding innovative ideas in an informal environment and for off-the-record meetings among key players concerned with current issues of common concern.

The North Sea Conferences illustrate another type of informal consultation (Skjaereth 2000). These conferences came about as a device for allowing a subgroup of states concerned with North Sea issues to engage in a dialogue within the framework of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) without including representatives of all the members of the convention. Held at the ministerial level and occurring at approximately three-year intervals, the conferences have developed a reputation as a place where informal but politically significant commitments are made. An interesting feature of this case in the context of this discussion of Arctic Ocean governance is that the North Sea Conferences provide a mechanism for limiting participation to a subgroup of essential actors as a means of avoiding complications arising from the inclusion of all the members of OSPAR. What is needed in the case of Arctic Ocean governance, by contrast, is a mechanism for listening to the voices of actors that are not formal members of a grouping such as the Arctic 8.

Finally, there are opportunities for organizing informal caucuses or affinity groups that address matters of ongoing concern and that meet on the margins of broader gatherings that take place on a regular basis. In the case of the Arctic, an option worthy of consideration would be to nest an Arctic caucus into a larger, recurrent gathering like the G8, the G20, or the Asia-Pacific Economic Cooperation (APEC) forum. It would be relatively easy to operate an Arctic caucus on the margins of one or another of these meetings without generating a lot of publicity, creating unrealistic expectations on the part of interest groups concerned with one or another Arctic issue, or undermining the role of the Arctic Council as the principal forum for addressing matters of international cooperation in the Arctic.

None of these examples provides a pre-packaged solution to the puzzle of how to listen to the voices of non-Arctic states in Arctic Ocean governance, without distorting or disrupting existing arrangements like the Arctic Council. Any informal consultative mechanism created to address this puzzle will have to be crafted to meet the circumstances of the case at hand. But what these examples do make clear is that informal consultative mechanisms are not only politically feasible in a variety of settings but also capable of playing a constructive role in addressing important issues that are hard to deal with in more formal settings. Though such mechanisms lack the authority to make formal decisions,

they can and do offer ways forward in facilitating cooperation where the more formal arrangements are ineffective.

A concrete initiative would be timely

What is the next step in dealing with the puzzle under consideration here? Though there is no simple much less correct answer to this question, there is a good case for responding to the question now with a concrete initiative. While explicit forecasts are impossible, it seems clear that Arctic Ocean development, including commercial shipping as well as the extraction of oil and gas, will move forward in the coming years. The involvement of non-Arctic states and multinational corporations in this process is unavoidable. What is needed is a mechanism to maximize the benefits of this development in a manner that is sensitive to the triple bottom line of sustainable development. One constructive step would be to establish an informal Arctic Ocean Forum (AOF), designed to serve as avenue in which representatives of non-Arctic states could set forth their views and in which dialogue among representatives of Arctic and non-Arctic states could occur without interfering in any way with the more formal operations of the Arctic Council. Just as the Northern Forum provides a mechanism for articulating the concerns of subnational units of government (e.g. states, counties, territories, oblasts) and for allowing representatives of these units to interact both with one another and with representatives of national governments, the Arctic Ocean Forum could become an informal meeting ground for the discussion of Arctic developments that have trans-boundary or international implications along with broader international developments that have Arctic implications.

The mission of the AOF would be to serve as an informal setting in which representatives of Arctic and non-Arctic states could engage in interactions designed to identify emerging issues of mutual concern, frame these issues in a manner conducive to effective policymaking, canvass innovative responses to the issues, and explore the prospects for resolving them in a cooperative manner. The dialogue occurring within the AOF should take the form of a two-way street. The issues considered should involve not only the interests of non-Arctic states in the development of Arctic resources (e.g. the rules governing commercial navigation in the Arctic, the regulations pertaining to oil spill prevention, preparedness, and response) but also the responsibilities of non-Arctic states for actions affecting the well-being of Arctic communities (e.g. the European Union's ban on the importation of seal products, emissions of black carbon). To ensure its relevance to Arctic policymaking, the AOF could organize meetings both in the run-up to Arctic Council ministerial meet-

ings as a means of making known the views of non-Arctic states and in the aftermath of ministerial meetings to consider the broader implications of the council's actions (or inactions).

Some simple terms of reference should suffice to govern the activities of the AOF. A preliminary list might include the following:

- Those attending sessions of the AOF should participate in their personal capacities,
- Participants in sessions of the AOF should include individuals associated with non-state actors (e.g. indigenous peoples' organizations, industry, environmental NGOs) as well as states,
- The AOF would have no authority to make decisions about Arctic issues, formal or otherwise,
- Chatham House rules should apply to all proceedings of the AOF,
- Although sessions of the AOF might take place in a variety of settings, some of the sessions should take place in accessible Arctic locations (e.g. Iqaluit, Longyearbyen, Murmansk).

The A8 and key non-Arctic states as well as the European Union could launch the AOF as a joint venture. In the case of the A8, the way forward may be to assign the deputy ministers of the Arctic Council the task of exploring a range of informal mechanisms for listening to the voices of the non-Arctic states and coming up with recommendations to be considered at the 2013 Arctic Council ministerial meeting in Kiruna. Sweden, the current chair, is particularly well-placed to lead such an effort. Sweden is a member of the A8 but not the A5; it is a member of the European Union as well as the Arctic Council; it has a long-standing record of playing the role of facilitator rather than joining any particular coalition at the international level. Finding a way to recognize the growing links between the Arctic and the global system and adjusting existing arrangements for promoting international cooperation with regard to Arctic issues would be an important contribution of a sort that would be compatible with Sweden's traditional role in international affairs. Such an initiative would be compatible as well with the idea emanating from the May 2012 meeting of the deputy ministers suggesting that the 2013 Arctic Council ministerial meeting should adopt a "ministerial statement" reaffirming the terms of the Ottawa Declaration but also recognizing the changes that have occurred since 1996 and providing strategic direction for the next phase of international cooperation regarding environmental protection and sustainable development in the Arctic.

Conversely, key non-Arctic states (e.g. China, Japan, and Korea along

with some of the European states) could take steps to launch this enterprise as a meeting ground allowing for dialogue and for the exploration of innovative arrangements for listening to the voices of non-Arctic states in Arctic Ocean governance. Given the argument of this chapter, any such effort must concentrate on effective communication rather than on the mobilization of pressure to consider changes in existing arrangements like the Arctic Council. One ongoing topic of interest would be evaluating the performance of the emerging Arctic Ocean regime complex in which different groupings of actors address issue-specific concerns (e.g. shipping, fishing, tourism) in the interests of moving the complex over time toward the integration end of the integration-fragmentation spectrum.

An intriguing option would be to get the ball rolling quickly and with a minimum of procedural complications by adopting the practice of Track 2 or back channel diplomacy and staging gatherings in which individuals from the Arctic states and key non-Arctic states are able to interact informally in the absence of elaborate preparations or any explicit approvals (Davidson and Montville 1981-1982).²⁰ In this connection, the North Pacific Arctic Conferences (NPAC) taking place at the East-West Center in Honolulu may constitute a promising development. The August 2012 session, for example, included thoughtful and well-connected individuals from Canada, Norway, Russia, and the United States and from China, France, Japan, and Korea who engaged in a substantial dialogue in their personal capacities over two days dealing with a range of Arctic issues. The East-West Center, formally an American organization, is dedicated to "... bringing people together to exchange views, build expertise, and develop policy options."²¹ The center has a particular interest in cross-cultural communication. It is premature to make any predictions regarding the effectiveness of this informal meeting ground. Yet there is much to be said for proceeding in this realm on a highly informal basis that makes it possible to move forward quickly and to create conditions that allow a mix of individuals to form the personal connections and develop the sense of trust needed to foster substantive discussions of complex issues that do not degenerate into reiterations of well-known and uncompromising positions. An added benefit of this mode of engagement is that it would accommodate the inclusion of representatives of non-state actors, including indigenous peoples' organizations, industry, and environmental NGOs.

IN CONCLUSION

There is no simple solution to the puzzle of listening to the voices of non-Arctic states in Arctic Ocean governance. But simply ignoring the

issue will not do. The transformative changes now taking place in the Arctic are tightening the links between this region and the global system. Whether we like it or not, the fate of the Arctic will be determined by our ability to manage these links in a manner that is responsive to the rights, responsibilities, and resources of all parties concerned. A strategy of attempting to govern the Arctic as a closed system cannot work. Finding ways forward that allow key non-Arctic states to have a voice in Arctic affairs while recognizing the legitimate interests of the Arctic states and supporting rather than interfering with the efforts of the Arctic Council must be a priority for the coming decade. Fortunately, there are ways forward that offer reasons for hope on the part of those endeavoring to solve this increasingly important puzzle.

Notes

1. An essay prepared for presentation at the “2012 North Pacific Arctic Conference,” Honolulu, Hawai‘i, 8-10 August 2012 and revised for publication in September 2012.
2. Research Professor, Bren School of Environmental Science and Management, University of California (Santa Barbara), 4518 Bren Hall, Santa Barbara, CA 93106-5131, USA—email: oran.young@gmail.com
3. Iceland is also a member of NATO but not generally regarded as an Arctic coastal state.
4. The 1996 Ottawa Declaration on the Establishment of the Arctic Council, for example, includes a footnote stating that “The Arctic Council should not deal with matters related to military security”—text available at www.arctic-council.org.
5. September 2012 brought a new record low in the proportion of the Arctic Ocean covered by sea ice.
6. The US Geological Survey, in a widely cited report, projects that the Arctic may contain up to 13% of the world’s undiscovered oil, 30% of the undiscovered natural gas, and 20% of the undiscovered natural gas liquids (USGS 2008; Gautier et al. 2009). But it is important to note that these projections are not based on extensive fieldwork, much less exploratory drilling.
7. The shale gas revolution in North America, for example, has made the large gas cap on the North Slope of Alaska uneconomical to produce and ship for the foreseeable future. Developments in European energy markets appear to be playing a significant role in delaying the development of the supergiant Shtokman gas field in the Barents Sea.
8. For an account exploring both opportunities and risks associated with

- Arctic development from the perspective of the business community see Emmerson with Lahn 2012.
9. See Young 2011 for a review of a collection of recent popular books on the future of the Arctic.
 10. In 2012, the Chinese icebreaker “Snow Dragon” transited the Northern Sea Route from East to West in the course of a scientific expedition.
 11. Brazil has signaled its intention to ratify the 1920 Spitsbergen Treaty as an initial step toward developing a presence in the Arctic.
 12. Issues relating to the delimitation of coastal state jurisdiction over the seabed in the Arctic are under active consideration in the Commission on the Limits of the Continental Shelf established under Article 76 of UNCLOS.
 13. Chinese commentators often draw a distinction between Arctic issues “... of a regional nature and those that have global implications” (Yang 2012).
 14. Recent discussions of the agenda for the Canadian chairmanship of the council, which begins in 2013, have focused attention on the importance of strengthening the role of the Permanent Participants by providing them with the resources needed to play an active role in all the council’s activities (Gordon Foundation/Munk School of Global Affairs 2012).
 15. The new criteria and rules pertaining to observer status are set forth in full in the Senior Arctic Officials (SAOs) Report to Ministers, Nuuk, Greenland, May 2011 (SAO Report 2011).
 16. The Spitsbergen Treaty currently has 40 signatories. An earlier regime, the four-nation agreement on the conservation of fur seals breeding on islands in the Bering Sea established in 1911, collapsed in 1985 (Young and Osherenko 1993).
 17. The Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic was signed at the Arctic Council ministerial meeting in May 2011. In formal terms, however, the council did not adopt this agreement (Arctic Council 2011).
 18. These are the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation and the 1973/1978 International Convention for the Prevention of Pollution from Ships (MARPOL). Current thinking calls for an Arctic agreement on oil spill prevention, preparedness, and response to be linked to Article 10 of the 1990 convention.
 19. The Arctic Ocean Review, scheduled for completion in 2013, is an Arctic Council project that may lead to innovative proposals regarding the integration of the Arctic Ocean regime complex. Information available at: <http://www.aor.is>.

20. Originally proposed as a means of addressing situations characterized by severe conflict, Track 2 diplomacy has come to refer to any situation in which informal engagement is used to avoid the rigid and somewhat stylized interactions of formal negotiations.
21. Information on the East-West Center, established in 1960 under the terms of an act of the US Congress and located adjacent to the University of Hawaii in Honolulu, is available at www.eastwestcenter.org.

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Comments on Chapter 6: American perspective

Robert W. Corell

The opening sentence of Professor Young's chapter sets a proper and vitally important framing for his contribution and the entire conference and presents a strategic governance issue that is a foundational consideration for the eight nations and indigenous peoples of the Arctic region:

“An increasingly important puzzle confronting those concerned with Arctic Ocean governance centers on the search for an effective means to pay attention to the legitimate concerns of non-Arctic states, without interfering with or distorting existing cooperative arrangements like the Arctic Council.”

