

## Briefing Note

# The Arctic Council's Task Force on Arctic Marine Cooperation

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### Creation of the Task Force

In early 2015, the United States proposed that the Arctic Council create a task force or expert group to assess the need for a new mechanism to enhance international cooperation and coordination in managing the Arctic Ocean (*US Concept Paper*, 2015: 1). Recognizing that the Arctic marine environment is rapidly changing and presents unforeseeable shared challenges and opportunities, the United States believed it was necessary to begin efforts to consider what type of mechanisms could improve how Arctic States work together to manage the uncertain future (*US Concept Paper*, 2015: 1). It envisioned that types of potential mechanisms for coordination fell along a spectrum, from treaty-based “hard” coordination with binding measures to “soft” coordination that facilitated convening relevant authorities and exchanging information (*US Concept Paper*, 2015: 1). The proposed task force

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would conduct an analysis to assess the need for a new mechanism and propose the basic elements of a cooperation mechanism, including its mandate, scope, legal form, and relationship to the Arctic Council (*US Concept Paper*, 2015).

On April 24, 2015, at the Ninth Ministerial Meeting of the Arctic Council in Iqaluit, Canada, the Ministers of the eight Arctic States and representatives of the six Permanent Participants<sup>1</sup> adopted the Iqaluit Declaration. It established a Task Force on Arctic Marine Cooperation (TFAMC) with a mandate “to assess future needs for a regional seas program or other mechanism, as appropriate, for increased cooperation in Arctic marine areas” (5). The detailed mandate in the Report of the Senior Arctic Officials (SAOs) to Ministers presented a series of questions for the Task Force to answer in a 2017 report to Ministers.

### **International Legal Context**

The TFAMC was created within an active international legal space. Human activities in the Arctic marine environment are governed by several binding legal instruments and guided by numerous legally non-binding declarations, strategic plans, and recommendations. The 1982 United Nations Convention on the Law of the Sea is the overarching legal framework for the sustainable use of the oceans and their resources, including the Arctic marine environment. Article 197 of the Law of the Sea Convention (LOSC) provides that “States shall cooperate...directly or through competent international organizations, in formulating and elaborating international rules, standards, and recommended practices... for the protection and preservation of the marine environment.”

The Arctic Council, established in 1996 by the Ottawa Declaration, is a high-level intergovernmental forum that promotes cooperation and coordination among the eight Arctic States: Canada, Kingdom of Denmark, Finland, Iceland, Norway, Russian Federation, Sweden, and the United States (“20 years of the Arctic Council,” 2016). The Arctic Council’s mandate is to address issues of relevance to the Arctic region, in particular environmental protection and sustainable development. The chairmanship of the Council rotates every two years among the Arctic States. From 2015 to 2017, the Arctic Council is under U.S. Chairmanship led by U.S. Secretary of State John Kerry. Under the theme “One Arctic,” the U.S. Chairmanship has defined three pillars of focus: 1) the economic and living conditions of Arctic communities, 2) Arctic Ocean safety and security, and 3) the impacts of climate change (One Arctic: Shared Opportunities, Challenges, and Responsibilities, 2015).<sup>2</sup>

The Arctic Marine Strategic Plan 2015-2025 (AMSP), approved by the Arctic Ministers in 2015, provides a framework for the Arctic Council to protect marine ecosystems, promote sustainable use of the marine environment, and enhance the well-being of Arctic inhabitants. It outlines four goals: 1) improve knowledge of the Arctic marine environment; 2) conserve and protect ecosystem function and marine biodiversity; 3) promote safe and sustainable use of the marine environment; and 4) enhance the economic, social and cultural well-being of Arctic inhabitants, and strengthen their capacity to adapt to the changing Arctic environment (AMSP, 2015).

## Other Views on Arctic Marine Cooperation

Arctic marine cooperation is a topic of increasing interest, and a number of academics and NGOs have considered the future of Arctic cooperation, and the function and design of a potential cooperative mechanism. In 2010, the Arctic Governance Project called for strengthening Arctic governance by broadening the mandate of the Arctic Council and enhancing existing treaties and arrangements (17). Some scholars have emphasized the importance of cross-scale integration of stewardship through a polycentric governance model that coordinates processes and decisions across multiple levels (Chapin, Sommerkorn, Robards, & Hillmer-Pegram, 2016: 214). The World Wildlife Federation recommends that a cooperative mechanism draft Programmatic Action Agendas on key strategic issues to be implemented by national governments or regional and international bodies (Eichbaum, 2016: 3). A regional seas arrangement has been proposed as the most politically acceptable platform for cooperation (Baker, 2016).<sup>3</sup>

## Mandate and Objectives

The TFAMC is charged with delivering a report to the Ministers in 2017 identifying future needs for strengthened cooperation in Arctic marine areas (*SAO Report*, 2015: 77). The objectives of this report are to propose recommendations on the nature and scope of such a mechanism, its relationship to the Arctic Council, and its potential legal form (*SAO Report*, 2015: 77). However, the decision to form the Task Force did not constitute a decision to establish the cooperative mechanism (*SAO Report*, 2015: 77).

## Composition

The TFAMC is co-chaired by the United States, Iceland and Norway. Each of the eight Arctic States, as well as Permanent Participants, are represented on the TFAMC. Accredited Arctic Council Observers such as the European Union and the World Wildlife Federation have also attended TFAMC meetings.<sup>4</sup>

## Progress to Date

The first meeting of the TFAMC took place in Oslo, Norway, on September 21-22, 2015 (*1<sup>st</sup> Meeting Summary Report*, 2015: 1). All eight Arctic States, three Permanent Participants (the Saami Council, the Inuit Circumpolar Council, and the Aleut International Association), and nine Observers attended. The purpose was to establish a common baseline understanding of the Arctic Council's work to date relevant to the Task Force, and of regional marine cooperation mechanisms around the world. Various organizations such as the International Council for the Exploration of the Sea (ICES), North Pacific Marine Sciences Organization (PICES), International Arctic Science Committee (IASC), and the Sargasso Sea Commission gave presentations providing context on relevant existing cooperative mechanisms (*1<sup>st</sup> Meeting Summary Report*, 2015: 1).

