New Directions for Governance in the Arctic Region

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The signing of the Arctic SAR (Search and Rescue) Agreement and establishment of a Permanent Secretariat for the Arctic Council at the 2011 Nuuk Ministerial marked a move from a soft to hard law approach to governing the Arctic region. This article examines the events that led to acceptance of a more robust governance framework, involving climate changes leading to greater economic activity and geopolitical interest in the Arctic. It goes on to evaluate the spectrum of possible governance frameworks for the Arctic region, from the Ilulissat approach to a regional seas agreement to an Arctic Treaty, and examines issue-areas that are most likely to result in a legally binding instrument in the short-to-medium term. The article concludes by suggesting that limitations to the scope and intensity of potential regional governance frameworks in the Arctic make it likely that a regional seas agreement will be the end point of regional governance measures, at which point Arctic environmental issues could be de-securitized and dealt with as part of a normal, political and bureaucratic order.

Introduction

The 2011 Arctic Council Ministerial in Nuuk, Greenland marked a watershed in the circumpolar region's political history. For the first time in the Arctic Council's fifteen-year existence, the eight member states signed a legally binding agreement, the *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*. Furthermore, the Arctic states agreed to establish a Permanent Secretariat for the Arctic Council in order to strengthen its capacity to respond to the challenges and opportunities it now faces. The Council is currently working on additional instruments by which to regulate the Arctic Ocean, including the development of a mandatory Polar Code for ships through the International Maritime Organization (IMO), an international instrument on Arctic marine oil pollution preparedness and response, and through recommendations for ecosystem-based oceans management stemming from an Arctic Ocean Review that will be completed in 2013.

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It is clear that climate changes and their effects are pushing the Arctic states towards enhanced institutionalization of relations, and the trend looks set to continue. What has provoked this response? What are the benefits and the consequences? How far down the path of institutionalization are the Arctic states likely to go?

This paper will examine the governance structure of the Arctic Council and the region in general, including an analysis on the recent evolution of the system and where it is likely to head in the future.

History of Arctic Governance

The Arctic is not a *terra nullius*, absent from human regulation or concern. At the same time, it has not been subject to as much regulation as other seas and oceans. This is due, firstly, to the fact that it has experienced significantly less human activity than other regions, not least due to sea-ice cover; and second, because the global order was such throughout the 20th century that meaningful, pan-Arctic cooperation was very difficult given the state of relations between the Soviet Union on one hand and the United States and its allies on the other. The 1973 *Agreement on the Conservation of Polar Bears*, between Canada, Denmark, Norway, the United States and the USSR is a notable exception, but was a primarily scientific, as opposed to political, effort.

The political space for international cooperation in the Arctic region opened up in 1987, when Mikhail Gorbachev gave his now famous Murmansk speech, calling to establish a "zone of peace" in the Arctic (Gorbachev, 1987). The Soviet Union collapsed soon after, ending the Cold War and allowing for kinds of regional collaboration that had not been possible before, such as Russian inclusion in the Inuit Circumpolar Council (ICC) and the formal establishment of the Northern Forum and the International Arctic Science Committee (IASC). Most significantly, it also let to the establishment of the Arctic Environmental Protection Strategy (AEPS) in 1991, a non-binding agreement between the eight Arctic states (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States) with a focus on monitoring and assessment of contaminants, protection of the marine environment, emergency preparedness and response, and conservation of flora and fauna (CARC, 1993-94).

Canada, which had been advocating for an Arctic Council since the late 1980s, was successful in 1995 in convincing the other Arctic states, in particular the United States, to establish an international organization that could address a wider range of economic and environmental issues, namely sustainable development (Bloom, 1999: 714). This was on the condition, imposed by the

Americans, that the organization did not take on a legal personality or receive structured funding. The *Declaration on the Establishment of the Arctic Council* was subsequently signed in Ottawa, Canada on September 19, 1996, with a mandate to "promote cooperation, coordination and interaction among the Arctic states…in particular on issues of sustainable development and environmental protection" (Arctic Council, 1996: 1).

In its first decade of the Arctic Council's existence, important scientific work was conducted, leading to high quality reports such as the *Arctic Climate Impact Assessment* (2004) and the *Arctic Human Development Report* (2004). The Arctic Council was also successful in helping to normalize relations between the West and Russia in the post-Cold era. However its limited mandate meant that the Arctic Council was unwilling to implement any kind of mandatory or enforceable regulatory framework to protect the Arctic environment.[1]

Climate and Other Changes as Impetus for Evolving Governance

The circumpolar region failed to garner much global political attention during the late 1990s and early 2000s, outside of circles interested in environmental security and indigenous rights – issues of 'low' politics. After 2007, however, a number of events came together that pushed the Arctic into the global spotlight and highlighted the lack of, and need for, better regional governance frameworks.

The most significant catalyst for change in the Arctic has been climate change and global warming. The *Arctic Climate Impact Assessment* (ACIA) of 2004 provided convincing scientific data, to back up anecdotal evidence, that the Arctic was indeed warming and there were physical, economic and social consequences for the Arctic states to deal with. The dramatic drop in sea ice coverage recorded in the Arctic Ocean in September 2007 negated any residual doubts, when sea ice coverage declined to 4.28 million km², or 39% below the long-term average from 1979-2000 (National Snow and Ice Data Center, 2007) (see Figure 1 below).

