

Briefing Note

Arctic Council's Impact on Arctic Shipping

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As the most proactive international body in the region, the Arctic Council aims to help provide safe, secure, environmentally sound, and sustainable shipping in the Arctic Ocean. The Arctic Council, as a soft law institution does not have authority to adopt legally binding resolutions for shipping – this capacity primarily rests with the International Maritime Organization (hereinafter IMO) –, however, the Council has an extraordinary decision shaping function, which it uses through strong cooperation. The Arctic Council's cooperation with the IMO has already proved itself to be fruitful, however, there is a long list of issues that require attention. The Arctic Council's cooperative approach therefore warrants an investigation and further analysis in order to understand the future direction of the Arctic Council's impact on Arctic shipping.

The IMO's unique role

It is widely accepted that the IMO is a “competent international organization” in connection with the adoption of international shipping rules and standards in matters concerning maritime safety, efficiency of navigation, and prevention and control of marine pollution from vessels and by dumping (U.N. Division for Ocean Affairs and Law of the Sea, 1996).

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The IMO's new mission statement declared in 2011 states that:

“The mission of the IMO, as a United Nations specialized agency, is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO's instruments with a view to their universal and uniform application.” (IMO Mission Statement, 2011)

As we see from the article, the cooperation is the key for the IMO to achieve its mandate of establishing common international ground rules for the safety and protection of the marine environment.

The Arctic Council

The Arctic Council's constitutive instrument defines its mandate as:

“.. to promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous peoples and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic” (The Arctic Council, 1996)

As indicated above, the Council also highlights “cooperation” as its priority. And it mainly focuses on environmental protection and sustainable development within the confines of issues common to the Arctic region.

Traditionally, the Arctic Council fulfills its role through scientific research, in particular monitoring and assessment. The Arctic Council working groups produce reports that use impact assessment, trend analysis and modeling to take measure of the Arctic region (Axworthy, Koivurova & Hasanat 2012). They create tables, charts, maps and graphs to help both in articulating and calculating the present and also tracing the possible futures (Axworthy, Koivurova & Hasanat 2012).

The AMSA Report

There are two working groups most relevant to our discussion here. These are the Protection of Arctic Marine Environment (hereinafter PAME) and, to a lesser extent, Emergency, Prevention, Preparedness and Response (hereinafter EPPR).

The PAME, as a follow-on effort to the Arctic Council's 2004 Arctic Climate Impact Assessment (ACIA) and Arctic Marine Strategic Plan (AMSP), released its Arctic Marine Shipping Assessment (AMSA) report in 2009.

More than 200 experts, led by Canada, Finland, and the United States, involved in creation of this report. With the 96 findings, divided under three main themes – Enhancing Arctic Marine Safety, Protecting Arctic People and the Environment, and Building Arctic Marine Infrastructure - and 17 recommendations, the AMSA report is considered as the Arctic Council's biggest contribution to the cooperative solution efforts. It is also safe to say that the AMSA report constitutes the foundation of the cooperation between the IMO and the Arctic Council.

Through the AMSA report, the Arctic Council highlights the importance of the IMO and calls for the Arctic states to:

“...to cooperatively support of the effort at the International Maritime Organization to strengthen, harmonize and regularly update international standards for vessels operating in the Arctic.” (Arctic Council 2009)

This is a clear message that the matters related to the Arctic maritime safety, security and environmental protection should be resolved through cooperating with the IMO.

Cooperative Work Completed

The IMO Polar Code

Under the Arctic Shipping Rules and Standards sub-theme, the AMSA report listed a key finding that:

“there is a general lack of uniform, mandatory, and non-discriminatory Arctic shipping regulations and mariner (ice navigator) standards for the Arctic Ocean, and the IMO has not developed or adopted specially tailored (and mandatory) standards for vessels operating in the Arctic. Further, it elaborated that none of the current IMO conventions such as MARPOL have yet been adjusted and adopted for Arctic marine operations, especially those operations in ice covered waters”.

Based on this finding, the AMSA recommended to start working towards the implementation phase.

Two implementation efforts, highlighted in the report, are:

- Support the updating and the mandatory application of relevant parts of the Guidelines for Ships Operating in Arctic Ice-covered Waters (Arctic Guidelines); and,
- Drawing from IMO instruments, in particular the Arctic Guidelines, augment global IMO ship safety and pollution prevention conventions with specific mandatory requirements or other provisions for ship construction, design, equipment, crewing, training and operations, aimed at safety and protection of the Arctic environment (Arctic Council, 2015)

Subsequently, a collective understanding about the necessity of a mandatory instrument has gained the much-needed momentum. Thereafter, Arctic states, being more active at the IMO meetings, started to work toward the creation of this mandatory instrument, namely the International Code of Ships Operating in Polar Waters (hereinafter the Polar Code).

In this process, the PAME working group also monitored the IMO’s development of the Mandatory Polar Code, and, through its Records of Decision, encouraged member governments to intensify their collaboration with respect to finalization of the Polar Code (Arctic Council, 2015). It also supported and encouraged the Arctic states to meet in advance of IMO committee and sub-committee meetings of relevance to the Polar Code. As a result, the Polar Code is created.

The Polar Code is due to enter-into-force on January 1, 2017.

The SAR Agreement

Under the Search and Rescue (SAR) sub-theme, the AMSA report recommended that:

“the Arctic states decides to support developing and implementing a comprehensive, multi-national Arctic Search and Rescue (SAR) instrument, including aeronautical and maritime SAR among the eight Arctic nations and, if appropriate, with other interested parties in recognition of the remoteness and limited resources in the region” (Arctic Council, 2015).