The Arctic Council provides an institutional setting for such consideration, but may not be adequate in the view of its founding terms of reference that stated that the Arctic Council is a “High Level Forum” to promote cooperation, coordination and interactions amongst the eight Arctic nations and the six indigenous peoples' organizations of the Arctic. Its decision-making authority is limited to a consensus mode, though it has used the Arctic Council framework to develop a search and rescue agreement that is treaty-like. It is led by the directive of a bi-annual meeting of the ministers of foreign affairs of the eight Arctic nations, with the engagement of the presidents of the six indigenous peoples' organizations of the Arctic. The Council's actions are limited to those formally taken by the ministers of foreign affairs. The ministers and the Arctic officials give special considerations to the six indigenous peoples' organizations in all matters before the council as they are Permanent Participants in the work of the Council. During Council meetings, comments by Official Observers are invited (there are a few non-Arctic nations that are Official Observers with no authority other than to state their perspectives). In my view, the Arctic Council has historically been insular with respect to the issues of nations and peoples outside its own formal participants so it is imperative to address the increasingly important governance issues for other nations, as raised in the chapter, with attention to their socioeconomic interests, particularly in the northern hemisphere. As the chapter poignantly notes,

“Major non-Arctic states (e.g. Brazil, China, India, Japan, Korea, and several European states) and intergovernmental

bodies (e.g. the European Union), on the other hand, have growing interests in the Arctic Ocean relating to activities like commercial shipping, oil and gas development, industrial fishing, and ship-based tourism and feel that they have a legitimate claim to be consulted when it comes to addressing matters relating to the governance of such activities.”

These are critical issues to be addressed and the chapter sets the tone for discussions at the conference on these vital governance and socioeconomic issues. These issues should, or perhaps, must be on the international foreign policy agenda for all the relevant and interested nations and peoples at least within the northern hemisphere. As Young’s chapter states, adequate and effective resolutions will be difficult to address, and hence will require the development of an adequate institutional framework within which to address them.

MORE DETAILED OBSERVATIONS

The chapter posits an important idea that is described as the new Arctic policy agenda. After underlining the policy implications of the transformative changes now occurring in the circumpolar Arctic, Professor Young presents a section that describes the stances of the Arctic states regarding Arctic Ocean governance and argues that their current position does not provide an adequate institutional framing for an effective solution. Young then advances an analysis of alternative ways to move forward by describing two distinct, but not mutually exclusive, strategies. One strategy centers on roles that issue-specific international forums (such as the International Maritime Organization and the International Arctic Science Committee) can play in addressing specific matters relating to Arctic Ocean governance. The other strategy emphasizes the value of informal mechanisms that can provide a means for effective communication without running into the political difficulties that afflict efforts to devise more formal solutions. The concluding section proposes a practical way forward that all parties concerned may want to pursue in the near future.

Professor Young quite properly posits a series of well-documented issues that will set the foundations for developing an adequate solution for increased engagement of the non-Arctic states in Arctic Ocean governance. In summary, they include:

- ***There are unavoidable Arctic policy issues emerging:*** It has become clear that there are very likely Arctic policy issues emerging broader than those solely of interest to the eight Arctic nations and their

peoples. Among the family of Arctic and non-Arctic nations these issues cannot be avoided.

- ***Climate and other and global change findings are now important:*** The Arctic has become a focus of global attention with the opening of the Arctic Ocean seaways due to the realities of global climate change.
- ***Arctic maritime shipping and related trade are now apparent:*** Marine issues have taken center stage, providing socioeconomic transformations for the five coastal Arctic nations (i.e., Canada, Finland, Norway, Russia and the United States and their peoples), while at the same time sustaining the deep interest and concern of the other three Arctic nations (i.e., Iceland, Finland and Sweden). What is transformational is that there now are many non-Arctic nations (e.g., Brazil, China, India, Japan, Korea, and several European states and the European Union as an international body, as well as the already mentioned Arctic Council observer nations of France, Germany, the Netherlands, Poland, Spain, and the United Kingdom) that have unavoidable socioeconomic interests in Arctic maritime shipping and related trade, as well as the rich natural resources (e.g., oil and gas as well as fisheries) of the Arctic Ocean and its nearby terrestrial environment.
- ***Sustainable development of the Arctic region may be at risk:*** Managed development is already overshadowing sustainable development for the region. Some of these issues are likely to be increasingly resolved by bilateral (e.g., the resolution of the disputed lands in the deep offshore of Norway and Russia as well as a fisheries agreement between these two nations), and multilateral agreements (e.g., Barents Euro-Arctic Council and the Barents Regional Council). Of equal and more substantive importance to non-Arctic nations will be international agreements or treaties that exercise their authority within the Arctic oceanic basin, such as International Maritime Organization (IMO) that as an United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships or by United Nations Convention on the Law of the Sea UNCLOS (the United States has ratified but is not a member). Both have powerful potential for resolving issues in the Arctic oceanic region, for example the UNCLOS has the power of an international treaty that covers issues such as: (a) ***Internal waters*** at covers all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate use, and use any resource. Foreign vessels have no right of passage within internal waters, (b) ***Territorial waters***, set

by treaty to be out to 12 nautical miles (22 kilometers; 14 miles) from the baseline, where the coastal state is free to set laws, regulate use, and use any resource, (c) **Contiguous zone** which notes that beyond the 12 nautical mile limit there is a further 12 nautical miles from the territorial sea baseline limit, the contiguous zone, in which a state can continue to enforce laws in four specific areas: customs, taxation, immigration and pollution, (d) **Exclusive economic zones** (EEZs), which extend from the edge of the territorial sea out to 200 nautical miles (370 kilometers; 230 miles) from the baseline. Within this area, the coastal nation has sole exploitation rights over all natural resources, and (e) **Continental shelf** is defined by UNCLOS as the natural prolongation of the land territory to the continental margin's outer edge or 200 nautical miles from the coastal state's baseline, whichever is greater. Hence, a state's continental shelf may exceed 200 nautical miles until the natural prolongation ends. It is clear that some of the evolving maritime issues in the Arctic oceanic region may be addressed and resolved by either IMO or UNCLOS outside the purview of the Arctic Council. These are powerful matters to consider with respect to governance issues in the Arctic Ocean.

- **Arctic policy is now on the front burner:** As the chapter argues, Arctic policy is becoming a matter of high politics. Far more than ever before, Arctic nations have developed national Arctic policy documents (e.g., United States Arctic Policy of 2009, the European Union's Arctic policy that sets three main policy objectives: (a) protecting and preserving the Arctic in unison with its population, (b) promoting the sustainable use of resources, and (c) international cooperation). Further, there has been a number of conference (e.g., ranging from NATO's Conference on Environmental Security in the Arctic Ocean (2010) to the Newly Emerging Arctic Security Environment Report (2010) that was prepared at the request of the Canadian Defense & Foreign Affairs Institute and a book by James Kraska on Arctic Security in an Age of Climate Change and an Arctic Security Public Opinion Survey on Rethinking the Top of the World). It is clear that Arctic policy and governance is now a hot topic from the self-interests of nations and analyses by third-party organizations.
- **The Arctic nations are viewing policy as within their exclusive purview:** The chapter makes a strong argument that the stance of the Arctic states is not tenable. As it is argued, that the strategy the five Arctic coastal nations the (the Arctic 5 or A5) have adopted and articulated with particular clarity is in the language of the

Ilulissat Declaration (May 2008). It amounts to arguing simultaneously that others should acknowledge their preeminence with regard to Arctic Ocean governance and that the A5 can be trusted to handle Arctic policy matters in a manner that proves beneficial to the Arctic Ocean as well as to all those interested in the use of its resources.

- ***Non-Arctic nations have rights and interests:*** Various international treaties and agreements make it clear that non-Arctic states have acknowledged rights and interests in the Arctic, as a simple review of the substance of UNCLOS and IMO will confirm. The International Covenant on Civil and Political Rights in the UN Charter provides an overarching framework for the rights and prerogatives of nations.
- ***Non-Arctic nations also have Arctic responsibilities:*** Non-Arctic states also have Arctic responsibilities: first, as signatories of international treaties and agreements (e.g., IMO) and also as major contributors to the changing global climate conditions. Nations outside of the Arctic contribute substantially to these changes. For example, carbon emissions from fossil fuels are now demonstrably affecting conditions in the Arctic, such as the major reduction in the extent of sea ice and the melting of land-based glaciers that are contributing to sea level rise globally.
- ***The geopolitical reality is changing substantially:*** Geopolitical shifts are hard to ignore as major socioeconomic “powers” evolves to include the Plus Five nations (i.e., Brazil, China, India, Mexico, and South Africa), some of which have major interests in the Arctic region. The advent of “soft power,” whereby nations are able to get others to share their desired outcome by co-opting rather than coercing them, contrasts with “hard power,” which is the use of coercion and payment. There is emerging evidence that more soft power will be deployed by nations to obtain their ends.
- ***The membership in the Arctic Council appears to be set:*** The chapter argues convincingly that the Arctic Council membership is not negotiable. Observing the simple act of non-Arctic nations seeking official observer status in the Arctic Council seems to support the argument that the Arctic Council sees its membership fixed to the eight Arctic Nations, the permanent participants of the six indigenous peoples organizations, and the official observers who have no authority to influence policy other than interventions in the discussions. Little has been done to change this and it is not likely to change in the years ahead.

- *Arctic Council observer status is a weak and ineffective mode for policy development:* Clearly, for many of the issues discussed above it is clear that permanent Arctic Council observership is not the solution as it does not give status to nations in the normal fashion essential to policy development and adoption.

A WAY FORWARD

As noted earlier, Professor Young posits two ways forward that are worthy of serious consideration. One strategy involves focusing on the development of an Arctic regime complex as a means of addressing a variety of specific issues relating to Arctic Ocean governance. The other strategy features the development of an informal consultative mechanism that allows for non-Arctic voices to be heard without undermining or detracting from the work of the Arctic Council. The author suggests that these strategies are distinct but by no means mutually exclusive, but that an Arctic Ocean regime complex is possible.

The author's first approach is to explore the idea of developing what is known as a "regime complex" for the Arctic Ocean in which a number of issues are addressed through differentiable, yet related, governance arrangements. These regime complexes are collections of non-hierarchically related governance arrangements that deal with various aspects of a recognized issue domain or spatially-defined area, such as climate change. Where they have been deployed in Antarctica, the regime complex arrangements for governing the conservation of seals and the management of commercial fishing have been handled under the provisions of conventions (the Convention on the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources) that are not subordinate to the 1959 Antarctic Treaty. The management of ship-based tourism in Antarctic waters was implemented through the efforts of the International Association of Antarctic Tour Operators (IAATO) a non-governmental organization that has succeeded in establishing and implementing well-defined regulations covering the activities of owners and operators of ships carrying tourists in Antarctic waters. Similar issues are present in the Arctic from the now established Search and Rescue agreement to yet to be resolved issues such the management of ship-based tourism in Arctic, oil spill and pollution of Arctic oceanic waters, and conditions for transiting Arctic Ocean whether along coast waters or straight across the central Arctic Ocean. These are unresolved and may be candidates for "regime complex" agreements that do not challenge the prerogatives of the Arctic Council, but do address serious Arctic governance policy matters.

The author raises another strategy to enhance Arctic governance prospects that focuses on the development of “informal consultative mechanisms” that allow for non-Arctic voices to be heard without undermining or detracting from the work of the Arctic Council. While there is not a range of experiences from which to draw guidance, the author suggests that there are issues that can potentially provide guidance for the voices of non-Arctic states to be heard in Arctic Ocean governance, such as (a) a working group along the lines of the Working Group on Arctic International Relations, (b) a committee like the Standing Committee of Parliamentarians of the Arctic Region, (c) the Commission on Security and Cooperation in Europe, (d) the North Sea Conferences operating within the ambit of the OSPAR Convention, (e) the World Economic Forum and the World Social Forum, and (f) an Arctic caucus or a North Pacific Arctic caucus operating within a broader forum like the G20. These constructive proposals should be to be explored.

A CONCRETE PROPOSAL TO EXPLORE ENHANCED WAYS TO ENGAGE NON-ARCTIC NATIONS IN RELEVANT ARCTIC OCEAN POLICY DEVELOPMENT

The author posits the establishment of an Arctic Ocean Forum (AOF) and notes that Arctic Ocean development, including commercial shipping as well as the extraction of oil and gas, will move forward in the coming years. The involvement of non-Arctic states and multinational corporations in this process is essential. The Arctic Ocean Forum (AOF) should be designed to serve as an informal venue for non-Arctic states to set forth their views and in which dialogue may be fostered among representatives of both non-Arctic states and Arctic states. The Northern Forum provides such a mechanism for articulating the concerns of sub-national units of government (e.g. states, counties, territories, oblasts) and for allowing representatives of these units to interact both with one another and with representatives of national governments. The Arctic Ocean Forum could become an informal meeting ground for the discussion of Arctic developments that have international implications along with broader international developments that have Arctic implications. The AOF could serve as an arena in which representatives of Arctic states and non-Arctic states could engage in regular interactions designed to identify emerging issues of mutual concern, frame these issues in a manner conducive to effective policymaking, canvass innovative responses to the issues, and explore the prospects for resolving them in a cooperative manner. The issues considered should involve not only the interests of non-Arctic states in the development of Arctic resources (such as the rules governing commercial navigation in the Arctic, the

regulations pertaining to oil spill prevention, preparedness, and response) but also the responsibilities of non-Arctic states for actions affecting the well-being of Arctic communities (for example, the ban on the importation of seal products, and emissions of black carbon). To facilitate the development of such a forum, the Dr. Young posits Terms of Reference (TORs) sufficient to govern the activities of the AOF. The establishment of the Arctic Ocean Forum would enable considerations of both creating a “regime complex” and formation of “informal consultative mechanisms.”