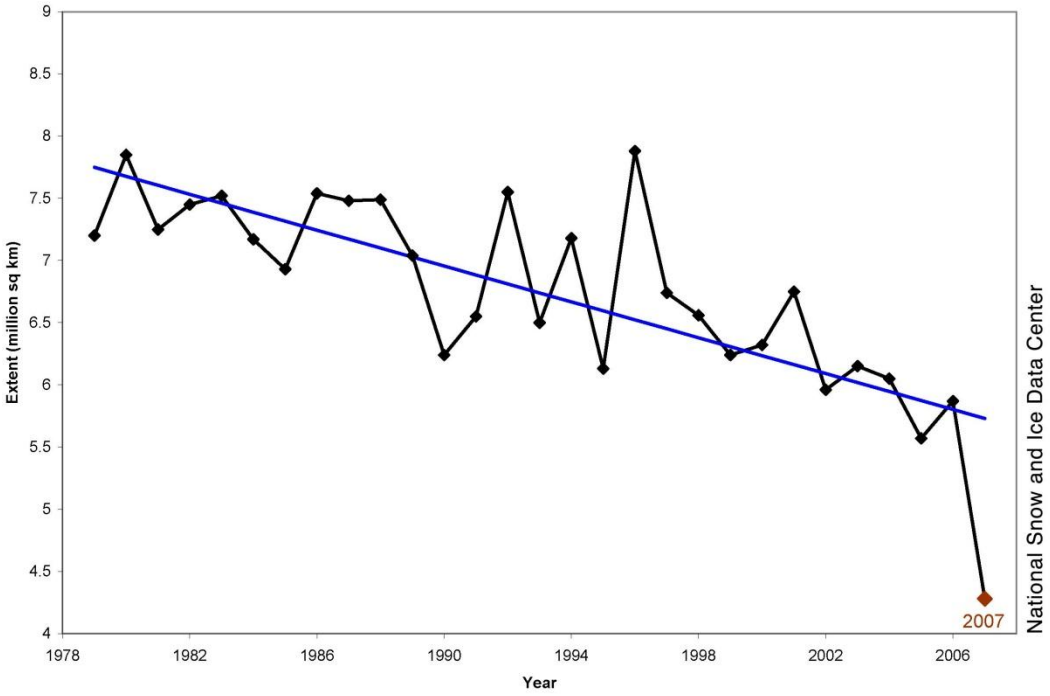

Figure 1 2007 Sea ice extent in sq km. Source: National Snow and Ice Data Centre

Although signs of dramatic climate change elicited concerns, they also highlighted the economic opportunities that could result from a warming Arctic, foremost among them opportunities for resource extraction, shipping and new fisheries. The high cost of oil in 2007-08, which peaked at a record high of $147/barrel on July, 11 2008, meant that drilling in the expensive and challenging Arctic environment might not only become much more accessible – it would also become profitable. Subsequently, big oil began an unprecedented buy-up of oil and gas leases in the western Arctic. In the summer of 2007 Imperial Oil and Exxon shocked observers with a nearly $600 million CDN bid that won them a 205,321 hectare exploration lease on the Canadian side of the Beaufort Sea. The following year saw an even greater increase in interest. In February 2008, Shell and ConocoPhillips bid nearly $2.7 billion in a competition for drilling rights in the Chukchi Sea – a record for any Alaskan oil or gas lease. By comparison, the last Chukchi sale, in 1991, generated only $7.1 million. British Petroleum, which as recently as 2002 had announced that it had no interest in further Arctic exploration, spent nearly $1.2 billion CDN in a June 2008 auction for oil and gas exploration leases covering roughly 611,000 hectares of the Beaufort seabed north of Tuktoyaktuk (Huebert, Exner-Pirot, Lajeunesse and Gulledge, 2012: 40). At the same time, commodity prices, which had been booming since 2000 owing largely to increased demand from the growing Asian middle class[2], ensured that a market for the Arctic's non-hydrocarbon resources would exist for decades to come.

The biggest challenge to exploiting the Arctic's many resources has been how to export the goods in a region that lacks basic infrastructure and is often hundreds if not thousands of kilometers away from the nearest regional transportation hub. Newly accessible shipping lanes – the Northwest Passage (NWP) was seasonally ice-free for the first time in the summer 2007 – promised that the transportation of resources out of the Arctic would soon become more feasible. The prospects for transpolar shipping also generated significant interest from Asia, in particular China, which as a huge exporter of goods is interested in diversifying its shipping options; and Japan and South Korea, with their enormous shipyards.

Finally, the Arctic became more important geopolitically when the events described above – climate changes and high commodity prices – led states to reconsider their plans for defending and securing their Arctic territory, following a general decline in Arctic military investment following the end of the Cold War. The United Nations Convention on the Law of the Sea (UNCLOS) provided the opportunity for states to delineate their extended continental shelf[3] claims back in 1982, and requires them to do so within ten years of ratifying the Convention. But until Artur Chilingarov's scientific expedition planted a titanium Russian flag on the seabed of the North Pole in August 2007, little media and political attention was paid to that particular clause and the fact that the Arctic Ocean holds over one quarter of the Earth's continental shelf.[4] Combined with the release of United States Geological Survey (USGS) figures in July 2008 indicating that the Arctic contains about 22% of all undiscovered global hydrocarbon resources, most of them offshore (USGS, 2008), the Arctic became, for a brief period, a hot spot in international affairs. It was portrayed in media and political reports as a new 'cold war', fuelled both by climbing oil prices and the South Ossetia War between Russia and Georgia in August 2008, which intensified concerns of Russia acting as an aggressor. A succession of military investments were announced by the Arctic states between 2007-2010[5], and military exercises, such as Norway's *Cold Response,* contributed to concerns that competing interests could result in conflict.

