

## The Limits of the Arctic Council

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Arctic-wide co-operation has already been with us for 15 years. The focus of the co-operation has been on protecting the fragile environment of the Arctic, especially in the first phase of the co-operation, which started with the signing of the Declaration and Strategy for the Protection of the Arctic Environment in 1991 by the eight Arctic states (Finland, Sweden, Norway, Denmark, Iceland, the Russian Federation, the United States and Canada).

In the Strategy, six priority environmental problems facing the Arctic were first identified, (persistent organic contaminants, radioactivity, heavy metals, noise, acidification and oil pollution), then international environmental protection treaties that apply in the region were identified and, finally, actions to counter these threats were outlined. As part of the environmental protection action by the eight Arctic states, four environmental protection working-groups were established: Conservation of Arctic Flora and Fauna (CAFF), Protection of the Arctic Marine Environment (PAME), Emergency Prevention, Preparedness and Response (EPPR) and Arctic Monitoring and Assessment Programme (AMAP). Three ministerial meetings (after the signing of the Declaration and the Strategy) were held in this first phase of the Arctic co-operation, generally referred to as Rovaniemi process.<sup>1</sup> The ministerial meetings were held in 1993 (Nuuk, Greenland), 1996 (Inuvik, Canada) and in 1997 (Alta, Norway). The last ministerial of the Rovaniemi –process was held after the establishment of the Arctic Council, and hence the ministerial focused on integrating the Rovaniemi –process under the structure of the Arctic Council.

The establishment of the Arctic Council in 1996 broadened the mandate of the co-operation to all common issues facing the Arctic (excluding matters related to military security), especially those relating to sustainable development; four environmental protection work-

ing-groups of the Strategy were integrated into the structure of the Council and one working-group was established (Sustainable Development Working-Group, SDWG). With the absence of permanent secretariat, the work of the Arctic Council is heavily influenced by the priorities the chair-states lay out for their two-year chair period, at the end of which a ministerial meeting is organized.<sup>2</sup> Senior Arctic Officials (SAO) provide guidance to the work of the Council in-between the ministerial meetings. The Arctic Council has also adopted new programmes related to environmental protection, such as the Arctic Council Action Plan to Eliminate Pollution in the Arctic (ACAP) and the Arctic Climate Impact Assessment (ACIA).

Increasingly, scholars as well as international and non-governmental organisations have started to criticise the way the Arctic Council conducts its work in general and its environmental protection mandate in particular. At the forefront have been two observers in the Arctic Council, an NGO, the World Wide Fund for Nature (WWF), and an international organisation, the World Conservation Union (IUCN).<sup>3</sup> The problems that have been pointed out by the observers and scholars are manifold, of which some can be mentioned. The structure of the Arctic Council is becoming increasingly complicated, with new programmes and projects being adopted as part of the Arctic Council's activities with no clear relationship to already existing programmes; The work of the Council lacks long-term perspectives due to the lack of a permanent secretariat and the consequent problem of chair-states wanting to have their own priorities implemented within their two-year chair period. There also seems to exist a lack of enthusiasm for the work of the Council, testified in part by the fact that in the last ministerial meeting in Inari only by three minister level representatives from the eight Arctic states participated.

One of the main underlying problems in the work of the Council is its legal basis. The Rovaniemi process and the Arctic Council have both been adopted via declarations, considered widely as soft-law instruments. Even though there is disagreement over the credibility of the whole concept of soft-law in international law, the participants to the Arctic co-operation view the Council as soft-law organisation with no power to establish internationally legally binding obligations for the Arctic states. First and foremost this means that the environmental protection cannot touch upon issues that should be at the heart of environmental protection work of the Arctic: those regulated by national environmental laws of the Arctic eight.

Within these limits, the Council has done a lot of useful work: reviewed the international environmental laws and treaties applicable to the Arctic region; produced guidelines and manuals on various fields of environmental protection, where Arctic application would require special measures; made an inventory of existing nature protection areas, studied the environmental problems damaging the environment etc. Sometimes these programmes have made a difference but many a times the end product has been somewhat disappointing.

This kind of structure of conducting environmental protection – national line-agencies co-operating with each other together with the representatives of indigenous peoples framework organisations – finds its limits quite easily. It is evidently a good thing that national line-agencies located in the southern capitals of the Arctic states meet each other regularly, and become aware of the Arctic risks as well as the problems the Arctic indigenous peoples confront. Yet, from the perspective of the local communities in the Arctic, the Council cannot really do much that pertains to the environmental problems they are facing. If the Council cannot move to regulate how the national legal systems are applied in the Arctic, it is hard to see how much sustainable development it could bring to the resource-rich Arctic region.

This was painfully shown by the Guidelines for Environmental Impact Assessment in the Arctic, an instrument that was adopted in the Alta ministerial in 1997 and was meant to harmonise the way environmental impact assessment should be done in the Arctic – both nationally and in a transboundary context. Even though the Arctic states agreed to apply these Guidelines in practise, according to the ministerial declaration from the Alta meeting, no real follow-up mechanism was established to oversee how these Guidelines were in effect implemented.<sup>4</sup> In the research we in the Arctic Centre conducted for the Finnish Ministry for the En-

vironment, we found out that only a few people from the stakeholders in the Arctic – environmental NGO's, indigenous peoples' organisations, companies, administrative agencies - even knew that the Guidelines exist, let alone that it would have influenced any EIA's made in the Arctic.