The Arctic Council, pursuant to the International Convention on Maritime Search and Rescue, 1979, and the Chicago Convention on International Civil Aviation, 1944, adopted the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic in 2011. This was the first ever legally binding agreement negotiated under the auspices of the Arctic Council.

It is important to note that the 1979 SAR convention developed under the IMO during a time when the United Nations Conventions on the Law of the Seas (hereinafter UNCLOS) was still under negotiation (Molenaar, 2012). IMO’s Marine Science Committee divided the world into 13 maritime SAR areas in the early 1980s with the Arctic Ocean designated as area number 13 (Molenaar, 2012).

The objective of this agreement is “to strengthen aeronautical and maritime search and rescue cooperation and coordination in the Arctic.” Each of the Arctic states undertook to “promote the establishment, operation and maintenance of an adequate and effective search and rescue capability within its area.”

The agreement in detail fosters the conduct of joint Arctic SAR exercises and training, lists information on the Arctic states’ rescue coordination centers, and addresses the issue of requests to enter the territory of a Party for SAR operations. The Arctic SAR agreement entered into force on 19 January 2013 following ratification by each of the eight Arctic signatory states.

Oil Pollution Preparedness and Response Agreement

In its key Marine Environmental Protection sub-theme, the AMSA report stated that:

“the release of oil in the Arctic marine environment, either through accidental release or illegal discharge, is the most significant threat from shipping activities.”

And again, in its recommendation section under the theme of Oil Spill Prevention, the AMSA report indicated that:

“the Arctic states decide to enhance the mutual cooperation in the field of oil spill prevention and, in collaboration with industry, support research and technology transfer to prevent release of oil into Arctic waters, since prevention of oil spills is the highest priority in the Arctic for environmental protection.”

Accordingly, as a response to this call, the Marine Oil Pollution Preparedness and Response Cooperation Agreement is adopted under the EPPR working group at the Kiruna Ministerial meeting in May 2013. And the ratification process of this agreement was completed in March 2016.

This instrument is inspired by various conventions and principles, including the UNCLOS, the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPPRC), the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 1969), and “polluter pays” principle.

This agreement mainly focuses on Arctic oil spills and addresses a range of practical issues, including requirement of a national 24-hour system for response, facilitation of cross-border transfer of resources, notification of the parties, monitor spills, conduct of exercises and training, joint reviews of responses to Arctic spills, and a set of operational guidelines in an appendix (Brigham, 2013).

Cooperative Work Ahead

The Arctic Council and IMO are expected to work cooperatively on a number of additional key Arctic issues in the coming years.

Some of the immediate issues might be listed as:

- Designation of MARPOL Special Areas. The Arctic Council and its working groups, especially PAME, is expected to conduct assessments and develop plans for future special area designations in order to help IMO take concrete measures.
- Protection of the Marine Mammals. Ship strikes, noise, and disturbance are some of the threat that the marine mammals will face in future Arctic. Close cooperation in this issue will also yield effective solutions. Arctic states are expected to propose routing alternatives for this matter.
- Ballast Water. Protection from invasive (exotic) species is another subject matter. AMSA report urges an assessment of the risks posed by ballast water carried invasive species and the taking of measures within national jurisdiction.
- Monitoring and Arctic Traffic Domain Awareness. Use of data from IMO mandatory Automatic Identification System Transponders and the application of IMO’s requirement for the Long Range Identification and Tracking of Ships.
- Heavy Fuel Oil. The Polar Code is heavily criticized for not including a provision that would ban the heavy fuel oil use in the Arctic ocean. Due to Russian dissent, the needed consensus on this topic haven’t been reached, however, further development is expected.
- Non SOLAS Vessels. Polar Code is applicable to tankers, bulk carriers and cruise ships, vessels 500 gross tons, therefore, fishing boats, yachts and smaller adventure vessels are out of its coverage. IMO has plans on expanding coverage and Arctic Council would take further role on this issue as facilitator.
- Additional issues, such as, sewage, grey water, ice navigator training, and passenger ship safety measures are also in the agenda for solution through cooperative work.

The Council’s Future Role

As we see from the above list, most of the navigational problems in the Arctic Ocean are still on the table waiting to be discussed and resolved. In this process however the Council’s position has a vital importance. The Council simply can not effort to act as a private club and isolate itself from the

other traditionally maritime nations, who also indicated its interest in the region. It needs to be stronger, therefore, it needs to be more inclusive in its effort to have a unified stand for common navigational problems in the Arctic Ocean. Currently, the Arctic Council's non-Arctic observer states, members of the IMO, are only given very limited, symbolic or diplomatic, role to play, but in reality, especially when we consider about the activities involving both Arctic Natural Resources and Central Arctic Ocean Shipping, these states should also be regarded as stakeholders. Therefore, their timely inclusion seems to be inevitable if we claim to have a uniform, non-discriminatory set of rules and regulations in a global level. Lastly, inclusive approach would also foster regional stability and security by facilitating united global approach in tackling future Arctic problems.

Conclusion

As I indicated in this article, we have all witnessed the Arctic Council's impact on decision making process. This is an ideal approach to find solutions to regional navigational problems because the IMO has very little in its power to offer unless coastal states -and interested parties- are willing to make an effort to come up with solutions. Considering the long list of problems and difficulty in resolving them, I think the Arctic Council has to go through a transformation. Only stronger and more inclusive Council can overcome the current and upcoming navigational problems in the region. The IMO might have power to have legally binding resolutions for shipping, but it is the Arctic Council's duty to be more effective and proactive.

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