Possible Directions for Arctic Governance

As a result of these events, media, politicians, indigenous organizations, environmental groups, and academic commentators all started to pay more attention to the Arctic as a geopolitical complex. With the Arctic Council not in a position, legally or politically, to respond to growing attention to the "scramble for the Arctic"[6], an ad hoc group of foreign affairs ministers and other top officials of the five littoral Arctic states (Canada, Denmark, Norway, Russia and the United States) met in Ilulissat,

Greenland, in May 2008, to provide an early response to the situation. On that occasion, the "Arctic Five" (A5), as they've become known, issued a declaration affirming their commitment to the orderly settlement of overlapping claims in the Arctic. The Ministers further stated that the "law of the sea"[7] "provides a solid foundation for the responsible management of the Arctic Ocean", and that there is "no need to develop a new comprehensive legal regime to govern the Arctic Ocean" (Ilulissat Declaration, 2008). But to many other stakeholders, the legal and political framework that did exist – the Arctic Council, adherence to a variety of global environmental treaties such as UNCLOS[8], and a series of voluntary guidelines on issues such as shipping and offshore oil and gas development – was no longer adequate for an ocean that was suddenly much more accessible and much more popular, with the promise of significantly enhanced economic activity in the short to mid-term.

A range of policy options were subsequently outlined by commentators, ranging from the status quo promoted at Ilulissat, to the idea of an Arctic Treaty, akin to the Antarctic Treaty System, put forward by the European Parliament. This section will outline these options in greater detail.

Ilulissat Approach

As iterated in Ilulissat, it is quite true that UNCLOS provides a solid legal framework to deal with at least some of the Arctic's marine issues. In particular, it provides rules concerning maritime boundaries; claims to an outer continental shelf; sovereign rights over resources; and the protection of the marine environment.

A number of relevant global conventions similarly apply to the Arctic. They include: the United Nations Framework Convention on Climate Change; the Convention on Biological Diversity (CBD); a broad range of conventions and other instruments adopted by the International Maritime Organization (IMO); the London (Dumping) Convention 1972 and its 1996 Protocol; the Convention on International Trade in Endangered Species (CITES); the Stockholm Convention on Persistent Organic Pollutants (POPs); and the Ramsar Convention on Wetlands of International Importance. Non-binding instruments include: the Declaration of Principles and Agenda 21 adopted by the 1992 United Nations Conference on Environment and Development; the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities; as well as the 2002 World Summit on Sustainable Development and its Johannesburg Plan of Implementation. Some regional conventions are also relevant, including the Convention on the Protection of the North-East Atlantic (OSPAR) and the Convention on Future Multilateral Co-operation in the North

East Atlantic Fisheries (NEAFC), both of which extend to parts of the Arctic region (De la Fayette, 2008: 554-55).

The point is that the Arctic is not a terra nullius. Hans Corell (2007), former Swedish Ambassador and Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, argues that UNCLOS, together with international treaties including the Montreal Protocol, the Kyoto Protocol, the Vienna Convention, the Stockholm Convention and the Convention on Biological Diversity, provide a sufficient framework by which the Arctic environment can be protected. This is especially true from his perspective that those problems threatening the Arctic are primarily generated internationally, and so should be addressed at a global level.

The problem for Corell is in their *implementation*, and he argues that efforts should be focused on improving those arrangements that already exist rather than constructing new ones. While a comprehensive regime might be easier to understand, "to create a specific and non-sectored legal regime for the Arctic would require a tremendous effort…rather than focusing on new regimes, it would be important to analyse what the threats are and then act accordingly, mainly by making sure that the existing regime is implemented and that States that have not yet acceded to or otherwise accepted elements of this regime do so" (Correll, 2007: 4). From this perspective, the status quo would be sufficient if the regulations that do exist were effectively implemented.

Unilateral/Bilateral Approach

Notwithstanding the generally cooperative atmosphere of contemporary circumpolar relations, it remains entirely possible that some or all of the Arctic states will pay only lip service to their recent promises to strengthen multilateral cooperation, while continuing to emphasize national or bilateral initiatives to strengthen environmental legislation or resolve conflicts. Canada and Russia's use of UNCLOS' Article 234 is an example of strengthening environmental regulation within the national EEZ, for example, and the United States has implemented a moratorium on fishing in its Arctic waters in order to evaluate the environmental consequences of fishing in this previously untouched area.[9] Some talk has been given to the possibility of joint Canadian-American management of the NWP[10], and Norway and Russia successfully resolved their bilateral boundary dispute in the Barents Sea in 2010 (BarentsObserver, 2010). The Nordic countries (Denmark, Iceland, Finland, Norway and Sweden) may continue to emphasize cooperation that is multilateral, but less than circumpolar, to deal with shared problems in the North Atlantic, Baltic and Barents regions, for example

NORDEFCO.[11] This approach has its benefits, in that many aspects are well established, generally effective when implemented, and easier to negotiate. However as the previously unused Arctic Ocean opens up to activity, new multilateral arrangements will almost certainly be required to manage the area sufficiently.