SUMMARY THOUGHTS

The author has set forth a set of constructs and ideas that has the potential to stimulate serious dialogue and discussion at the 2012 North Pacific Arctic Conference. To suggest additional ideas for such discussions, the following is offered to stimulate such. The Arctic Governance Project (AGP), in which Dr. Young played a leadership role, developed a set of five policy recommendations that address issues relevant to this chapter and these discussions. They are outlined below with my comments based on perspectives gained over the past years that go beyond the AGP recommendation, and which hopefully address the central issues of the chapter and the conference dialogue.

1. Honor, implement, and enhance existing Arctic governance systems

The AGP notes that good governance in the Arctic will be best served, at least for now, by honoring, implementing, and enhancing existing treaties among nation states, e.g. the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Framework Convention on Climate Change (UNFCCC), other inter-governmental agreements, treaties and other arrangements between states and indigenous peoples, and relevant practices that together constitute a living network of relationships designed to promote sustainability, environmental protection, social justice, and responsible economic development in the Arctic and to recognize the rights of indigenous peoples to participate in decision-making.

Comments

The chapter and the discussions above reinforce the centrality of this recommendation of the AGP. While the Arctic Council has been a consensus-based forum, it has not and is not likely to become a central player in the development and implementation of Arctic Ocean policies. This is a strong recommendation and will likely serve the interest of non-Arctic nations.

2. Strengthen the Arctic Council

The AGP notes that the Arctic Council has been remarkably successful as a policy-shaping body. But there are opportunities to strengthen the Council's mission, scope, structure, and functions, including:

- a. Reaffirm the primacy of the Arctic Council as the principal forum for the consideration of Arctic policy issues.
- b. Reframe and broaden the mandate of the Arctic Council to include issues relating to security, health, and education and to highlight stewardship as the overarching objective of Arctic governance.
- c. Take steps to enable the full participation of the Permanent Participants in all Arctic Council activities, including providing a funding mechanism to cover the costs of such participation.
- d. Admit key non-Arctic States (e.g. China, Italy, Japan, Korea) as well as the European Commission to Permanent Observer status in the Arctic Council.
- e. Establish more systematic and efficient procedures for communicating with local and regional authorities and administrators in the Arctic.
- f. Create explicit mechanisms to provide regular input from the business community and environmental organizations in the deliberations of the Arctic Council.
- g. Institutionalize integrative and holistic perspectives in Arctic policy processes; assemble data and develop analytic tools needed to do so.
- h. Establish a reliable funding mechanism for the Arctic Council, so that the Council can select and launch projects without relying on the willingness of individual members to contribute to projects on a case-by-case basis.
- i. Establish a permanent secretariat for the Arctic Council located in a member state.
- j. Hold a meeting of the Arctic Council at the level of heads of state and government at the first available opportunity.

Comments

The chapter and the discussions above reinforce the centrality of this recommendation of the AGP. The ministers of foreign affairs at their 2011 ministerial meeting in Nuuk, Greenland addressed some of

these recommendations and hence strengthen their role in Arctic affairs. However, the agenda of the 2012 North Pacific Arctic Conference and the interests of many of the non-Arctic nations attending will not be adequately served by existing Arctic Council strategies. I believe that the Arctic Council has the potential to better serve all Arctic interests for Arctic and non-Arctic nations in the long term. I suggest that greater pressures should be placed on the Arctic Council to more effectively serve these broad interests. This might include, subject to adequate Terms of Reference, raising the status of non-Arctic nations to a level adequate to enable the non-Arctic nations to directly participate in policy development (for example, to the level of Associate Arctic Nation). Further, the official observer status should be redefined so that there is differentiation among the various types of observers from the scientific and technical to NGOs. All have profoundly important roles to play in the deliberations of the Arctic Council and to the development of Arctic policy. The UN bodies might be venues to suggest these expansions of the roles and mandates for the functioning of the Arctic Council.

3. Establish regulatory mechanisms to address proactively key functional and sectoral issues through appropriate international bodies

The AGP notes that there are good reasons to establish regulatory mechanisms in anticipation of economic development and industrial activities in the Arctic along with the emergence of new issues of environmental protection. The way forward in this realm is to work through existing intergovernmental bodies where possible and to focus on the most important and promising areas first. Developing a legally binding Polar Code covering Arctic shipping and including strong environmental protection measures under the auspices of the International Maritime Organization is a good place to start. Legally binding agreements on search and rescue (SAR) and emergency responses should be included as a part of this effort. Other areas, such as fishing and tourism, may require the development of free-standing bodies, much like the International Association of Antarctic Tour Operators (IAATO).

Comments

The chapter and the discussions above reinforce the centrality of this recommendation of the AGP and this recommendation is well discussed in the author's chapter including the "regime complex" and the "informal consultative mechanism." The Polar Code would be an added benefit established in the spirit of the UN's legally binding agreements and treaties.

4. Institutionalize the science/policy interface in the Arctic

The AGP notes that science has played an important role in the development of Arctic policy. The work of the Arctic Monitoring and Assessment Programme (AMAP) is a clear case in point. But there is a need to establish a closer relationship between science and policy to ensure that research agendas focus on issues of clear relevance to policy and that scientific findings are conveyed on a regular basis to policymakers in a manner that emphasizes their implications for making and implementing policies. The Arctic Council provides an excellent forum for experimenting with procedures designed to achieve this goal. This should lead over time to the development of a broader Arctic science agreement to promote, on a cooperative and transparent basis, enhanced interactions between science and policy relating to the protection of ecosystem services, the pursuit of sustainable human-environment relations, and, more generally, the achievement of stewardship in the Arctic.

Comments

The chapter suggests the centrality of this recommendation of the AGP. Science and knowledge developed therein are a fundamental foundation for the development of Arctic policies, particularly those regarding the Arctic Ocean. A far reaching action by the Arctic Council would be to establish the International Arctic Science Committee (IASC), the International Arctic Social Sciences Association (IASSA), and possibly others when appropriate as official scientific advisors to the Arctic Council. A range of arrangements should be considered, from a special category of science advisors to the Arctic Council to creating associate working groups of the Council with responsibilities that parallel the Council's current working groups but augment their range of responsibilities. The motive is simply to strength the direct input of science from responsible bodies into the policy development process. An adequate set of Terms of Reference would be essential.

5. Create non-governmental Arctic stakeholder forums or roundtables to build trust and stimulate dialogue on Arctic issues

The AGP notes that there is a need for mechanisms to promote interactions among individuals interested in the Arctic in off-the-record and relaxed settings to build trust among a wide range of actors, to facilitate knowledge exchange, to encourage innovative thinking, and to stimulate learning among those concerned with Arctic issues. The goal is to enrich the efforts of bodies like the Arctic Council rather than to dilute or detract from their efforts.

Comments

The chapter and the discussions above reinforce the centrality of this recommendation of the AGP. Dr. Young effectively addresses many of these issues in his chapter.

The chapter, “Listening to the Voices of Non-Arctic States in Arctic Ocean Governance: Sorting out the role of non-Arctic states in Arctic Ocean governance presents a puzzle” by Oran R. Young presents a powerful set of issues for the 2012 North Pacific Arctic Conference.

Comments on Chapter 6: Canadian perspective

Bernard W. Funston

INTRODUCTION

Professor Young’s chapter, entitled “Listening to the Voices of Non-Arctic States in Arctic Ocean Governance,” presents a very useful identification and analysis of a number of current Arctic governance issues. He examines the high-level political forum constituted by the Arctic Council and its relationship to Arctic Ocean governance. The chapter offers practical suggestions for ways forward.

This commentary supports many of the conclusions in Professor Young’s chapter but differs on the potential role of the Arctic Council to accommodate non-Arctic state voices. On the one hand, Professor Young rejects the Arctic Council as a body to handle many aspects of Arctic Ocean governance (“The Council lacks the capacity to make authoritative decisions, and its access to material resources remains limited.”). On the other hand he concludes that efforts to reform or evolve the Council to better accommodate non-Arctic state voices are “non-starters” or are inadequate to address the governance issues he identifies.

He sets the stage by observing that: “Major non-Arctic states...have growing interests in the Arctic Ocean relating to activities like commercial shipping, oil and gas development, industrial fishing, ship-based tourism, and environmental protection and feel that they have a legitimate claim to be consulted when it comes to addressing matters relating to the governance of such activities.”

However, the chapter notes that: “The Arctic states and especially the five Arctic coastal states...have taken vigorous steps to assert their

control over all matters of governance relating to the Arctic Ocean and its marginal seas.”

Interestingly, Professor Young acknowledges that an “Arctic Ocean regime complex” is emerging. Indeed, it has been in place for some time. As the Arctic Council’s *Arctic Ocean Review Phase I Report* (2009) illustrates, there are numerous binding and non-binding international and regional instruments relating to the Arctic, not the least of which is the UN *Convention on the Law of the Sea*. This is indeed what the group of five Arctic states were driving at when they issued the *Ilulissat Declaration* in May 2008.

By its very existence, an Arctic Ocean regime complex goes some way to refuting suggestions that non-Arctic states have had no voice in Arctic governance. As member states to international instruments, they have already played a significant role in establishing the legal frameworks and principles which constitute the governance regime in this region. Contending that non-Arctic states have no voice in Arctic affairs overlooks the ongoing roles they play in implementing and regulating trade, commercial shipping, oil and gas development, trans-boundary pollutants, industrial fishing, ship-based tourism, climate change and environmental protection under existing conventions such as the International Maritime Organization, United Nations Framework Convention on Climate Change, United Nations Convention on the Law of the Sea and so on.

However, in speaking about Arctic Ocean governance it is important to distinguish between global and regional or local matters. Professor Young’s chapter seems to call for a greater role for non-Arctic states in governing affairs and setting policy within the region, notwithstanding the sovereignty and sovereign rights of Arctic states, through some sort of comprehensive forum for coordinated policy discussions. One task for this more inclusive policy forum, it appears, would be better integration of the elements of the existing Arctic Ocean regime complex. His chapter does not go into detail as to what a greater role for non-Arctic states would entail.

Although the title of Professor Young’s chapter seems to be about seeking a solution to the puzzle of non-Arctic states having a voice in Arctic governance, the new Arctic Ocean Forum (AOF) he proposes appears to be oriented more towards civil society having a voice in Arctic governance. He suggests that participants appear “in their personal capacities” and observe Chatham House rules. So presumably any Arctic or non-Arctic government officials who attend would not be representing state interests.

This proposal for a new Arctic Ocean Forum begs several questions: Would states really want to send their officials to participate in their

personal capacities? Would such a forum be afforded any weight among Arctic or non-Arctic states? Would representatives of NGOs, business and indigenous groups also appear in their personal capacities or would they be expected to represent their organizations' interests? What would such a forum add in relation to enhancing non-Arctic State voices in Arctic Ocean governance?

The process of creating a new forum could be expected to raise the same sorts of time-consuming issues the Arctic Council faced during its founding negotiations: who is allowed in; what would be the rules of procedure; how will the forum speak on complex issues where there is no consensus; who will organize and pay for the meetings; how will the forum conduct its intersessional work; would there be a role for Permanent Participants from non-Arctic states; etc., etc.? Would Arctic states want to participate in both the Arctic Council and a new AOF?

If an Arctic Ocean Forum were constituted along the lines recommended in Professor Young's chapter, the high level of informality could work at cross-purposes with the overall objective stated by Professor Young, namely more integration and formalization of the Arctic Ocean regime complex.

Nonetheless, there will always be a role for dialogue and information sharing, particularly in relation to emerging Arctic issues. Professor Young is quite correct when he articulates the global importance of the Arctic region. An Arctic Ocean Forum could be a useful mechanism, but respectfully it does not seem to be the solution to the puzzle posited in Professor Young's chapter.

THE PROMISE OF THE ARCTIC COUNCIL

It must be recalled that the Arctic Council itself is an existing informal mechanism for high-level policy discussion on the Arctic. Some suggestions are offered in this commentary for the creation of "trans-regional mechanisms" within the Arctic Council to foster greater scientific cooperation among Arctic and non-Arctic interests as a means to realize the contributions of Observers, in particular, non-Arctic states, within the Council. This scientific cooperation can advance policy-relevant dialogue between Arctic states and the international community, just as it has done so among Arctic states within the Arctic region. These trans-regional mechanisms have the potential to strengthen the Arctic Council without unduly altering the delicate balances among Arctic States, Permanent Participants and Observers within the Council.

