

## Briefing Note

# The Arctic Five Versus the Arctic Council

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### Introduction

As climate change opens the Arctic to human activity and the region steadily captures more international attention, a rich tapestry of Arctic international governance mechanisms has formed and propagated. From the sub-regional to the pan-Arctic, numerous forums now exist where Arctic and non-Arctic states and other entities interact to address the issues facing the roof of the world, but “[t]he Arctic Council has emerged as perhaps the most important of these” (Nord, 2016: 4).

In recent years, however, another regional body has appeared on the scene: the Arctic Five. Many opine that this loose union of the five Arctic littoral states, that excludes other Arctic states and native organizations, is usurping the Arctic Council’s central position in northern governance. The Arctic Five, through its compression of regional decision making, is also charged with undermining the spirit of cooperation that the Council has helped unfurl across Arctic international relations.

The aforementioned view is widespread, and certainly possesses a degree of truth. But the relationship that has developed and that could develop between the Arctic Five and Arctic Council is more nuanced than popularly put forth. As such, this Briefing Note aims to elaborate on how these two regional associations actually and potentially interact, both negatively *and* positively. While actions by the Arctic Five can detract from the work and regional position of the Arctic Council, the former is not the harbinger of the latter’s demise. Furthermore, these two groups can even complement one another to positively address Arctic issues.

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## What are the Arctic Five and Arctic Council?

To accurately analyze how the Arctic Five and Arctic Council interact, one must understand what they are.

### *The Arctic Five*

The Arctic Five is the grouping of the five Arctic littoral states (Canada, Denmark, Norway, Russia, and the United States of America) in addressing Arctic affairs. It must be emphasized that this association has no independent power or existence apart from the states that comprise it. That is, the Arctic littoral states meet and negotiate among themselves in an ad hoc manner. There is no formal or permanent administrative structure undergirding the grouping, it is simply a moniker for interactions involving the five Arctic littoral states, used to reference the manner in which these countries choose to interact and organize themselves in specific instances. This, however, does not deprive the association of importance. Gatherings of and concerted action on the part of the Arctic littoral states have significant implications for the region.

Although interactions between the Arctic Five states involve steady low-key bilateral and multilateral communication through traditional diplomatic channels, the union manifests itself most prominently when the countries gather at summits to discuss Arctic matters. When Arctic issues emerge that these countries believe must be addressed in unison, the Arctic Five assembles. So far, the three most notable formal gatherings of the group were in: Ilulissat, Greenland (2008); Chelsea, Canada (2010); and Oslo, Norway (2015). The Ilulissat and Oslo gatherings produced non-binding declarations from the littoral states with regard to the international legal regime applicable to the Arctic and the prevention of unregulated fishing in the region, respectively.

### *The Arctic Council*

In contrast to the ad hoc nature of the Arctic Five, and despite it being the product of a non-binding declaration – the 1996 Ottawa Declaration – rather than a treaty, the Arctic Council is a relatively fixed and ordered body that has been referred to as a “quasi-international organization” (Nord, 2016: 34). It labels itself, however, a “high level intergovernmental forum” given that it is not an international organization with independent legal character, but rather a space and framework for state action (Rottem, 2016: 169).

The Council is certainly a forum, as it brings together numerous actors in a hierarchical organization to consider Arctic matters. The apex actors are the eight Member States (the Arctic Five in addition to Iceland, Sweden, and Finland), who make all decisions for the Arctic Council by consensus. Next in line are the Permanent Participants: six indigenous peoples’ organizations representing Arctic natives that have full consultation rights in all Council negotiations and decisions. Below the Permanent Participants are the Observers: non-Arctic states, international organizations, and non-governmental organizations that are approved by the Member States to observe Council operations, and that may participate to limited degrees at the discretion of the Members. These actors meet and interact through the various permanent units and regularly scheduled gatherings of the Arctic Council.

But on top of being a forum, the Council is, perhaps foremost, a research shop. Its core and most consistent activities are conducted through six working groups that research Arctic

environmental and development matters. In addition, task forces are also regularly established to investigate specific issues over set time periods. The research, findings, and reports that these organs produce are what the Member States and others principally rely on to inform their discussions of Arctic issues and formulate policy.

Unlike the Arctic Five, meetings of the Arctic Council have produced binding international agreements acceded to by its members: Agreement on Cooperation and Rescue in the Arctic (2009) and Agreement on Cooperation in Marine Oil Pollution Preparedness and Response in the Arctic (2011). In addition, the text of a third treaty, Agreement on Enhancing Arctic Scientific Cooperation, was agreed to by the Member States this year, and will likely be acceded to in 2017. Council research and negotiations also spurred the adoption of the binding International Code for Ships Operating in Polar Waters (2015) by the International Maritime Organization, which enters into force in 2017.