Piecemeal Approach

While most agree that UNCLOS provides a good *starting* point, the mainstream position accepts that at least some issue areas would benefit from further cooperation. Even the *Ilulissat Declaration* talks about the need to "strengthen existing measures and develop new measures to improve the safety of maritime navigation and prevent or reduce the risk of ship-based pollution in the Arctic Ocean" and to "further strengthen search and rescue capabilities and capacity around the Arctic Ocean…through bilateral and multilateral arrangements between or among relevant states." (Ilulissat Declaration, 2008). Certainly the articulation of the 2011 Search and Rescue (SAR) agreement indicates that statement was not simple rhetoric.

Noted Arctic expert Oran Young, while rejecting a comprehensive, legally binding regime, supports the development of issue-specific regulatory arrangements. He argues that this is preferable for several reasons. First, it is the most pragmatic: far better to have "a messy process that yields effective governance with respect to some important issues [than have a] more comprehensive and orderly process that fails to achieve success across the board" (Young, 2009a: 441). Young does not see the development of a legally binding treaty to be politically feasible, especially on the part of the United States and Russia (Young, 2009b: 75). The United States in particular has had an extremely hard time ratifying even largely uncontroversial treaties.

According to Young, there are also advantages to a soft law approach. Arrangements that are not legally binding "may contain content that states would not accept in a legally binding instrument, are likely to have an easier time encompassing the activities of a range of non-state actors, and, above all, are ordinarily easier to adjust or even restructure in response to changing circumstances relating to the issues at stake" (ibid: 76). Given the dynamic nature of Arctic issues and events, it may be preferable to have the flexibility inherent in the soft law approach to deal with the inevitable political, economic and environmental changes that will occur in the region in the coming years.

Similarly, pursuing a hard law strategy implies a reliance on negotiations and compliance from *national* governments; however the soft law regime in place today has allowed for greater space in which

indigenous peoples, NGOs and local governments can participate. As Young counters,

> the current patchwork of governance arrangements in the Arctic provides opportunities for a variety of non-state actors to exercise real influence over a number of specific issues arising in the region…The growing influence of non-state actors worldwide has advanced too far to allow for traditional diplomatic practices to assume and maintain supremacy over issues like those arising in the Arctic today. The negotiation of a traditional legally binding treaty for the Arctic would not be regarded as a progressive move in this context (Young, 2009a: 441).

How would a piecemeal approach work in practice? Because the Arctic Council has not developed the authority or capacity to manage regulatory regimes, it would make sense for the different issue areas to be managed under existing relevant organizations. Thus a mandatory Polar Code for shipping would be enforced via the International Maritime Organization; the North East Atlantic Fisheries Commission could cover industrial fishing throughout the Greenland and Norwegian Seas; and the forum provided by the Convention on Biological Diversity could address matters pertaining to the loss of species in the Arctic (ibid). This type of approach seems to describe what, in fact, is now occurring in the Arctic.

Regional Seas Agreement

Advocates for a regional seas agreement argue that the clear benefits of an eco-system based approach call for the establishment of such an arrangement in the Arctic. They argue that the sector-based regulation approach has resulted in declining marine environmental quality and loss of biodiversity across the globe (Saksina, 2009: 31), and that the intertwined nature of managing increased shipping and oil and gas development on the one hand, and conserving fisheries, marine mammals, sea birds and habitat on the other, argues strongly for a comprehensive ecosystem-based approach in the Arctic (Huebert and Yeager, 2008: 28). The WWF Arctic program has been an outspoken proponent of such a system, and has published a number of expert reports on the issue (ibid; Koivurova and Molenaar, 2010).

There are plenty of models on which an Arctic regional seas agreement could be designed. The North-East Atlantic region in particular, which includes Arctic Council members Denmark, Finland, Iceland, Norway and Sweden, provides a model with its OSPAR Convention, established in 1992 and based on the following main principles: the 'precautionary principle'; the 'polluter pays principle'; the Best Available Techniques (BAT); and the Best Environmental Practice (BEP). Furthermore, the United Nations Environment Programme (UNEP)'s regional seas programme, which was

established in 1974 and includes over 140 countries in 13 programmes[12], could provide both a model and logistical guidance to an Arctic regional seas programme. In fact, the Arctic region already participates in the UNEP regional seas programme through its Arctic Council working group PAME (Protection of the Arctic Marine Environment), although it continues to lack a formal and legally binding programme.

And so it seems the Arctic has been prepared to embrace the principles of the regional seas programme but has not yet developed the will or desire to participate in a legally binding capacity. Proponents of a regional seas agreement therefore see the development of a comprehensive Action Plan, backed by a legally binding Convention and related Annexes, to be the best way forward in providing necessary protection for the sustainable use of the Arctic Ocean.

Arctic Treaty

Some observers, most notably the European Parliament, have called for an Antarctic-type treaty to govern the Arctic. In their 2008 Resolution on Arctic Governance, the European Parliament

> [suggested] that the Commission should be prepared to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty, as supplemented by the Madrid Protocol signed in 1991, but respecting the fundamental difference represented by the populated nature of the Arctic and the consequent rights and needs of the peoples and nations of the Arctic region (European Parliament, 2008).