With this kind of structure for establishing environmental controls on how economic activities are executed in the Arctic, we can certainly argue that the Council will be unable to counter the problems caused, for instance, by global warming and the associated opportunities for making better economic use of the Arctic. As the Arctic Climate Impact Assessment reveals, hydrocarbon and minerals exploitation, transportation, etc. are likely to increase in volume in the Arctic, a development that will place more demands on the environmental protection work in the region.

One possibility in countering these developments would be to try to strengthen the Arctic Council, and more specifically its environmental protection capability. According to Nowlan, who did her study for the IUCN project on the topic, there might be a possibility to borrow from the more developed polar regime, the Antarctic Treaty System, and especially its 1991 Madrid Protocol on Environmental Protection.<sup>5</sup> On the basis of the Nowlan report, the IUCN convened an expert meeting in March 2004 to discuss the possibility of formalizing the current soft-law regime.<sup>6</sup> No clear consensus emerged from this expert meeting over the formalisation of the Arctic Council on the basis of the Environmental Protocol to the Antarctic Treaty. It was decided that it is more reasonable to examine at what level each environmental problem should be addressed, whether that be global, regional, semi-regional, national or sub-national.

The clear structural difference between the two polar regions – the territorial sovereignty claims over the Antarctic having been frozen by the 1959 Treaty whereas most of the Arctic being part of sovereignty or sovereign rights area for the Arctic states – became too big an obstacle for borrowing from the Antarctic Treaty System. For the present author, there does not seem to exist enough similarities between the two regimes, nor enough political will, to transform the Arctic Council on the basis of the Protocol.

Even though it seems that no major renewal of the Council is possible, it also appears that the attempts to renew the Council should not stop at that. From the perspective of the people and communities living in the Arctic region, the functioning of the Council in its present mode seems unfortunate: it presents itself as a

high-level inter-governmental forum - with participation from the region via indigenous peoples framework organisations and by other Arctic international forums being observers in the Council - with interests of sustainable development and environmental protection in mind, but cannot really do much for promoting sustainable development in the face of huge challenges brought to the region by globalisation and climate change.

If the questions as to whether the environment and the people of the Arctic region are well-managed – questions, which are of much interest to the people and communities living in the region – can be answered by referring to the existence of the Arctic Council, there is a great danger of the Council becoming a façade under which unilateral and uncoordinated policies of the states in the region can proceed. This problem of façade legitimisation is bound to haunt its work until it can transform itself to an inter-governmental organisation with legal powers.

There would thus seem to exist a need to launch the third phase of the Arctic co-operation, the two first phases - the AEPS and the Arctic Council – being soft-law co-operation. The celebrated role of the Arctic Council as a ‘a symbol of the emergence of the Arctic as a distinct region in international society’<sup>7</sup> seems increasingly outdated as new environmental and social problems would require a more authoritative role for the Council.

There would, in fact, seem to exist a possibility for this transformation during the coming International Polar Year (IPY, 2007-2008).<sup>8</sup> During this period, there will be huge media attention surrounding the two polar areas, bringing out their similarities and differences. Here, inspiration from the well-developed hard-law regime of

the ATS could be used as an inspiration for formalising the Arctic Council and according to it the possibility to enact binding international obligations. Given the regional problems the Arctic is facing, this would seem to be the only credible route to promote sustainable development in the region.

## Notes

1 Senior Arctic Officials (SAO), normally officials from the foreign ministries of the eight Arctic states, guided the co-operation in-between the ministerial meetings.

2 The first chair-state was the United States (1998-2000, Barrow ministerial), Finland (2000-2002, Inari), currently Iceland is a chair and the next chair will be the Russian Federation.

3 The difference between the WWF and the IUCN is that IUCN is a hybrid organisation, the membership, which consists also of states (78) and government agencies (113) but also international and national NGO's.

4 The only follow-up was a creation of a website where information about the EIA laws and procedures, responsible agencies etc. can be found. The website at <<http://arcticcentre.ulapland.fi/aria/>> (5 December 2006) is a very useful tool for researchers and those who are in general interested in EIA procedures, but it certainly does not contain any connection to actual supervision of how the Guidelines are applied and implemented in the Arctic.

5 Nowlan, L., “Arctic Legal Regime for Environmental Protection”. IUCN Environmental Policy and Law Paper No. 44.

6 The expert meeting was participated by scholars, representatives of Arctic indigenous peoples and government officials. The IUCN decided recently to establish a permanent Arctic Specialist Group.

7 Young, O., “The Structure of Arctic Co-operation: Solving Problems/Seizing Opportunities”, at <<http://www.arcticparl.org/?/reports>>

8 This International Polar Year is fourth of its kind, the most recent being organized fifty-years ago (1957-1958). It is, of course, not a year, but years, and it is not even the years usually mentioned in its name (2007-2008). The IPY will start from the March 2007 and it will end by March 2009 in order to enable to summer field seasons in both poles.