Professor Young's chapter characterizes the current situation as a "puzzle." Characterizing the current geopolitical situation as a puzzle is actually a helpful, positive approach that offers hope of a solution. A

puzzle can be ‘solved’ by the correct movement and orientation of the pieces. However, some puzzles are more complicated than others.

I would characterize the situation as a “paradox” rather than a “puzzle.” A paradox is defined as “A thing conflicting with perceived notions of what is reasonable or possible.” The early promise of the Council as a regional forum that could engage the international community on Arctic issues of a global nature has retreated at the very time when it should be moving forward. What accounts for this paradox?

On the one hand, there is some evidence that many of the Arctic states were caught unprepared by the speed of change in the Arctic and the dramatic escalation of global interest in the region. One indicator of this unpreparedness was the issuing of the Ilulissat Declaration in May 2008. The need for the Ilulissat Declaration arose from a growing perception outside the Arctic region that there was a governance void at the top of the world. To the consternation of Arctic states, this misperception had fuelled calls for some sort of Arctic treaty or Arctic charter to correct the situation. The Ilulissat Declaration was meant to show that everything was under control.

A second indicator of unpreparedness was the sudden outpouring of Arctic policies and strategies after 2009. Admittedly many of these strategies and policies had been in preparation for a number of years but there had been no real urgency to complete them. Again, the desired effect was to demonstrate that everything was under control.

The awkward handling of the Observer issue within the Arctic Council is arguably a third indicator of unpreparedness. If we look at the original political consensus that formed the Council (see below), it is arguable that the intention was indeed to include non-Arctic states and non-Arctic voices. However, through a series of internal missteps this original purpose has been frustrated.¹

Some of the other factors that have created this paradox are well documented in Professor Young’s chapter.

IS THE ARCTIC COUNCIL A GOVERNANCE BODY?

Professor Young’s chapter correctly identifies a suite of issues within a rubric of Arctic governance. Governance is a deceptive word and at times suggests a level of order and clarity that belies reality. The Arctic Council is characterized in its founding Declaration as a “high level political forum.” However, for the first decade of its existence the Council was more of a cooperative science body than a policy or governance body. The expectation that the Council should play a role in governance is arguably a recent one. Some commentators² (Molenaar 2012) have ar-

gued quite convincingly that an Arctic Council System, akin to the Antarctic Treaty System, has slowly emerged. Professor Young's description of an Arctic Ocean regime complex echoes this conclusion.

BACKGROUND

The observer issue was one of the most protracted items of discussion during the negotiations of the Arctic Council Rules of Procedure from 1996 to 1998. At the time, concerns tended to focus on the potential of NGOs to disrupt the work of the Council. The admission of non-Arctic states to the roster of Observers was not particularly troublesome.

Only four years after the Council was established the Barrow Declaration in 2000 requested "that the SAOs with assistance from the chairs of the Arctic Council subsidiary bodies, consider and recommend, as appropriate, ways to improve how work is structured in the Arctic Council and present a report at the next Ministerial Meeting."

The Haavisto Report³, prepared during the Finnish Chairmanship from 2000 to 2002 in response to this Ministerial request, noted under the heading "The Arctic goes Global": "In recent years there has [sic] been significant processes in international politics which have highlighted the role of the Arctic and brought the Arctic issues on to the global stage. When planning the future of the Arctic cooperation, these trends shouldn't be neglected. Even if globalisation can be seen as a threat from the Arctic perspective, it can also create new possibilities for further developing Arctic cooperation."

The 2006 SAO Report to Ministers contained the following recommendations:

- "Encourage the Chairman of the SAO's to continue, in that capacity, outreach efforts of the Arctic Council aimed at the international community, regional organizations and academic and research communities with the aim of increasing awareness of the work of the Arctic Council and exploring possibilities for cooperation."
- "Continue to strengthen relations with Arctic Council observers and review applications of countries and others interested in becoming observers to the Arctic Council."

At the Arctic Council meeting in Copenhagen in May 2010 the Deputy Ministers tasked the SAOs to produce a document to address four issues, one of which was: "The role of observers and the format for their participation". This document was to be presented to the Ministers at their meeting in Nuuk in 2011 and was to be the basis of decisions to resolve the Observer question. However, in Nuuk the

Ministers decided, within a new “Framework for Strengthening the Arctic Council,” to impose new criteria on the admission of Observers. The Nuuk Declaration states: “Adopt the recommendations of the Senior Arctic Officials (SAOs) on the role and criteria for observers to the Arctic Council as set out in Annexes to the SAO Report, and decide to apply these criteria to evaluate pending applicants for observer status.”

EVOLUTION OF THE ARCTIC COUNCIL

It is natural for a body such as the Council, that was in many ways ahead of its time, to attract more attention as the issues which it addresses grow in national, regional and global importance. This evolution was anticipated in the founding declaration and the original Rules of Procedure of the Arctic Council. The preamble to the 1996 Declaration contains various commitments and recognizes certain realities. The general goal of the states was summarized in the preamble as “Desiring to provide for regular inter-governmental consideration of and consultation on Arctic issues.” Article 1 of the 1996 Declaration stated, *inter alia*, that:

The Arctic Council is established as a high level forum to :
provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.

The 1996 Declaration also included certain structural and procedural elements:

- The Council is to be composed of Arctic states, Permanent Participants and Observers.
- Decisions of the Arctic Council are to be by consensus of the Members states.
- The Arctic Council should regularly review the priorities and financing of its programs and associated structures.

Can current realities and issues surrounding Observers be resolved through normal evolution of the processes and structures established by the original framework for the Council, or are reforms and amendments to this framework needed? Many, if not all, current challenges could probably be met through creative approaches based, for the most part,

on the founding documents and existing Rules of Procedure of the Council.

The Arctic Council emerged from scientific cooperation under the Arctic Environmental Protection Strategy. In its first decade of operation (1996 to 2006), it is arguable that the Arctic Council was, to a large degree, a body for scientific cooperation, albeit with important policy relevance. The relatively low national and international profile of Arctic issues during this initial decade allowed the Council to develop a remarkable corpus of cooperative scientific work.

However, the upsurge in Arctic awareness in national and global affairs after 2006 appears to have created even greater pressures in many quarters for the Council to become a high-profile policy body.

The continuity of the Arctic Council has come primarily through the substantive work of the Council's working groups. There have been many changes of governments in the Arctic states and many changes to the various positions and approaches to the issues facing the Council.

Amidst this change, scientific cooperation has allowed working groups to complete numerous impressive assessments, projects and activities in a relatively neutral realm. It is the shared achievements on this substantive scientific work, it can be argued, which have increasingly facilitated cooperation on policy issues at higher levels in the Council.

The debate as to whether science should lead policy, or follow it, is not particularly fruitful. Science can inform policy and policy can help direct science. There are strong examples both ways. In the context of the Arctic Council, the scope and nature of cooperation in general has been a success story.

Nonetheless, a range of pressures appear to be pushing the Council to question its structures and operations with some of the following consequences:

- There is an apparent growing gap between the priorities and agendas of the SAOs and those substantive scientific work elements assigned to Working Groups in their work plans and Ministerial Declarations.
- There appear to be an increasing number of occasions when Working Groups are outside the room for key discussions.
- Confusion has arisen as to the appropriate number and role of Observers within the Council. (For example, the apparent decision during the Danish chairmanship, 2009-2011, to make all Observers ad hoc created uncertainty as to whether they could properly attend working group meetings during the inter-sessional period between SAO meetings. *Ad hoc* Observer status under the original rules expired at the end of each SAO meeting. Therefore, techni-

cally *ad hoc* Observers were no longer accredited under the Rules of Procedure to attend any Working Group meetings which might fall between SAO meetings.)

- There are concerns among some Permanent Participants that their roles could be marginalized if more voices are heard around Arctic Council tables.
- Pressures and expectations appear to be growing, in various quarters, for the Council to speak with a collective voice about Arctic issues and to act more like a governance body.
- Pressures and expectations also appear to be growing, in various quarters, for the Council to increase its profile and become more visible regionally and globally.

THE ROLE OF OBSERVERS AND THE FORMAT FOR THEIR PARTICIPATION

The Observer question is not a new one. The role and format for Observer participation was a key part of the original negotiations leading to the creation of the Arctic Council. What was the original political consensus respecting Observers at the time the Arctic Council was established? This consensus of the Arctic states is contained in the founding declaration signed in Ottawa in September 1996 and in the Rules of Procedure agreed to in Iqaluit in September 1998.

It is important to make a clear distinction between questions relating to whether or not a particular entity should be granted Observer status within the Council in the first place, and questions relating to their participation and contributions following admission.

The category of Observer was created for entities “that the Council determines can contribute to its work.” [Rule 36].

It would be anomalous to require Observers to contribute to Council work, but then create conditions that prevent them from doing so. In considering how best to address the issue of the role of Observers and the format for their participation, it is necessary to determine how this existing requirement (namely that they contribute to Council work) can best be operationalized.

It was clear from the negotiations to establish the Council that the decision as to which entities could become Observers was a purely political one. The formulation of a broad test, together with the consensus rule, made this so. Openness and transparency were to be constrained by the need for consensus.

Some early political tensions between certain NGOs and certain Arctic states were quietly resolved in bilateral discussions and resulted in

eventual Observer accreditation of the NGOs in question. Whereas other organizations that had objectives at odds with the Arctic states or the Permanent Participants, as was the case with some animal rights organizations, were repeatedly denied observer status. The test as to whether a potential observer “can contribute to its [the Council’s] work” was never intended to be based on a set of objective criteria.

The Nuuk decision in 2011 to adopt Observer criteria has not really added objectivity to the process. The new criteria have simply imposed some difficult-to-measure conditions which are still evaluated within a political framework. Indeed, it is arguable that some of the new criteria might not, in some cases, be met even by some of the Arctic states themselves.

There do not appear to be any structural defects in the Rules that prevent Observers from contributing to the work of the Council. Rather, as a matter of practice, the Council and its Chairs have applied Rule 38 to allow short interventions from some Observers at the end of the meeting after substantive agenda items have been concluded.

However Rules 37 and 38 contain language which could support a broader engagement. Rule 37 provides that “Observers shall be invited to the Ministerial meetings and/or to other meetings and activities of the Arctic Council.” Rule 38 permits them to “submit relevant documents to the meetings.” These rules apply not only to SAO and Ministerial meetings, but also to the meetings of the working groups, task forces and other subsidiary bodies.

Therefore, within the existing rules and structures of the Council, there is room to be creative about the mechanisms to ensure that Observers can play a role commensurate with the requirement that they contribute to the work of the Council. Any such mechanisms would need to take into account the number of Observers currently recognized by the Council as well as the range of issues that are likely to be of common interest to them and Council.

An important objection to increased Observer engagement has been raised in relation to potential overshadowing or reducing of Permanent Participant engagement. However, it must be recalled that the role of Permanent Participants is not in jeopardy. It is set out in clear terms in the 1996 Declaration and also in Rule 5 which states:

“Rule 5: In accordance with the Declaration, the category of Permanent Participation is created to provide for active participation and full consultation with the Arctic indigenous representatives within the Arctic Council. This principle applies to all meetings and activities of the Arctic Council.”

Historically, funding and capacity issues have been the major obstacles to realizing active participation and full consultation with the Arctic indigenous

representatives within the Council. Efforts to enhance the effectiveness and efficiency of the Council therefore also need to include ways to address these issues.

In the proper circumstances and with well-designed mechanisms, Permanent Participants could actually have their voices enhanced, not diminished, by finding ways to facilitate Observer contributions to the work of the Council and to better engage in dialogue with them on these important trans-regional issues.

As the Council has evolved and Arctic issues have become more mainstream in global affairs, trans-regional issues and non-Arctic issues are repeatedly identified as major drivers of change in the circumpolar North.

One driver is generally emphasized above all others: climate change and variability. Another important driver which is often overlooked is globalization. Climate change and globalization are at the root of many of the issues which the Arctic region (and non-Arctic regions) will face in relation to interests in Arctic lands and marine areas in years to come. It is precisely this situation that has both attracted external attention to the Arctic Council and placed pressure on it to provide leadership and responsive attention to Arctic-relevant issues.

The distinction between “Arctic-relevant” and “Arctic-based” issues is an important one. Arctic-based issues, by definition, involve matters that occur in the Arctic. However, as climate change, trans-boundary contaminants, resource demands, expansion of international transportation routes, thermohaline circulation changes, loss of biodiversity, ecosystem changes and other issues illustrate, many of the most profound influences in relation to Arctic change cannot be confined by clear geographical lines.

Opening a broader dialogue that goes beyond the traditional Arctic-based focus will require careful political and technical planning.