The point of such an approach would be to create a highly formal and interventionist treaty that would seek to balance resource development and environmental protection, with an emphasis on protecting global rather than national interests (Raeva, 2009: 26). The outcome would prioritize conservation over development.

In general, such suggestions have been anathema to Arctic indigenous peoples and national governments. Indigenous groups resent the image of the Arctic as a pristine environment needing to be saved by outside environmental groups, when they have managed its conservation for millennia (Nuttall, 1998). This is reflective of the sometimes competing visions between environmental groups and Inuit, for example, over what is an acceptable use of the area's wildlife, such as polar bear conservation and seal hunting. The A5, on the other hand, are unlikely to give up or share control of an area that is largely under their exclusive jurisdiction and encompasses great economic promise. While all five governments have made efforts towards enhanced environmental protection in the Arctic, none are likely to be interested in developing a regulatory regime that hamstrings efforts to

bring economic development to the region. Finally, few in the Arctic find much by the way of similarities with the Antarctic, and many resent the comparison: the Arctic is composed of a common sea surrounded by land, whereas the Antarctic is land surrounded by sea; the Arctic is a homeland whereas the Antarctic is uninhabited; and the Arctic Ocean is surrounded by states, with national boundaries fairly clearly determined, whereas the Antarctic has no government, is politically neutral, and is governed by the Antarctic Treaty System. Thus it seems highly unlikely that a Treaty style system which focuses on preservation as opposed to sustainable development will gain much political support in the Arctic region. The recent report of the UK Environmental Audit Committee, which calls for a moratorium on oil drilling in the Arctic (UK Environmental Audit Committee, 2012) is likely to be received similarly: with indifference or exasperation.

Table 1: Potential Approaches to Arctic Governance

Type of Approach	Unilateral/ Bilateral	Ilulissat Approach	Piecemeal Approach	Regional Seas Agreement	Arctic Treaty
Main Features	Arctic Council remains a soft law forum; Arctic governance develops through national legislation and bilateral agreements	Reliance on UNCLOS; soft law regime with no Arctic-dedicated legally binding instruments	UNCLOS provides framework, supplemented by issue-specific regulatory regimes, eg SAR, shipping, fisheries; focus on strengthening existing arrangements	UNEP-style regional seas programme; hard law Convention supplemented by Protocols and Annexes; ecosystem based management	Legally binding treaty; formal status for circumpolar states and observers; emphasis on conservation; international over national interests

Arctic Governance Today

Concurrent with deliberations on what type of governance structure should be adopted in the Arctic, a normative consensus evolved which accepted that more should be done to regulate and control activity in the Arctic, in particular the Arctic Ocean. The consensus was outlined in the series of Arctic strategies and policies which each one of the eight Arctic states, as well as NATO and the European Commission, put forth between October 2008 and August 2011.[14] While all adopting national perspectives on Arctic relations, the strategies achieved a startling level of unanimity, articulating support, in varying degrees, for the following core principles: that disputes should be peacefully resolved and enhanced regional cooperation sought; the environment should be protected;

development should be encouraged but needs to be sustainable; and indigenous peoples should be included in decision-making. Most notably, the eight Arctic states agreed to a legally binding instrument – an Arctic Council first[15] – on SAR. The *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic* was signed by the eight Arctic states on May 12, 2011. The Agreement is not groundbreaking from a legal perspective; it does not affect the domestic legislation of circumpolar states, nor does it oblige states to enhance their assets or acquire new resources. But it is hugely symbolic, heralding possibilities for much more robust governance of the region. The call to establish a Permanent Secretariat (in Norway) at the same meeting reinforced the idea that the Arctic states are newly accepting of a level of authority from the Arctic Council that has previously been unknown. The presence of U.S. Secretary of State Hillary Clinton in Nuuk – the first time the Americans were represented at that level – indicated that the traditional American reluctance to grant the forum a formal or legal role was now over, particularly when the American delegation spearheaded the call for an Arctic Council task force to develop an international instrument on Arctic marine oil pollution preparedness and response (Nunatsiaq News, 2011).

It thus seems that the Arctic has evolved beyond the unilateral/bilateral, as well as the Ilulissat approach, and is now working within a piecemeal approach.

Future Venues for Multilateral Cooperation

With the Arctic states now looking ready to accept more institutionalized cooperation in the region, what issue areas are most likely to result in legally binding instruments in the short to medium term? This section briefly outlines the most likely candidates.

Shipping

The most consequential international agreement set to be established in the Arctic in the short term is the Polar Code – specifically, an *International Code of Safety for Ships Operating in Polar Waters* that is being developed under the auspices of the IMO with the goal of ensuring safety of life and protection of the environment in the world's polar waters. A set of voluntary guidelines was agreed upon in December 2002, and updated in 2009. However as shipping traffic has risen, and looks set to continue to rise, a need to regulate construction; equipment; operations (including crewing); and environmental protection and damage control has been deemed necessary to account for the difficult conditions that exist in polar waters.