Finally, mention must be made that the mandate of the Arctic Council is circumscribed: under the auspices of the Ottawa Declaration, it is ostensibly limited to “issues of sustainable development and environmental protection in the Arctic,” and “should not deal with matters related to military security” (Declaration on the Establishment of the Arctic Council, 1996) – although the use of the more permissive “*should* not” rather than the more restrictive “*shall* not” perhaps leaves this area open to future Council treatment. This is in contrast to the Arctic Five, which can theoretically address any topic that its constituent states desire.

### **Friend or Foe?**

Given that both the Arctic Five and Arctic Council are, at their core, associations with overlapping membership congregated for the purpose of addressing Arctic issues, it is not hard to see how the work of one may influence that of the other, negatively or positively.

#### ***Arctic Five-Arctic Council Antagonism***

The states of the Arctic Five engaged in their first meaningful action in Ilulissat – although some have argued that the group’s true first action was in Oslo in 1973 when the states signed the Agreement on the Conservation of Polar Bears. Since then, it has been widely argued that this assemblage detracts from the work of the Arctic Council and the broader Arctic cooperation that the Council is meant to engender.

Many see undertakings of the Arctic Five as problematic given that this body does not include all of the Member States, Permanent Participants, and Observers of the Arctic Council. Work in the Arctic Five therefore leaves out numerous actors with legitimate Arctic interests, and thwarts the purposeful inclusion of native organizations within Arctic Council decision making. The Arctic Five can therefore function as a workaround to the Arctic Council, allowing its constituent states to avoid having to engage the opinions of the Council’s additional parties. The Ilulissat and Oslo Declarations were both decried by excluded Arctic Council actors and commentators for these reasons (Steinberg et al., 2015: 10) (Nielsson & Magnussen, 2015).

The Arctic Five can also function to narrow issues prior to their emergence in Arctic Council discussions, assert littoral state predominance in an area, and thereby also limit Council actor engagement in Arctic affairs. This can be accomplished by the Arctic littoral states expressing

their views and even resolutions of matters through the Arctic Five prior to them meaningfully emerging in formal Arctic Council discourse. Thus, issues can arrive at the Council in conceptually altered forms, and actors can be influenced by the positions already taken by the Arctic Five.

Arguably, since fisheries management certainly falls within the Arctic Council's mandate to address sustainable development and environmental protection in the region, the Oslo Declaration on unregulated fishing in the Arctic will function in exactly this manner. Now, for better or worse, every discussion of Arctic commercial fishing that might arise in the Council, or anywhere else for that matter, will have the Arctic Five's Oslo Declaration as a starting point.

### ***Arctic Five-Arctic Council Synergy***

There is, however, another side to the Arctic Five-Arctic Council relationship, one that largely goes unmentioned: their potential complementarity. Aside from their being in competition as overlapping forums for the addressing of Arctic issues, the two bodies and their unique characteristics can work together to positively contribute to international Arctic governance, more so than they could on their own. In this regard, the relative advantages of the Arctic Five and Arctic Council are paramount.

In terms of the Arctic Five, the limited participation in the association – just the five Arctic littoral states – offers efficiencies in comparison to the Arctic Council *because of* the exclusion of many Arctic stakeholders. Matters can be addressed in a more streamlined fashion not only because of the limited number of actors involved, but also because of the limited *types* of actors involved. Only states participate in the Arctic Five, and the interests of states are more congruous with one another than with those of native or other types of intergovernmental and non-governmental organizations. This efficiency is one of the reasons that the Arctic Five was selected by the littoral states as the forum through which to undertake the work culminating in the Oslo Declaration, despite multilateral discussion of Arctic fishery management beginning in the Arctic Council (Molenaar, 2015: 427-28).

Adding to its efficiencies is the fact that the Arctic Five does not have the Ottawa Declaration ostensibly limiting its ambit; it may address any and all issues that the Arctic littoral states wish.

The Arctic Five's efficiencies of broadness of competence and limited participation were both on display through the Ilulissat Declaration. First, the legal regime applicable to the Arctic generally is not a matter of sustainable development or environmental protection, but rather one of jurisdiction, sovereignty, and dispute resolution. So it is highly debatable whether this matter could have even been brought up through the Arctic Council. Second, the issue arguably only concerns the Arctic littoral states since it principally addresses their overlapping continental shelf claims in the region, claims that only littoral states have. As such, the involvement of other actors would have needlessly bogged down discussion and delayed action.

Finally, the Arctic Five is plausibly more able to equably engage and include non-Arctic states in discussions when need be (Rottem, 2016: 171). Unlike the Arctic Council, the Arctic Five grouping is entirely a matter of discretion, with no formal rules detailing the extent to which various states may be involved or establishing a hierarchical relationship between them. While the Council boasts the broader consistent presence and participation of Arctic and non-Arctic

states in its proceedings, non-Member State involvement is completely subjugated to the inclinations of Members, making it a less effective or attractive forum for asserting non-Member State interests. The fact that Arctic indigenous organizations are privileged in Arctic Council discourse compared to non-Arctic states is also potentially problematic for the latter's involvement: states are the paramount actors and sole deposits of sovereignty in the international system, and they jealously guard their status as sovereign equals above all other types of actors in international relations (Biersteker, 2013).