TRANS-REGIONAL MECHANISMS

As an initial step to realize the potential contributions of Observers, consideration could be given to creating, within the Council and its working groups, one or more “trans-regional mechanisms” to encourage cooperation that will help build information and knowledge relating to non-Arctic issues that affect the Arctic, and Arctic issues that affect other parts of the planet. What might a “trans-regional mechanism” look like? It could have two elements:

- a) a mechanism for political cooperation between the Arctic Council (at the level of Ministers, Permanent Participants and SAOs) and the member states of such organizations, for example, as the

- International Council for the Exploration of the Sea (ICES)* and the *North Pacific Marine Science Organization (PICES)*⁴; and
- b) a mechanism for scientific cooperation with the working groups of the Council and the appropriate scientific subsidiary bodies of such organizations, for example, as ICES and PICES, so as to encourage substantive work on agreed upon “Arctic-relevant” issues.

This approach is based on the interconnections between the Arctic region and two important marine areas, namely the northwest Pacific and the North Atlantic. The objective of these trans-regional mechanisms would be to connect the agendas and activities of the Arctic Council and other existing organizations that already engage in cooperative science in the northwest Pacific and North Atlantic.

For example, ICES is the prime source of scientific advice on the marine ecosystem to governments and international regulatory bodies that manage the North Atlantic Ocean and adjacent seas⁵. Members⁶ include all coastal states bordering the North Atlantic and the Baltic Sea, including all eight Arctic states, and a number of European states that are Arctic Council Observers. These Arctic and non-Arctic states can build interlocking regional organizations that have mutually reinforcing Arctic-relevant programs. A focus on science could produce the positive policy-relevant interactions that have characterized the Arctic Council’s development.

Similarly, PICES is an intergovernmental scientific organization to promote and coordinate marine research in the northern North Pacific and adjacent seas. Its present members are Canada, Japan, the People’s Republic of China, the Republic of Korea, the Russian Federation, and the United States of America.

Work volumes, priority setting, meeting frequency, funding issues and so on will have a bearing on operationalizing this approach. However, within the Arctic Council, Observership could become a bond rather than a division. Creating the trans-regional mechanisms within the Arctic Council would also allow Permanent Participants to contribute to the cooperative trans-regional agendas and activities. The reporting out on this work undertaken in the “trans-regional mechanism” could be included in the normal Working Group reports to SAOs and Ministers. Acknowledgement of Observer contributions and perspectives could thereby be taken into account in the main body of the reports to meetings without requiring lengthy interventions by Observers at the conclusion of meetings. Rule 38 would continue to allow the Chair to recognize appropriate interventions by Observers during meetings.

As trans-regional and Arctic issues grow in importance and profile, it will be increasingly important for Arctic states and non-Arctic states to demonstrate broad cooperation on challenging scientific and policy issues.

THE ARCTIC IS NOT A CLOSED SYSTEM

The Arctic should be viewed as a barometer that is highly responsive to other global processes. Quite simply, the solutions to some Arctic problems cannot be implemented by actions in the Arctic. On the other hand, non-Arctic regions may be unable to address some of their pressing problems without giving due attention to the Arctic.

The blurring of the line between the far north and the rest of the planet is a critical development that carries with it a range of important new considerations that mark the transition from a boutique issue to a mainstream issue. The perception of an accessible Arctic has certainly put the region firmly on the global geopolitical agenda. The potential for rapid economic development in the Arctic as a result of high world prices for energy and minerals, and easier access to resources as a result of climate change, raises numerous questions relating to environmental, social, and cultural impacts of development in an ecologically fragile and culturally vulnerable region.

While geographers have ongoing debates about where to draw the dividing line between the Arctic and non-Arctic, this commentary recommends we step back from this debate about dividing lines. The presence of some sort of “Arctic Circle” demarcating the southernmost limit of the Arctic has tended to “ghettoize” the region, setting it aside as a boutique issue that is often viewed in isolation, apart from mainstream national and international affairs. What happens in the Arctic does not stay in the Arctic, and vice versa.⁷

Perhaps the true potential of the Arctic lies in the lessons it provides regarding humanity’s voracious appetites. It is a clarion call to a reappraisal of our approach to consumptive growth. The Arctic will not be saved by building a wall around it, nor by focusing only on governance within the region. This is another reason that this commentary has characterized the Arctic as a paradox, not as a puzzle. We need to acknowledge that the Arctic is a region which helps open a dialogue on how we govern outside the Arctic and for this to occur the voices of non-Arctic states must be heard.

Notes

1. However, it is important to note that the Nuuk Declaration established a Task Force to deal with some of these issues.
2. Molenaar, E. J., *Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea*. *The International Journal of Marine and Coastal Law* 27 (2012) 553–595.
3. Pekka Haavisto, *Review Of The Arctic Council Structures*, 2001, p. 23

4. ICES and PICES are used here as examples because the member states under these conventions include many of the Arctic states and the non-Arctic states that have shown interest in Arctic affairs.
5. See <http://www.ices.dk/aboutus/aboutus.asp>
6. The member states are Belgium, Canada, Denmark (including Greenland and Faroe Islands), Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, the United Kingdom, and the United States of America. Each of the member state is represented by two delegates on the ICES Council. The ICES Council is the principal policy and decision-making body of ICES. The Affiliate Countries are: Australia, Chile, Peru, and South Africa.
7. Fenge, Funston, and Young. Promoting Sustainable Development in the Circumpolar Arctic, April 2008, unpublished.

Comments on Chapter 6: European perspective

Arild Moe

The question of appropriate and effective governance of the Arctic Ocean can be approached from different angles. One angle is to ask who should be legitimate participants in governance. The Arctic Council emerged in the wake of larger international processes—the easing of tensions towards the end of the Cold War, as well as growing concern for the environment, sustainable development, and protection of indigenous people. The Council was from the outset not intended as a body addressing “all things Arctic,” but had an explicit focus on the environment. After an initial wave of enthusiasm, the Council lived a fairly quiet existence. Lack of interest in ministerial meetings was demonstrated by low-level attendance by some of the members, particularly the US. The studies and reports convened by the Council attracted attention though, but more as broad and solid documentation and production of knowledge than as input to political processes.

This state of affairs came to an end not many years ago. The members of the Council now give much more attention to the Council. The most striking turn has been in U.S. policy. The U.S. government now seems intent to use the A8 format for discussions concerning the Arctic and is ready to expand the scope of activities in the Council. Several countries and organizations are vying to get in and obtain an official status in the Council. The reason for this change is of course the grow-

ing interest in the Arctic. As Young says, Arctic policy is becoming a matter of high politics. States and organizations looking for a venue or forum for Arctic issues rapidly see that there is only one game in town, namely the Arctic Council. But the Council has achieved this position to a large extent by default.

Young's analysis of the structure of the Arctic Council amply shows how complicated it is to accommodate the aspirations of non-Arctic states within that framework. A peculiar feature of the structure is the high status given to indigenous peoples' organizations, reflecting the focus of the Council when it was set up. These organizations, as well as the Arctic countries backing them, are concerned that a broadening of participation in the Council would be at the expense of the influence of indigenous peoples.

But there are also other reservations among the members of the Arctic Council. Primary among these is a concern that increasing the number of permanent observers somehow could infringe on the exclusive resource rights given to the Arctic coastal states by the Law of the Sea Convention. But there is not a unanimous stance in this regard. It seems that Russia has the greatest reservations towards expanding the Council based on such reasoning, whereas others like Norway have signaled a more open attitude.

The combination of political apprehension and the structure of the Council makes an expansion of full membership impossible, as remarked by Young, and increasing the number of permanent observers is difficult, and may be not satisfactory for non-Arctic states in any case. It is obvious that there is not a unified European position on these issues since Europe includes one A5, but not EU member (Norway), one A5 and EU member (Denmark), two A8 EU members (Sweden and Finland), one A8 and non-EU member (Iceland) and six permanent observers and EU members (Germany, UK, France, Netherlands, Poland and Spain). Whereas Europe is quite well represented in the workings of the Council, strong pressure for a change has come from the European Commission who wants the EU to be recognized as a permanent observer.

A different approach from discussing who are legitimate players in the Arctic Council is to identify which issues call for broader international cooperation and what needs to be governed. The list of elements in an Arctic regime complex presented by Young shows that there are many Arctic issues already treated in forums other than the Council. Looking at issues more concretely undoubtedly makes it easier to establish who are relevant participants, who are affected, who can contribute.

This discussion could be taken one step further by distinguishing between issues that encompass the whole Arctic and issues of a sub-re-

gional character. Moreover, there are issues which have stronger links to processes outside the Arctic than to other processes in the Arctic. The Arctic as a whole is not always the relevant framework for problems and processes taking place in the Arctic. As argued by Olav Schram Stokke, sometimes the Arctic is too big as a framework and sometimes it can be too small, and 'the eight member-states of the Arctic Council are either too few or too many for dealing effectively with the management challenges associated with greater commercial interest in the Arctic'.¹

Climate change belongs in the category that extends beyond the Arctic, indeed it is a global issue. It must be handled in global processes and the Arctic dimension must be included there. Regional fisheries regimes encompassing only EEZs in a section of the Arctic represents the other extreme. It does not make sense to treat such issues in a circum-polar or even broader international context. Fishing in high seas is different. Shipping is a global industry and it would not be effective to discuss Arctic shipping in a separate organization. Thus the IMO plays a crucial role, but also recognizes special Arctic needs by way of a Polar Code. Search and rescue preparedness and cooperation falls squarely in the sphere of responsibility of the Arctic states.

When one looks at the broader institutional landscape in the Arctic it seems that non-Arctic states have many other venues for being heard besides the Arctic Council. Nevertheless, much depends on which processes and institutions will be given weight and energy by the Arctic states.

The members of the Arctic Council face a dilemma. If they want to expand the scope of work in the council a restrictive attitude towards broader participation becomes more and more untenable.

The alternative could be to rethink the role of the Council within a broader regime complex. Even if the Arctic Council has gained increasing visibility in recent years and now has a permanent secretariat it is not given that all the countries in the Council see an expansion of its role as the only way forward. In Norway, for instance, voices can be heard that argue that the Council is biased in favor of environmental interests and could be an unreliable body if resource extraction issues were put on its agenda. Thus, a more diversified institutional structure can also be in the interest of Arctic states.

An obvious risk in relying on a diversified and specialized institutional architecture is the fragmentation mentioned by Young. There is a need for overview and connecting processes. To some extent, the Arctic Council has had and could continue to have such a function for its members. Deliberations in the Council have directed attention to knowledge gaps and needs for regulation and have channeled political energy

into relevant political processes outside the Council.

This does not solve the question raised by Young of establishing a high level informal consultative mechanism which includes key non-Arctic states. Some sort of forum, like the Arctic Ocean Forum, ought to be possible. The Arctic 5 will cautiously protect their exclusive resource rights. But the same law of the sea that gives these rights also ensures the rights of non-coastal states to shipping in general and fishing outside the EEZs. In addition, many environmental issues know no borders. This fundamental realization implies a need for a forum that includes interested non-Arctic states. But it does not imply a need for a general purpose organization for Arctic matters. To become an effective channel for communication a forum would have to focus on a concrete agenda. This would mean that participation not necessarily would be the same from time to time. The goal must be not only to include relevant states, but also relevant authorities and knowledge from these states. The Arctic states should take the initiative to organize such meetings.

A set up as suggested by Young where the G20 is used as a framework for consultations would exclude the smaller Arctic States and thus represent another extreme in Arctic governance. It is easy to predict the position of European Arctic states to such a proposal: Non-starter!

Notes

1. Olav Schram Stokke: 'Environmental Security in the Arctic: The Case for Multi-Level Governance' *International Journal*, Vol . 64, No 4, 2011, pp. 835-848.

Comments on Chapter 6: Chinese Perspective

Peiqing Guo

On May 12, 2012, the Senior Arctic Officials (SAO) Report issued in the Seventh Ministerial Meeting of the Arctic Council in Nuuk, Greenland, set up new criteria for admitting observers and defined roles for their participation in the Arctic Council. Countries eligible to apply to be observers of the Arctic Council must meet very demanding requirements which include recognitions of the “sovereignty, sovereign rights and jurisdiction” of the Arctic countries (“three ‘must’ recognitions” or “three recognitions,” hereafter). To be observers, non-Arctic states must submit their application “no later than 120 days” before a

ministerial meeting. At present, non-Arctic states are standing at a crossroads. Observer status is an important matter for non-Arctic states and is closely related to their national interests in the Arctic so they must weigh the advantages and disadvantages of this type of participation in the Council before they make their decision.