The Arctic states have been supportive of the Polar Code. The *Arctic Marine Shipping Assessment* (AMSA), which was commissioned by the Arctic Council in 2004 and approved in 2009, provided much of the current political impetus for mandatory regulation, having as one of its key recommendations the mandatory application of the *Guidelines for Ships Operating in Polar Waters* and the augmenting of IMO safety and pollution prevention conventions with specific mandatory requirements for ship construction and operations (PAME, 2009b). The Arctic states further supported the initiative in the *Nuuk Declaration* of May 2011 "urg[ing] the completion as soon as possible of work at the International Maritime Organization to develop a mandatory polar code for ships" (Arctic Council, 2011b). The target date for completion is 2014. The IMO sub-committee on Ship Design and Equipment, which is tasked with developing the Polar Code, has faced challenges related to Chapter 15 of the Code – the only one that deals specifically with environmental protection from pollution that can result from accidents or regular ship operations in polar waters (Einemo, 2012). However given the political support for such a Code, it seems likely that it will be approved in some form by 2015, providing an important piece in the puzzle of Arctic governance.

Oil and Gas

The Arctic Council, and various Arctic stakeholders, have taken a strong interest in oil and gas exploration and exploitation in the region. This is linked to the fact that oil and gas developments provide the greatest economic opportunity as well as one of the greatest environmental risks in the Arctic.

Previous efforts to develop multilateral responses to oil and gas activities in the Arctic have stalled. The Arctic Monitoring and Assessment Programme (AMAP) provided an assessment of oil and gas activities in the Arctic back in 1997/98, with an updated report submitted in 2007. The 2007 version includes several pages of recommendations on how to improve and strengthen regulation of the oil and gas industry and ensure consideration of local communities and environmental consequences (Arctic Monitoring and Assessment Program, 2007). While acknowledged by the Arctic Council (Arctic Council, 2009), it has had limited policy influence.

A more comprehensive document defining recommended practices is the *Arctic Offshore Oil and Gas Guidelines* issued in 2009, which built on earlier iterations issued in 1997 and 2002. The goal of the *Guidelines* is "to define a set of recommended practices and outline strategic actions for consideration by those responsible for regulation of offshore oil and gas activities in the Arctic" (PAME, 2009a: 4),

however a study by Offerdal (2007) indicated very limited awareness of and application of the earlier versions of the *Guidelines* within the relevant national bureaucracies (as quoted in Stokke, 2011).

There are now positive signs, however, that the Arctic Council is finally heading towards more robust regulation of the oil and gas industry: it established a Task Force to develop an international instrument on Arctic marine oil pollution preparedness and response at the Nuuk Ministerial in 2011 and looks set to sign a binding treaty concerning response for potential oil spills in the Arctic (Arctic Portal, 2012). Co-chaired by Norway, the United States and Russia, the Task Force is likely to prepare an instrument based on *the International Convention on Oil Pollution Preparedness, Response and Co-operation* (OPRC), a framework to which all eight Arctic states are already parties and which explicitly, in Article 10, promotes the development of multilateral or regional agreements on oil pollution preparedness and response.[16] A legal instrument will likely be ready for signing at the 2013 Arctic Council Ministerial.

Eco-System Based Management

It has become de rigueur to discuss oceans management in terms of eco-system based management (EBM), and the challenges found in the Arctic seem to lend themselves particularly well to such an approach. Fundamentally, EBM is an environmental management approach that seeks to sustain healthy and resilient ecosystems while supporting sustainable human use of that ecosystem. In terms of marine management, EBM argues against piecemeal, single-issue management, and in favour of a more integrated approach.

A number of Arctic Council working group activities have adopted these principles in the past, but they are now gaining more political support. The Arctic Council ministers established an expert group on Arctic ecosystem-based management at the 2011 Ministerial. Co-chaired by Sweden, the USA and Iceland, the expert group is expected to recommend further activities in the field at the 2013 Arctic Council Ministerial. At the same time, the PAME working group has been conducting an Arctic Ocean Review (AOR) since 2009, with the project expected to wrap up in 2013. The AOR builds on the Arctic Marine Strategic Plan (AMSP), which was completed and endorsed in 2004. The first phase of the AOR project was to compile information on global and regional measures relevant to the conservation and sustainable use of the Arctic Ocean. The second phase is intended to produce a final report that will summarize opportunities to strengthen existing measures and instruments and make further recommendations for Arctic Ocean management (PAME, 2011).

Similarly, the International Union for Conservation of Nature (IUCN) has been working on an Arctic EBM project since 2010. Although it is not a formal Arctic Council project, the IUCN, which is an observer to the Arctic Council, has been collaborating with the Council's EBM expert group.

In many ways, the Arctic Council's current approach to Arctic marine management is reminiscent of the overly deliberative, overly scientific *modus operandi* that the Council was criticized for in the past (see Huebert, VanderZwag, Ferrara, Elferink and Rothwell, 2001). However there are hopes that this painstaking approach will result in slow, steady build-up of political support for an eco-systems based scheme to monitor, regulate and enforce human marine activity, perhaps in the form of a regional seas agreement or something similar.

Fisheries

Arctic and sub-Arctic fisheries are critically important to regional economies and local indigenous subsistence in the North. As global warming affects the Arctic ecosystem, changes are certain to come. The *Arctic Climate Impact Assessment* (ACIA) projected that some major arctic marine fisheries, including those for herring and cod, are likely to become more productive as climate warms, while Arctic char, broad whitefish, and Arctic cisco, which are major contributors to the diets of local people, are threatened by a warming climate (ACIA, 2004: 17).