This relative advantage of the Arctic Five can be seen in action with regard to unregulated fishing in the central Arctic Ocean. While the littoral states delivered the Oslo Declaration on their own, the document specifically recognizes the interests of other states and declares the Arctic Five's intention to work with others "in a broader process" on this issue (Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean, 2015). And this broader process has already begun: other Arctic and non-Arctic states have been brought in for talks that will hopefully lead to a binding regional fisheries management regime (Hoag, 2016) (Zerehi, 2016).

Turning to the Arctic Council, its primary advantage is that it is a stable body that allows for constant dialogue between its participants. Its established structure and administrative scheme, predominantly its research-focused working groups, also allow for ongoing and targeted work that produces a steady stream of Arctic data. These qualities are in contrast to the Arctic Five, which has to organize ad hoc meetings every time it wishes to address an issue, and ad hoc science meetings or other types of collaborations if it wants to render original research.

As noted above, decisions made through the Council also carry more credibility than those arrived at through the Arctic Five because of its broader participation and meaningful inclusion of Arctic native organizations. This point, however, must be caveated: Arctic Council resolutions carry more credibility among *Arctic* states not part of the Arctic Five and Arctic indigenous organizations, but not necessarily more broadly. This is because there is growing disquiet among non-Arctic states regarding the Council because of their distinctly disadvantaged position within the forum (Nord, 2016: 87) (Young, 2012: 282).

The relative advantages of the Arctic Five and Arctic Council potentially mesh in positive ways. While the Council is the more competent and productive producer of Arctic research, the Arctic Five is, as a result of its comparative lack of organizational rules and participants, a potentially more efficient avenue for turning out declarations framing Arctic issues and binding agreements involving non-Arctic states. As such, in certain circumstances, the Arctic Council can produce the actionable data and the Arctic Five can act. In this way, even though the Arctic Council may not be the forum through which determinations on issues are or can be reached, research and discussions from the Council can heavily inform Arctic Five resolutions.

Conversely, actions by the Arctic Five can frame issues prior to their meaningful introduction within the Arctic Council. Although this interaction can adversely narrow concerns as discussed above, it can also serve a positive function by making Arctic littoral state positions clear, thereby streamlining discussions and conclusions through the Council.

## **The Arctic Five-Arctic Council Relationship**

The antagonisms and synergies between the Arctic Five and Arctic Council aside, the two bodies have developed a rather clear relationship primarily determined by the actions of the Arctic Five given its ad hoc and uninhibited nature.

To date, the only declarations to emanate from the Arctic Five are non-binding ones on issues that are either outside of or better handled outside of the Arctic Council's purview, and the positions of which are generally in line with the views of Council participants. The main, and some might argue sole, cause of antipathy from Council participants towards the Arctic Five is the fact that they have been excluded from its decision making processes. But, given the factors noted above, this is currently a more theoretical problem should the Arctic Five states begin producing binding agreements that they seek to impose on others rather than one of practical consequence. The Arctic Five has yet to act in such a manner, and it is unlikely to.

As currently employed by the Arctic littoral states, the Arctic Five has two primary purposes. First, it is a tool to assert its constituents' claim of preeminence, even above other Arctic states, in Arctic affairs and governance. Second, the association is a means to outline and address potentially disruptive issues before they upset the spirit of cooperation that pervades Arctic international relations. This was particularly the case with the Ilulissat Declaration, which was meant, in the face of a "viral and possibly destabilizing conception" of the Arctic as a theater of coming conflict (Kuersten, 2015), to clearly express the littoral states' intention to amicably settle their territorial disagreements through the legal mechanisms established by the United Nations Convention on the Law of Sea.

It is doubtful that the Arctic littoral states will begin producing binding international agreements among themselves through the Arctic Five because the Arctic contains substantial swathes of High Seas and Area (seabed beyond national jurisdiction) where every state has certain rights of travel and exploitation. Given the limited membership of the Arctic Five, the five Arctic littoral states do not want to legally restrict themselves while others remain uninhibited.

The Arctic Five will more than likely continue as a means to frame pressing Arctic issues in non-binding Arctic littoral state terms for their future binding treatment through other avenues, a role that occasionally places certain states above others in addressing Arctic affairs but that is not inherently antithetical to the work of the Arctic Council. Where appropriate, Arctic matters will still find themselves before the Council for their final resolution.

## **Conclusion**

The relationship between the Arctic Five and Arctic Council is not one dimensional. Given the Arctic Council's inherent limitations as a forum for the conduct of international Arctic governance, other associations are needed in this endeavor. Rather than being a completely negative influence on northern international relations, as popularly put forth, the Arctic Five currently plays a unique and at times constructive role in the region. Moreover, it has the potential to contribute further in concert with the Arctic Council. Going forward, the relative strengths and weaknesses of the Arctic Five and Arctic Council will hopefully figure more prominently in assessing these bodies and their potential composite contributions to international Arctic governance.

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