INTERPRETATION OF THE NEW CRITERIA OF THE “THREE ‘MUST’ RECOGNITIONS”

The “three ‘must’ recognitions” are the most rigorous, harsh, and ultimately unprecedented requirements in the history of international organizations. Investigating all other international organizations, no other international organization sets similar standards to the Arctic Council’s for observer. In other cases, requirements on the observer are very lenient. Before the Arctic Council Nuuk Conference, only the Economic and Social Council (ECOSOC) put forward one recommendation to set up stipulations about the obligation and responsibility of non-governmental (NGO) observers. However, the stipulations were very simple and loose:

1. The NGO observer should submit one progress report every four years;
2. ECOSOC encourages the NGO observer to extend their activity to more regions around the world.

ECOSOC’s stipulations also include withdrawal mechanisms for NGOs to relinquish their observer status. If NGOs have committed infractions recognized by the international community, such as illegal drug trade, money-laundering, or arms trading, or if an NGO abuses the observer status, or contributes nothing to the work, they will be removed from observer status.

It is necessary to clarify one term before we go further. “Sovereignty, sovereign rights and jurisdiction” in the Arctic can be understood as single national sovereignty, the sovereign rights and jurisdiction claimed by single nation, instead of collective or alliance of eight or five Arctic states. We usually hear the term “collective security, or alliance defense rights,” but never “collective sovereignty, sovereign rights and jurisdiction.” Another term, “three ‘must’ recognitions,” means “one package recognition”, but not selective recognition in the time and scope because “three-must” does not clarify existing sovereignty, sovereign rights and jurisdiction declared by Arctic states, or potential sovereignty to be claimed by them in the future. In addition, non-Arctic observers

must recognize all Arctic states' sovereignty, sovereign rights and jurisdictions, instead of recognizing Arctic Country A but neglecting Arctic Country B.

THE ANALYSIS OF THE “THREE ‘MUST’ RECOGNITIONS”

1. Sovereignty: internal water and territorial waters

Except for the tiny Hans Island there are scarcely territorial sovereignty disputes around the Arctic. That is to say, it is almost no problem for non-Arctic states to recognize Arctic states' sovereignty including territorial land, internal water, territorial water and territorial air. However, in the future, the disputes will likely occur in the over-length straight baseline, most of which is not in the line with customary law reflected in the British-Norway Fishery Case 1951. The longest straight baseline has not exceeded 54 nautical miles in the British-Norway Fishery Case. However, as far as we know, lots of straight baselines around Arctic islands exceed 54 nm, which causes problems around transit passage and innocent passage. As we know there are differences between them.

2. Sovereign rights: outer continental shelf and exclusive economic zones

A larger question is the sovereign rights in the Arctic, which are strongly related to outer the continental shelf and the exclusive economic zone (EEZ). The delimitation of the outer continental shelf of will probably bring contentious debates among Arctic countries. An equally serious problem is the clarification of sovereign rights within an EEZ. A large amount of “residual rights” are not defined clearly, such as remaining fishery rights, and legality of military uses of the EEZ. UNCLOS does not give a clear answer on which country should hold residual rights, but it is recognized that the coastal state does not have full residual rights in the EEZ. The rights of the coastal state in its EEZ are listed in Article 56 of the Convention. In principle, stakeholders are not allowed to exercise the rights prohibited by international law apart from rights not prohibited because the EEZ's legal status is different from territorial water and high seas. Article 59 of UNCLOS set up that the disputes “should be resolved on the basis of equity and in light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as the international com-

munity as a whole.” As a result of the uncertainty of sovereign rights within an EEZ in Arctic, there is much flexibility and many significant differences concerning jurisdiction among the countries. While it is true that there are disputes in warm waters, the few EEZs in the Arctic will meet more challenges due to the harsh climate in the Arctic.

Besides the sovereign rights within an EEZ and the continental shelf, there are a few disputes of sovereign rights such as that between the US and Canada in the Beaufort, between the US and Russia in the Bering Strait. In these cases, which side non-Arctic states expected to take? Whose sovereign rights should non-Arctic states recognize? Unfortunately, the “three ‘must’ recognitions” do not give us an answer.

Some may argue that non-Arctic states should keep far away from the Arctic’s internal disputes. However, the matter is not so simple. The most ironic contention is around the legal status of the EEZ and continental shelf around the Svalbard Islands. Neither UNCLOS nor the Svalbard Treaty signed in 1920 give the exact answer to the legal status of Svalbard EEZ and continental shelf. Many Arctic states, including Russia, Iceland and Denmark, maintain that the Svalbard Treaty is applicable to the EEZ and continental shelf, as well as outer continental shelf. Norway has insisted that the treaty is limited to the Svalbard Islands and territorial waters. Which side should non-Arctic states take? Whose sovereign rights should non-Arctic states recognize? Can we say the matter still has nothing to do with non-Arctic states? Korea, Japan and China are all parties of the treaty, and have equal rights of economic development and scientific investigation in the islands and the related waters. The legal status of the EEZ and continental shelf, including the outer continental shelf, has an important bearing on the interests and rights of China and other non-Arctic states. They are keeping a close eye on the progress. Obviously, “three ‘must’ recognitions” neglects history and, therefore, are illogical and self-defeating.

WEIGHING THE PROS AND CONS

How might a non-Arctic state benefit from observer status? What do non-Arctic states suffer from “three-recognition”? It is worth considering the advantages and disadvantages:

Advantages include being able to sit behind the conference table, being able to receive some early documents to have access to information in advance. Additionally, observers may be able to exchange with representatives from Arctic states and take part in the activity of working groups of Arctic Council. Disadvantages include the fact that observer status may give non-Arctic states no real privileged information since

most of the information and discussion in Arctic Council meetings is public. It may not be possible to maintain the communication efficiency some non-Arctic states have hoped for. Oran Young notes, "Representatives of the observer states are seldom allowed to speak in meetings of the Arctic Council managed by the chair of the Senior Arctic Officials, much less in the biennial ministerial meetings of the council. Nor do they have access to discussions among the Senior Arctic Officials themselves or in meetings of the deputy ministers, a recent innovation in the practice of the council." The present author fully agrees with Young on this point.¹

Is it possible to have the effective engagement of the non-Arctic states in the Arctic Council? According to Young, "There is no established practice that provides opportunities for meaningful engagement regarding specific issues, and the environment of council meetings is not conducive to real dialogue."²

Does attendance at the scientific activities of working groups make sense for non-Arctic observer states? Oran Young comments further that, "...activities of the working groups do not provide an effective venue for real dialogue regarding issues on the new Arctic policy agenda. Representatives of all the non-Arctic state observers regard this situation as highly unsatisfactory."³

The reality has proven it is only wishful thinking that non-Arctic states will profit from observer status in the Arctic Council. "All six states that are currently permanent observers have found this status unsatisfactory and generally frustrating in terms of providing opportunities for substantive engagement regarding issues now emerging on the Arctic policy agenda."⁴

Non-Arctic states are not able to obtain what they wish as Arctic permanent observers. To make matters worse, non-Arctic states will likely lose the initiative and flexibility of the diplomacy because they have recognized Arctic states' "sovereignty, sovereign rights, and jurisdiction" in advance, particularly in one package. Such recognition amounts to offering more sovereignty rights than Arctic states have ever dreamed of but without them having to pay any price. It is like sending a blank check to Arctic states, and indulging them to sign by themselves at their will. Arctic states will be overjoyed by non-Arctic states' subjection. In coming international negotiations, non-Arctic states will be in a very disadvantageous position. The "three-must-recognitions" means one package of recognition, not selective admission. If you were the observer, you would have no choice but to act as an obedient student!

The question is what a non-Arctic state can get from observer status by paying such a price. Many interests and rights enjoyed in the Arctic Ocean can be gained according to existing recognized international

instruments. Is it worthwhile to get a poor seat behind the Arctic Council table by sacrificing such valuable diplomacy resources? Worst of all, non-Arctic states are marketing with their future rights and interests! In a word, the observer status will bring them much obligation but no rights and benefits. Non-Arctic states should understand that it is impractical to combine their own rights and interests with observer status.

In conclusion, the observer status of Arctic Council is not an optimal choice for non-Arctic states currently. Perhaps it is one practical alternative to apply for ad hoc observer, at least now.

ARE THERE ANY OTHER WAYS FOR NON-ARCTIC STATES TO TAKE PART IN ARCTIC GOVERNANCE?

Because of different geography and geopolitics, it is difficult to form a comprehensive legally binding framework like the Antarctic Treaty in the foreseeable future. Arctic governance will be fragmented in the coming years, which offers much opportunity for external actors to take part in Arctic governance. What is clear is that the Arctic cannot go its own way, carving out a developmental path independent of global forces. The impacts of climate change and globalization have also intensified interactions between the Arctic and other parts of the planet.

There is a trend of external actors moving from the periphery to the center of Arctic affairs and this is logical as many of the existing impacts in the Arctic originate from outside the region. Arctic is majorly affected by global climate change. For example, climate warming is a global problem requiring international consensus (at least theoretically) to reduce CO₂ emissions from industrialized and developing countries. In a similar vein, shipping is an international sector that requires consensus on the development and implementation of instruments to reduce environmental impacts, guarantee safety of navigation, and develop economically efficient activities.⁵

In the meanwhile, the Arctic is the driver of the global climate change. For instance, the Arctic Oscillation seriously affects climate in the middle latitudes covering China, Korea and Japan, as well as western European countries. It is necessary to find the mechanism of atmospheric circulation and ocean current relationship between the Arctic and mid-latitudes. It's fair to say non-Arctic states have legitimate scientific interests in the Arctic to say nothing about navigation, fishery interests, and so on. The Arctic has been covered by lots of international instruments and entities. The role of global maritime and environmental instruments such as UNCLOS, the International Maritime Organization, and the United Nations Framework Convention on Climate Change (UNFCCC) will play an integral and critical role in shaping the future

of the Arctic governance. Existing multilateral treaties such as the Svalbard Treaty provide the strong foothold for non-Arctic states like UNCLOS. In particular, the central Arctic Ocean is beyond the jurisdiction of Arctic nations. No country or group of countries has sovereignty over the North Pole or the Arctic Ocean around it.⁶ Any party of UNCLOS is entitled to fish in the doughnut, and so, any multilateral and regional fishery agreements or treaties have no legally binding force or enforcement to non-Arctic states that is not included. Ironically, staying outside of the Arctic Council creates the freedom for non-Arctic states relying on existing international instruments.

Even though it is difficult to set up one comprehensive treaty, it does not mean it is impossible to establish one agreement concerning certain areas, such as Arctic fisheries. A plausible scenario appears to be the one where Arctic and non-Arctic states negotiate to address gaps in the Arctic regime on an issue-by-issue basis.

What will happen if Arctic states stick stiffly to obstructing the participation of non-Arctic states? If they continue to do so, the challenges now facing the Arctic Council may mean that it will gradually be supplanted by evolving sectoral governance regimes. The Arctic Council stands very much at a crossroad. "The Arctic Council is in danger of being perceived as an exclusive club, making major decisions about the Arctic with little regard for the concerns and interests of non-Arctic states. The existing approach risks creating the conditions whereby non-Arctic states could simply disregard the arrangements, rules, and codes of conduct that the Arctic Council creates for the Arctic and instead work outside existing frameworks."⁷ The "Arctic Council will need to become a forum not just of the Arctic nations but for all countries and organizations with a genuine interest in the region."⁸ If so, the Arctic Council will attain strong soft power and public calls around the world.

Obviously, the Arctic states have "stronger interests and a greater say in the future of the Arctic."⁹ But they need to take into account the legitimate interests of non-Arctic states. In the meanwhile, non-Arctic countries need to consider reasonable concerns of Arctic states and respect their sovereignty, sovereign rights and jurisdiction on the basis of recognized international treaties and various dialogues. Nonetheless, only when both Arctic and non-Arctic states find the balance based on mutual respect and understanding, will there be a prospect of settling the Arctic issue.

Notes

1. "Listening to the Voices of Non-Arctic States in Arctic Ocean

- Governance”, by Oran Young, Research Professor, Bren School of Environmental Science and Management, University of California (Santa Barbara), 2012 North Pacific Arctic Conference, August 9, 2012, p. 17.
2. *Ibid.*, p. 18.
 3. *Ibid.*, p. 18.
 4. *Ibid.*, p. 17.
 5. Clive Schofield and Tavis Potts, “Emerging Arctic Navigational Opportunities and Arctic Governance,” CCLR 4, 2009, p. 479.
 6. Communication from the Commission to the European Parliament and the Council: The European Union and the Arctic Region, Brussels, November 20, 2008, COM (2008) 763 final, p. 9.
 7. Kristofer Bergh, “Arctic cooperation must become more inclusive,” July / Aug 11, SIPRI, <http://www.sipri.org/media/newsletter/essay/julyaugust11>
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Comments on Chapter 6: Japanese perspective

Fujio Ohnishi¹

INTRODUCTION

To begin with, I would like to express my gratitude for this opportunity to take part in discussions on one of the most important and topical issues in current Arctic International Relations. Being a student of international relations with a special focus on the Nordic regional arrangements both in Scandinavia and the Barents Euro-Arctic region, I am an avid follower of Professor Young’s research. He is not only a respected scholar but has long maintained a strong commitment to Arctic issues.