Many fisheries worldwide have benefitted from regional fisheries management organizations (RFMOs), including in sub-Arctic regions such as the Northwest Atlantic Fisheries Organization (NAFO: Canada, Greenland and France/St. Pierre & Miquelon); the NorthEast Atlantic Fisheries Commission (NEAFC: Denmark/Greenland, EU, Iceland, Norway, Russia); and the North Pacific Anadromous Fish Commission (NPAFC: Canada, Japan, South Korea, Russia and United States). Encouragingly, all eight Arctic states have ratified the *UN Fish Stocks Agreement*. Article 9.2 of the agreement provides guidance for the creation of new regional organizations to manage fisheries as well as means by which Arctic stocks can be monitored (Article 14) and means of enforcement (Article 19) (Huebert and Yeager, 2008: 26). But while it seems likely that at some point an RFMO to manage Arctic high seas will be necessary, to date the Arctic Council has neglected the issue, even in terms of commissioning basic fisheries research including the development of future scenarios about areas, dates, species, fishing techniques for which new fishing opportunities are likely to arise and potential impacts for non-target species (Koivurova and Molenaar, 2010: 51). This has been the bread and butter of the work of the Arctic Council, and would easily fall within the mandate of the

CAFF working group, but has not been pursued to date.

As Koivurova and Molenaar argue, there is currently considerable opposition within the membership of the Arctic Council to it becoming actively involved in fisheries management and conservation (ibid: 26)[17], and despite its obvious importance the issue wasn't even mentioned in the 2011 Nuuk Declaration. This is an important issue that deserves the attention of the Arctic Council, and the discussion of and preparation for an Arctic RFMO falls fairly squarely within its mandate.

Future Prospects for Arctic Governance

It is clear that Arctic governance has undergone fundamental changes in the past five years, as has the region in general. There are many obvious external factors that have influenced this change, but the evolution in general fits within broader patterns of institutionalization. By assessing these patterns, we can estimate how far down the path of institutionalization and legalization that Arctic governance is likely to travel.

First, climate change has created a functional need – thus serving as a catalyst – for the building of regional institutions in the Arctic. As early as twenty years ago, the level of human activity in the Arctic Ocean would not have justified political intervention in any of the issue areas outlined above. Such a level of interdependence on environmental issues – as opposed to trade or traditional security – is relatively uncommon when looking at other major geopolitical regions of the world, which tend to develop around land bases. However issues of ocean and environmental security are very well disposed to regional (rather than national or global) solutions, for pragmatic as well as political reasons. Pragmatically, marine environments have complete disregard for land borders, and so it makes no sense to manage fish stocks, pollution prevention, or even shipping on a national basis. Politically, environmental security issues lend themselves more easily to cooperation because there is no security dilemma. That is, as opposed to traditional security matters, where security gains by one state lead to a decrease in the relative security of its competitors, when it comes to environmental security, gains by one are gains for all. It is in everyone's best interest to promote policies of sustainability in their neighbours, even if they are themselves unwilling to take on the costs of prevention and protection in their own territory. Thus, one can expect regional cooperation and governance frameworks in the Arctic to continue to revolve around responses to the challenges imposed by global warming and the increase in human activity it will bring.

Second, the Arctic Council features real limitations in supporting the legalization of regional governance arrangements. Unlike, for example, the European Union or North American Free Trade Agreement (NAFTA), the Arctic Council has no legislative power or legal authority. To wit, the search and rescue agreement was a treaty between the eight Arctic states, but it is not *of* the Arctic Council. As such, one can expect legal instruments coming out of the Arctic region to be relatively 'lowly' legalized, lacking a third party to implement, interpret and apply rules; resolve disputes; or make further rules (see Abott, Keohane, Moravcsik, Slaughter and Snidal, 2000: 401), unless the instruments come out of other authorities with legal personalities such as the IMO or UNCLOS. In the short to medium term, one should not expect any changes to this arrangement, as there would be few advantages to the states involved. Russia and the United States would be particularly unlikely to concede any authority to the other in such a small venue. As such, there is a limit to how creative the Arctic states can and will be in framing governances solutions, because they will be encouraged to operate under the auspices of other international frameworks wherever possible.

Finally, the scope of activity for Arctic governance frameworks will continue to be limited to environmental management issues, particularly as relates to the Arctic Ocean. Despite having a mandate for sustainable development, the Arctic Council simply doesn't have the resources or funding to enact social development policies; certainly none that could match or replace what individual state governments are already enacting themselves. In addition, meaningful development usually occurs at the local level, and only sometimes at the national level, but rarely at the regional level. The Arctic Council has provided a useful political forum for Arctic indigenous peoples, and has brought much needed attention to pressing cultural, economic and social concerns of northerners. However, in terms of enacting a governance framework to address those issues, it is an unlikely and unpromising venue.

Conclusion: Arctic Governance End Game

There are a number of limitations to the scope and intensity to be adopted by regional governance frameworks in the Arctic, and as such they are likely to be reached in the next decade. A move beyond the current piecemeal approach to a well-constructed, resourced and implemented regional seas agreement is the logical end point for addressing and managing issues of common regional concern. The goal is not for the Arctic to develop layer upon layer of regulation and intervention, but to develop an appropriate framework that allows for the sustainable use of Arctic Ocean resources and then focus on compliance. At some point, the region will have been able to de-securitize Arctic

environmental issues, and deal with them as part of a normal, political and bureaucratic order. There is no reason to expect the five coastal Arctic states to ever agree to an Antarctic-style treaty.