In attempting to solve a puzzle to find a way forward that satisfies the essential concerns of both Arctic and non-Arctic groups, the considerations and recommendations in the chapter by Professor Young are very persuasive and appear largely compatible with Japanese interests in Arctic. In particular, his recommendation on establishment of an Arctic Ocean Forum (hereafter AOF), a consultative body with no decision-making powers, is in line with Ocean Policy Research Foundation’s (OPRF) opinion expressed at the 2011 East-West Center/Korea Transport Institute Conference, that ocean governance for the Arctic

Ocean should be engaged in not only by the coastal states but by all countries relatively close to the polar region, such as those in the area of the North Pacific. This commentary gives a brief overview of the Japanese relationship with the Arctic and then proceeds to consider the analysis submitted by Professor Young. At the end, the commentary considers how best the idea of an AOF might be realized.

JAPANESE INVOLVEMENT IN THE ARCTIC

Briefly speaking, Japanese involvement centers mainly on the scientific fields. Japan has engaged in polar science for more than half a century. This long standing interest has naturally prompted research in the Arctic as well. More recently, there are growing economic prospects centering on the importation of oil and gas resources as well as the shortened passage between Europe and Asia. Japanese companies have started to look at the Arctic as a place of opportunity. However, Japan's economic involvement is weaker than its scientific involvement, since it still remains within the realm of possibility rather than fact. It is expected that a political initiative would mitigate a variety of risks and promote Japanese involvement in the Arctic.

Aside from the brief sketch mentioned above, however, a closer look reveals that Japan has in fact been involved in a variety of Arctic affairs for the past century. There are five milestones. The first historic involvement of Japan in the Arctic dates back to the Spitsbergen Treaty signed in 1920. As one of the High Contracting Parties to the Treaty, Japan holds certain rights and obligations under its legal regime, including rights of fishing and hunting in the territories and the territorial waters (Art.2), liberty of access and entry (Art.3), establishment of an international meteorological station (Art.5) and same treatment with the nationals of Norway with regard to methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights in the territories (Art.7). In practice, these rights cannot be executed unilaterally but in accordance with the relevant Norwegian jurisdiction.

Currently, some conflicts have been renewed among signatory parties, to some extent, as to interpretation of the Treaty's applicability regarding the EEZ and continental shelf around Svalbard. Unfortunately, perceptions on the strategic importance of Svalbard have been weak in the Japanese Ministry of Foreign Affairs. However, current developments in the High North increase the strategic importance of Svalbard for all signatories; to this, Japan is no exception.

Japan's second important involvement in the Arctic came in the field of science. During the Cold War, there were several examples of collaborative research on the Arctic atmosphere, ocean, and fauna and flora

between Japan and the US and Japan and Canada. After the Murmansk speech by Gorbachev in 1987, the political atmosphere regarding Arctic research changed drastically, increasing the interest in the Arctic among natural science researchers. In Japan, the National Institute of Polar Research (hereafter NIPR) established the Arctic Environment Research Center in 1990, and opened a research station at Ny-Ålesund on Svalbard in 1991 in collaboration with the Norwegian Polar Research Institute². Joining the International Arctic Science Committee from 1991, NIPR began to engage in a variety of national and international research activities in the Arctic. While NIPR focused on terrestrial fields of research, the Japan Marine Science and Technology Center (currently, JAMSTEC: Japan Agency for Marine-Earth Science and Technology) began marine research in the Arctic from 1991 in collaboration with the U.S. JAMSTEC conducted its first research cruise with the oceanographic research vessel 'Mirai' (Future) in 1998. Since then, invaluable observational studies have resulted from ten Arctic expeditions by JAMSTEC³

More recently, faced with the increasing effects of climate change in the Arctic Ocean and their potential impact on the Arctic terrestrial environments, as seen in the accelerated retreat of the Arctic ice cap, Arctic research in Japan has been revitalized. In May 2011, the Consortium for Arctic Environmental Research was founded by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) to bolster Arctic research activities in Japan. In June 2011, in the course of a governmental initiative for facilitating green innovation and environment-friendly technologies, MEXT initiated the Green Network of Excellence, within which the five year Arctic Climate Change Research Project was begun⁴

A third important involvement in the Arctic was also given impetus by Gorbachev's proposal regarding opening of "the North Sea Route." To examine all the possibilities of the NSR as an international commercial sea-lane, the Ship & Ocean Foundation (currently OPRF), aided by the Nippon Foundation, carried out the 'International Northern Sea Route Programme (INSROP)' from 1993 to 1999. INSROP was an international project of close collaboration among Japan, Norway and Russia, with participating researchers numbering 390 from 14 countries pursuing multi-disciplinary study of the NSR. Phase I of INSROP was carried out from 1993 to 95 and Phase II over the two-year period from 1997 to 98. Four sub-programmes were implemented in Phase I: a) Natural Conditions and Ice Navigation, b) Environmental Factors and Challenges, c) Trade and Commercial Shipping Aspects of the NSR, and d) Political, Legal, Cultural and Strategic Factors. Each sub-programme produced some 20 to 40 studies⁵

In Phase II, integration of the results of the studies in Phase I was carried out, together with supplemental work suggested by an international evaluation group. INSROP GIS (Geographical Information System) was formulated in Phase II on the basis of extensive data accumulated in both Phases. Another outcome of Phase II was navigation simulation in the NSR, which evaluated the NSR operations by making use of sea ice statistics on the routes and newly developed algorithms for ship performance prediction in ice-infested waters. An experimental voyage was performed with an ice-strengthened cargo ship, the *Kandalaksha* (14,700 DWT) from Yokohama to Kirkenes in Norway, during which observations and measurements of various items by a research team of eighteen experts and specialists on board from Japan, Russia, and Canada were made. The voyage afforded a good chance to deepen understanding of natural conditions and ship performance through the NSR. In advance of the establishment of the Arctic Regional Hydrographic Commission in 2010, INSROP pioneered charting of the shipping route in the Arctic⁶

A fourth involvement can be seen in efforts for establishing a Japanese Arctic policy agenda. In line with increasing prospects of development in shipping and exploitation of oil and gas in the Arctic Ocean, Japan officially declared its application for Observer Status of the Arctic Council in April 2009⁷. Since then, the Japanese government attends meetings of the Arctic Council as an ad-hoc observer. The Arctic Task Force was established in the Ministry of Foreign Affairs in September 2010 as an aid to identifying the Japanese interests in the Arctic⁸. To date, however, an official strategy toward Arctic Ocean governance has not been launched.

In line with efforts for drawing up a Japanese policy agenda, OPRF launched ‘the Arctic Conference Japan’ in 2010, with experts in international law, security, science, shipbuilding, shipping and climate. Over the past two years, conference members have continued to meet to establish a unified view of multifaceted Arctic issues and to address Japan’s Arctic policy and strategy so as to meet the interests of Japan and the world. In its proposals released on April 25, 2012, the Arctic Conference Japan urged government to:

1. establish a “playmaker” for Arctic policy,
2. engage actively in Arctic Ocean management,
3. be actively involved in environmental protection of the Arctic Ocean,
4. reinforce involvement in Arctic natural resources development,
5. bolster Arctic research,

6. promptly respond to logistical changes by the opening of Arctic seaways,
7. design a new security program in response to opening of the Arctic seaways,
8. contribute to the establishment of order in the Arctic Ocean,
9. intensify Japan-Russia dialogue.⁹

When it comes to business and investment in the development of shipping and exploitation of gas and oil, the incentives for Japanese companies seem rather unpromising compared to companies in other non-Arctic states such as China and Korea. The main reason is that economic incentives are less apparent due to the low level of economic profitability. As to oil and gas from the Arctic, its estimated costs are higher than for resources from the Middle East.¹⁰ The commercialization of shale oil also decreases the prospects of importing energy resources from the Arctic. Since the Great East Japan Earthquake in March 2011, the demand for oil and gas as alternatives to nuclear power plants has increased. The attractiveness of the Arctic as a producer of oil and gas resources will increase when all nuclear power plants are deactivated for the long term. Currently, the Japanese government has decided to restart some nuclear power plants and has not made clear its new long term energy policy.

In terms of shipping, the Northern Sea Route (hereafter NSR) is potentially important option for shipping industries, especially those involving tanker and bulk carrier operations that are taking advantage of the shortened passage between Europe and Asia. However, uncertainty regarding passage costs on the NSR reduces the attractiveness of the shorter distance¹¹. Government support in efforts to clarify shipping costs for the NSR is hoped for by the shipping industries¹². This may take various forms. Concluding a special agreement regarding passages in the NSR with Russian authorities is one option.

Summarizing the overview of the Japanese involvement, one should distinguish actual involvement and potential interests in the Arctic. As to actual involvement, science has been the main focus. This means that climate change and its global impact is of such high concern in Japan that the Arctic is an important research field. A potential interest is also growing in the area of business and investments. What is expected of the government is formulation of a cross-cutting strategy that integrates the policy priorities for science, environment, transport, industries, energy, foreign affairs, and defence. More recently, a nonpartisan group of parliamentarians on Arctic policy has been formed. This can be considered a first step in this new direction.

PROFESSOR YOUNG'S CHAPTER

In turning to the chapter by Professor Young, Section one included the highly significant observation that the search for an effective means to address the legitimate concerns of non-Arctic states, without interfering with or distorting existing cooperative arrangements such as the Arctic Council, is an increasingly important puzzle. In Section two, the chapter addressed the past and current postures of Arctic politics. I agree with the following four descriptions by Professor Young: that the Arctic has become a focus of global attention, that marine issues have taken center stage, that managed development is overshadowing sustainable development, and that Arctic policy is becoming a matter of high politics. In Section three, Professor Young argues that current attitudes of the Arctic states are not tenable. Japan, as a non-Arctic state, is concerned about a move to draw a clear line between the Arctic states and non-Arctic states in addressing Arctic policy agenda issues. Professor Young's observation in the same Section that non-Arctic states have acknowledged rights and interests in the Arctic is also highly welcome. This observation is very important as these rights and interests are the legitimate foundation for non-Arctic states to engage in Arctic Ocean governance. In addition, non-Arctic states also have responsibilities regarding matters of environmental protection and sustainable development in the Arctic, as Professor Young pointed out. Tightening of the links between the Arctic and the global system would enable more involvement of non-Arctic states in Arctic Ocean governance.

Regarding proposals for solving the puzzle in Section four, I agree with the analysis by Professor Young that Arctic Council membership is not negotiable and that permanent observer status in the Arctic Council is not the solution. It is in the interest of non-Arctic states to obtain a seat, which would secure a more efficient mechanism for our voices to be heard in Arctic Ocean governance. Therefore, the two alternatives he offers in Section five, which are not exclusive, deserve due consideration here. Sketching the emerging Arctic Ocean regime complex, Professor Young argued for the Arctic Council as an integrative force in this regime complex. We hope that the Arctic Council can function as an integrative force across a number of issue-specific regimes so that Arctic Ocean governance will be managed in a more effective manner. Since non-Arctic states take part in some of these regimes, better functioning of the Arctic Council would indirectly promote the effective integration of non-Arctic states voices into Arctic Ocean governance as a whole.

In considering an AOF as a consultative body, the proposed plan in Section six would seem desirable in meeting the request that non-Arctic states' voices be heard. The idea of an AOF is important for five reasons. First, it is a new idea. Second, it is based on the understanding

that not only the A8 but also non-Arctic states have legitimate rights, interests and obligations. Third, by doing so, the idea of an AOF achieves differentiation in commitment between the A8 and non-Arctic states. Namely, an AOF would serve as a very practical compromise between both sides, which is hard to find in other forms. Fourth, the idea of an AOF skillfully avoids the issue on who are included in non-Arctic states by adding a term of reference on participation at their own expense. An issue on who the key non-Arctic states are may become a matter of concern in future, but currently participation in an AOF should be open to everyone. Such an informal forum would better serve than a formal framework in terms of membership.

VITAL POINTS FOR REALIZING THE AOF IDEA

To proceed with our discussion on how to enhance the idea of an AOF, there are three points to consider. First, it is important to take a serious first step in concrete initiatives. Both the A8 and non-Arctic states need to participate in this. Non-Arctic states might be invited to participate in the North Pacific Arctic Conference (hereafter NPAC) to discuss how best to establish an AOF. On the initiative of NPAC, governments of non-Arctic states may then meet together to discuss the idea of an AOF.

On the other hand, it would also be a very important step if an initiative is put forth from the side of the A8. Without consent of the A8, any likely concept of an AOF would be stillborn. As Professor Young suggests, the current Chair of the Arctic Council, Sweden, is competent to fulfill this innovative task, given its many and varied contributions to international society in the past. We hope that Sweden would combine the current discussion on the status of observers in the Arctic Council with the idea of an AOF, thus initiating a dialogue with non-Arctic states.