Of course there is much to be done between now and then, with the Arctic states only very recently having come around to the idea that legally-binding instruments and ecosystem based management are optimal practices. Developing a normative consensus around these principles was hard. Enacting and implementing those principles will be even harder – but they are finally starting to seem within reach.

Notes

1. See David VanderZwaag, Rob Huebert and Stacey Ferrera. (2002). The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering while the Arctic Marine Environment Totters. *Denver Journal of International Law and Policy*. 30(2), 131-72.
2. See the World Economic Forum (2011). Mining and Metals Scenarios to 2030 (Report). Retrieved (05.25.12) from, http://www.weforum.org/reports/mining-metals-scenarios-2030
3. Under UNCLOS III, states have rights to an Exclusive Economic Zone (EEZ) extending 200 miles from their coastline. However this zone can be extended up to 350 miles and in some case even further, if states can demonstrate with geological evidence that there is a natural prolongation of their continental shelves. States would have sovereign rights only to the resources in the sea bed – not the water column – in that area.
4. See Michael Pidwirny. (2006). Fundamentals of Physical Geography (2006), as quoted in Betsy Baker. (2010). Law, Science and the Continental Shelf: The Russian Federation and the Promise of International Cooperation. *American University International Law Review*. 25(2), 252.
5. See Huebert (2009) and Huebert et al. (2012). for a listing of the announcements and events.
6. This was the provocative title of Scott Borgerson's 2008 submission to the *Foreign Affairs* journal: Arctic Meltdown: The Economic and Security Implications of Global Warming. *Foreign Affairs*. 87, 63–77.
7. The "law of the sea" is actually spelled in lower case letters, probably as a consequence of the fact that the United States is not actually party to the 'Law of the Sea' – UNCLOS III.
8. The USA is notably not party to the UNCLOS.
9. See the 2009 *Fishery Management Plan for Fish Resources of the Arctic Management Area*, available at http://www.fakr.noaa.gov/npfmc/fmp/arctic/ArcticFMP.pdf
10. See for example Brian Flemming, "Canada-US Relations in the Arctic: A Neighbourly Proposal", *CDFAI*, December 2008.

11. The Nordic Defence Cooperation, or NORDEFCO, builds on existing collective security arrangements in the Nordic area, but with a view to broadening and deepening existing cooperation with a defense pact. It began as an initiative among the Norwegian, Swedish and Finnish Chiefs of Defence, with a report submitted in June 2008 outlining potential areas for cooperation and harmonization, and expanded in November 2008 when Iceland and Denmark joined the arrangement and the Defence Ministers of the five Nordic countries signed a Memorandum of Understanding (MoU) regarding the enhanced Nordic cooperation in Nordic Supportive Defense Structures.
12. See the United Nations Regional Seas Programme (UNRSP) website, http://www.unep.org/regionalseas/about/default.asp
13. See for example Mark Nuttall. (1998). *Protecting the Arctic: Indigenous Peoples and Cultural Survival*. Amsterdam: Harwood Academic Publishers.
14. See Lassi Heininen, *Arctic Strategies and Policies: Inventory and Comparisons* (2011). Akureyri, Iceland: Northern Research Forum; and also his article in this volume, for an overview of the strategies. The Arctic Council lists the actual strategies at http://www.arctic-council.org/index.php/en/about/documents/category/12-arctic-strategies.
15. The Arctic Council has no authority to make or enforce legislation, so technically the SAR Agreement is not an Arctic Council instrument. However the Agreement was mandated at (or by?) the Arctic Council Minsters in 2009, developed by an Arctic Council task force, and signed by all eight Arctic states at the 2011 Arctic Council Ministerial meeting.
16. See International Maritime Organization (IMO) website for details and text of the OPRC: http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-(OPRC).aspx
17. This assessment is based particularly on discussions held during the April 2009 Senior Arctic Officials (SAO) meeting.

The Diplomatic Race in the Arctic: First Strategies, Now Ambassadors

As Arctic affairs have become increasingly high profile, states have been busy appointing Arctic Ambassadors, of which there are now seven. Arctic Ambassadors are generally tasked with representing their state at the Arctic Council and other forums, but also carry an important symbolic message of their country's commitment to circumpolar relations. Canada appointed Mary Simon as ambassador for Circumpolar Affairs way back in October 1994, but the position was cut in 2006. After repeated calls by commentators to reinstate the position, Stephen Harper finally appointed Nunavut MP and federal Health Minister, Leona Aglukkaq, as Canada's Minister to the Arctic Council and upcoming Chair. Can it be long before Norway appoints its own Arctic Minister?

2006

Poland
Ambassador (Jakub Wolski)

2008

Russia
Ambassador at Large, Arctic Cooperation (Antonin Vasiliev)

2009

Finland
Arctic Ambassador (Hannu Halinen)
France
Polar Ambassador (Michel Rocard)

2010

Sweden
Arctic Ambassador (Gustaf Lind)

2011

Iceland
Ambassador for Arctic Affairs (Hjalmar W. Hannesson)
Spain
Ambassador for Polar and Oceanic Affairs (Marcos Gómez Martinez)

2012

Denmark
Arctic Ambassador (Klavs A. Holm)
Singapore
Special Envoy to the Arctic (Tony Siddique)
Canada
Minister for Arctic Council (Leona Aglukkaq)

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