Second, the robustness of an AOF would depend on the degree of how effectively the Arctic Council takes into consideration the voices of non-Arctic states that are expressed in an AOF setting. Professor Young said in his chapter that any such effort must concentrate on effective communication rather than on the mobilization of pressure. I agree with this view. An AOF should be a forum where the A8 and non-Arctic states might equally express their respective concerns. However, it should be underscored that if the Arctic Council fails to sufficiently listen to the voices of non-Arctic states, it might create a situation where the non-Arctic states feel they must pursue a more empowering platform. It would be regrettable if the ineffectiveness of an AOF lead to establishment of a non-Arctic Council.

Third, while focusing on the establishment of an AOF, it is also im-

portant to figure out appropriate priorities for its meetings. While the basic features are already outlined in Professor Young's chapter, I would suggest that a start-up meeting consider the range of themes that would be included in an AOF conference. There should be a variety of options. One option would be Marine Scientific Research in the Arctic. As Japanese involvement centers on scientific fields, inclusion of this topic would be highly recommended. There has already been a potential conflict regarding the rights of all states to conduct marine scientific research as stipulated in Section 13 of UNCLOS and the jurisdiction of coastal states. Rules and procedures of coastal states differ regarding the granting of consent for marine scientific research. This might lead to be insistent demands to settle claims between some non-Arctic states and Arctic coastal states. This topic should definitely be included in an AOF conference, a view consistent with Japan's experience in the Arctic. I would appreciate hearing the voices of other non-Arctic states regarding possible structures of an AOF. Finally, I believe that the A8 and non-Arctic states would succeed in building constructive relationships in Arctic Ocean governance.

Notes

1. The views expressed in this commentary are those of the author and do not necessarily reflect the official position of the Ocean Policy Research Foundation.
2. Takashi Yamaguchi, "Hokkyoku tanken kara chikyu ondanka saizensen he"(From Arctic Expedition to Global Warming Research), Kisho kenkyu noto(Meteorological Research Note), No.222 (2011) pp.5-6.
3. Ocean Policy Research Foundation, Nihon hokkyoku kaigi hokokusho (Report of The Arctic Conference Japan) (Tokyo: Ocean Policy Research Foundation, 2012) p. 28.
4. Ibid., pp. 25-26.
5. More information about INSROP is available below: Ship and Ocean Foundation, The Northern Sea Route: The Shortest Sea Route linking East Asia and Europe (Ship and Ocean Foundation, 2001) http://www.sof.or.jp/en/report/pdf/200103_rp_ar0103e.pdf/ (as of 24.07.2012).
6. See more detail information. Ocean Policy Research Foundation, New Era in Far East Russia and Asia (Tokyo:Ocean Policy Research Foundation, 2006) http://www.sof.or.jp/en/activities/index6_1.php (as of 24.07.2012).
7. It may be worth noting that Japan holds observatory status in the Barents Euro-Arctic Council established in 1993. However, its interest in the BEAC had declined until the end of the 1990's. Hokkaido prefecture joined the Northern Forum, which was formally launched

- in 1991.
8. http://www.mofa.go.jp/mofaj/press/release/22/9/0902_01.html (as of 24.07.2012).
 9. About press release, see OPRF's blog. http://blog.canpan.info/oprf_en/(as of 24.7.2012). About proposals, please see the material below. Nihon Hokkyoku Kaigi (The Arctic Conference Japan), Hokkyokukai no jizoku kano na riyo ni muke nihon ga tadachi ni okonau beki sisaku (*Policy Proposals : Actions and Measures Japan is To Take With a View to Ensuring Sustainable Use of the Arctic Ocean*) (Tokyo: Ocean Policy Research Foundation, 2012), pp. 1-9. Currently, these proposals are available only in Japanese. The English translation will be provided through OPRF internet portal.
 10. Charles Emmerson and Glada Lahn, *Arctic Opening: Opportunity and Risk in the High North* (London: Lloyd's and Chatham House, 2010) p. 23.
 11. Interview with an expert of planning section in the shipping industries, Tokyo, 31.07.2012.
 12. *Ibid.*

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1. Takashi Yamaguchi, "Hokkyoku tanken kara chikyu ondanka saizensen he"(From Arctic Expedition to Global Warming Research), Kisho kenkyu noto(Meteorological Research Note), No.222 (2011) pp. 5-6.
2. Ocean Policy Research Foundation, Nihon hokkyoku kaigi hokokusho (Report of The Arctic Conference)
3. *Ibid.*, pp. 25-26.
4. More information about INSROP is available below: Ship and Ocean Foundation, *The Northern Sea Route: The Shortest Sea Route linking East Asia and Europe* (Ship and Ocean Foundation, 2001) http://www.sof.or.jp/en/report/pdf/200103_rp_ar0103e.pdf/ (as of 24.07.2012).
5. See more detail information. Ocean Policy Research Foundation, *New Era in Far East Russia and Asia* (Tokyo: Ocean Policy Research Foundation, 2006) http://www.sof.or.jp/en/activities/index6_1.php (as of 24.07.2012).
6. It may be worth noting that Japan holds observatory status in the Barents Euro-Arctic Council established in 1993. However, its interest in the BEAC had declined until the end of the 1990's. Hokkaido prefecture joined the Northern Forum, which was formally launched in 1991.
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8. About press release, see OPRF's blog. http://blog.canpan.info/oprf_en/ (as of 24.07.2012). About proposals, please see the material below. Nihon Hokkyoku Kaigi (The Arctic Conference Japan), Hokkyokukai no jizoku kano na riyo ni muke nihon ga tadachi ni okonau beki sissaku (Policy Proposals : Actions and Measures Japan is To Take With a View to Ensuring Sustainable Use of the Arctic Ocean) (Tokyo: Ocean Policy Research Foundation, 2012), pp. 1-9. Currently, these proposals are available only in Japanese. The English translation will be provided through OPRF internet portal.
 9. Charles Emmerson and Glada Lahn, *Arctic Opening: Opportunity and Risk in the High North* (London: Lloyd's and Chatham House, 2010) p.23.
 10. Interview with an expert of planning section in the shipping industries, Tokyo, 31.07.2012.
 11. Ibid..

Comments on Chapter 6: Korean perspective

Sung-Jin Kim

As a former Minister of Maritime Affairs and Fisheries of the Republic of Korea I am convinced that the topics of Professor Young's chapter are important: they are directly related to all of the Arctic Ocean agenda items that we have been discussing in the past two years. He examines the limits of the current Arctic governance system as new and diverse agenda items have emerged. He notes the global demand for new economic and commercial opportunities of the Arctic Ocean and offers a comprehensive analysis on the current governance system. In addition, he points out that the rights and responsibilities of emerging non-coastal global players have become more important and offers a new direction on how best to reflect their capabilities and opinions on the Arctic Ocean governance.

Professor Young points out that the current international system is inadequate in solving the emerging international conflicts relating to the Arctic Ocean and needs to be revised to coordinate different national interests. The ultimate goal of Arctic Ocean governance is, according to Young, to find a rational way of using the Arctic Ocean in a sustainable and peaceful way by satisfying various national interests of all Arctic coastal and non-Arctic coastal states without interfering with exist-

ing status of the Arctic Council (AC).

As seen by Professor Young, the Arctic Circle countries would like to maintain their exclusive vested interest in the region while the non-Arctic circle countries have their own interests in developing sea routes and resources. He concludes that instead of focusing on the role of observers at the AC the non-Arctic countries should actively leverage a regime complex and informal negotiation procedures. Given that the policies of Article 5 coastal states under the United Nations Convention on the Law of the Sea (UNCLOS) have a pivotal role in the Arctic governance, the AC will continue to enjoy its unique status. In addition, Professor Young proposes a system in which high-level officials of the eight Arctic countries participate in the AOF and have access to discussions where the AC reviews the opinions. While I highly praise Professor Young's presentation I would like to add some of my own personal thoughts below. First, Professor Young mentioned the conflict between the Arctic coastal (A5) countries and non-coastal states (Finland, Iceland and Sweden). It seems to be in line with the international trend where coastal countries are strengthening and expanding their maritime jurisdiction to secure marine resources under UNCLOS. He points out that a shift to A5 from A8 countries within the AC can be seen as following the trend of the times. Then, in a mid- and long-term perspective, the AC will be likely to lose momentum due to tension or conflicts over member states' interests. And, in this line of thought, it is likely to be more efficient for Korea and other non-Arctic countries to concentrate on boosting cooperation with individual A5 countries than focusing on joining the AC. I basically agree with Professor Young for the same reason but believe that an observer status at the AC has a limited yet significant meaning as it allows a country to have an official access to general discussions on the diverse Arctic issues. In addition, the new body that Professor Young proposes might take some considerable time to be established. I, therefore, believe that the countries also need to pursue an observer status so that they can formally participate in the discussions as timely as possible.

Professor Young also proposes that non-Arctic countries make every effort to establish an Arctic Ocean regime complex, informal negotiation procedures, and various conferences and forums. As indicated earlier I believe this approach is the best practical and realistic alternative for non-Arctic states within the AC framework. What I want to stress is that diverse voices from non-Arctic countries must not ring hollow and disappear but be heard and accepted by Arctic states. In order for that to happen, the various public discussion venues Professor Young suggested are necessary and they need to be more systematically framed and developed. This is the right time for producing tangible outcomes

instead of sweet rhetoric. Here is a good example: non-Arctic states such as Korea which have interests in the Arctic routes and resource development can coordinate their opinions and forward their shared interest to the AC member states. But it would, it seems, take quite a while to reach this stage with significant amounts of preliminary discussions and cooperation. The Asian Forum on Polar Sciences with scientists from Korea, China, Japan, India and Malaysia already exists but its influence on decision making seems rather limited.

While Professor Young noted the main economic interests of non-Arctic nations including marine routes and resources, I would like to point out that there are much broader issues. One such issue is the climate change in the Arctic Ocean and its impact on the Arctic, its neighboring areas, and the entire planet. For example, changes in the Arctic Ocean currents are altering fisheries in the northwest Pacific and significantly transforming coastal economic activities of the region including the livelihood of fishermen. The North Pacific countries must make concerted efforts to respond to these changes, including sharing scientific information and data relating to the Arctic region. In Korea, we are under a direct influence of climate change in the Arctic: we have experienced unprecedented cold spells and heavy snow storms, changes in the marine ecosystem and altered courses of typhoons following changes in sea water temperatures. Professor Young's alternative, the AOF, is very significant for these reasons. I particularly agree with his point that responsibilities of non-coastal countries and discussions on securing the livelihood and the role of indigenous peoples, who will be directly affected by these development, must be included in the AOF. I would like to add to these points by suggesting the scope of the AOF's participants. A comprehensive membership is required that include not only the proposed A8, non-coastal and EU countries but also indigenous peoples, scientists and policy experts as well as representatives from businesses and international organizations. I believe further in-depth discussion on this matter is also called for at NPAC. In addition, making it a G20 summit agenda item is, in my opinion, desirable. However, what practical benefits can be achieved under the current structure is not clear. It is questionable how the A8 countries stand on this as the G20 summit has more authority than the ministerial body of the AC. In addition, we need to review ways to discuss the issue at regional economic forums such as the APEC ministerial meetings or at comprehensive conferences such as World Ocean Summit (held in Singapore in February, 2012).

QUESTIONS FOR DEVELOPMENT AND SUGGESTIONS

I would like to point out that many controversial issues still remain re-

garding the membership of the AC even though Professor Young noted them on the chapter and I, too, mentioned them earlier. For example, countries are expected to continue to make effort to secure an observer status even though negative opinions are prevalent on the effectiveness of such status and the possibility of adding more observers. There is also the possibility that the existing observers may express more complaints. Therefore, to some extent it is important to improve the governance of the AC in terms of better reflecting the observers' opinions on the Council or adding more observers to it. I would like to invite Professor Young's views on this matter.

In addition, given the current thawing conditions, bilateral agreements between relevant countries can solve most of the main economic issues for a while such as the Arctic routes, energy and fisheries resources development. I want to learn what the AC's stance is on this and which stance will be more desirable.

The issue of the Arctic Ocean governance that Professor Young presented may be called a result of the past discussions at NPAC. Moving forward, the most important task is how we can deliver our findings to the relevant authorities such as the AC and non-AC states in order to formulate a new mechanism like the AOF.

For this we need to concretely develop the "Terms of References" Professor Young suggested. For example, we can set up the so-called Small Technical Group inside NPAC to lead the discussions as well as to identify technical items including Terms of References. We can also have more open, detailed and substantial discussions on regional basis led by experts from Korea, China and Japan.

Last but not least, I would like to propose a step-by-step approach to find ways resolving the difficult puzzle in the Arctic Ocean Governance. Clearly, the first step should be taken by NPAC.

Active participation and dialogue among relevant nations, experts and corporations are needed. We also need to form a cooperative body (or bodies) that can handle these matters comprehensively. When Neil Armstrong first stepped on the Moon 43 summers ago, he said that it was "one small step for man: one great leap for mankind." I am confident that NPAC will become one giant leap for mankind in resolving puzzles and showing us the possibilities of a bright future.

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