In discussions at the first meeting, several delegations indicated that they looked forward to identifying opportunities for future cooperation, in addition to identifying existing gaps, though also cautioning that any new budgetary proposals would be closely scrutinized (*1<sup>st</sup> Meeting Summary Report*,

2015: 1-2). Several delegations identified desirable values for Arctic marine cooperation, such as the importance of involving local communities, coordinating on a regional basis, and being flexible and adaptable to change. Delegations generally agreed that the AMSP would be a good point of departure for their work. Additionally, delegates identified certain preliminary needs in international cooperation, such as utilizing an ecosystem approach, coordinating across Arctic Council subsidiary bodies on cross-cutting issues, and ensuring stable funding for monitoring of the environment.

On November 18, 2015, the Co-Chairs proposed an approach for intersessional work in their first non-paper. The proposed approach started with the strategic objective established at the Ministerial level, identified gaps and opportunities in achieving the strategic objective, and proposed which of these gaps or opportunities the coordinating mechanism could address (Intersessional Non-Paper, 2015: 2). The Arctic Council had identified as a strategic objective the implementation of an ecosystem-based approach to management through the 2013 Kiruna Declaration and Kiruna Vision Statement as well as the 2015 Iqaluit Declaration (Intersessional Non-Paper, 2015: 3). The Co-Chairs stressed that the Task Force's mandate encompassed not only *gaps* (what is missing), but also *opportunities* (things that could be done better or more efficiently) (Intersessional Non-Paper, 2015: 2). Using the four goals outlined in the AMSP as a framework, the Co-Chairs identified as potential gaps or opportunities the coordination and funding for monitoring, cooperation in the formulation and measurement of ecological quality indicators and objectives, the management of Arctic marine areas beyond national jurisdiction, a framework for multiple States to coordinate management of marine ecosystems transcending their national jurisdictions, and a regional mechanism for coordinating area-based management (Intersessional Non-Paper, 2015). The task at this stage was for delegations to decide whether they wanted to address these identified gaps and opportunities, and to determine the priorities of the TFAMC.

In January of 2016, the Co-Chairs produced a second non-paper that synthesized the delegations' feedback on the first non-paper and developed a proposed work plan through the 2017 Ministerial Meeting. This non-paper also organized clusters of questions for the next meeting to help solidify abstract discussions (Co-Chair's Non-Paper, 2016).

The second meeting of the TFAMC was held in Stockholm, Sweden, on February 4-5, 2016 (Co-chairs' Summary Meeting II, 2016). Over two days, delegations proposed principles and values to guide future Arctic marine cooperation. There was broad agreement that future cooperation should take place within the framework of the Arctic Council, and that there should be involvement of Arctic indigenous peoples. Delegations also proposed four types of cooperative mechanisms: 1) a ministerial process that allows for ministers to regularly convene for coordinated action; 2) a marine commission within the Arctic Council comprised of senior officials with marine expertise and Permanent Participants; 3) deputy SAOs to serve a coordinating function, and 4) dedicated SAO meetings on marine cooperation issues (Co-Chairs' Non-Paper, April 2016: 1). Delegations additionally noted that answering the specific questions of the second non-paper would require further intersessional work involving domestic constituencies.

In April 2016, the Co-Chairs produced a third non-paper to facilitate discussions at the third meeting of the TFAMC (Co-Chairs' Non-Paper, April 2016). The non-paper synthesized values and principles to guide Arctic marine cooperation, summarized deliberations to date, and posed questions to facilitate discussion at the third meeting. (Co-Chairs' Non-Paper, April 2016: 5).

The third meeting of the TFAMC took place in June 1-2, 2016, in Reykjavik, Iceland. At this meeting, a consensus began to emerge regarding the functions that a cooperation mechanism might possess. Several delegations agreed that the mechanism should be located within the Arctic Council and strengthen existing Arctic Council structures; preserve all rights to which the Permanent Participants are entitled; be on-going rather than provisional or ad hoc; convene marine experts and managers; have sufficient stature and credibility to enable an integrated approach to marine stewardship; facilitate scientific coordination; formulate ecological quality objectives and indicators; serve as a forum for information exchange; have area-based stewardship functions; and facilitate follow-through on the Arctic Council's policy recommendations. No consensus emerged on the form of the mechanism, though many delegations expressed the view that it should not be legally binding.

## Future Steps

As this article was going to press, the TFMAC was scheduled to hold its fourth meeting in Portland, Maine, on 22-23 September 2016, during which delegations will continue to revise their discussions and take up an initial draft report prepared by the Co-Chairs. Intersessional work will take place in preparation for the final meeting of the current biennial cycle in February 2017, during which outstanding issues will be resolved and the report finalized.

The final report and recommendations of the TFMAC are expected to be delivered to Ministers in 2017. Thus far, the work of the TFMAC itself has been an excellent example of how the Arctic States and Permanent Participants can cooperate to address shared challenges, which demonstrates the potential of a future cooperative mechanism in protecting and enhancing the Arctic marine environment.

## Notes

1. Permanent Participants are Arctic organizations of indigenous peoples with majority Arctic indigenous constituency, representing a single indigenous people resident in more than one Arctic State, or more than one Arctic indigenous people resident in a single Arctic state. The designation of an organization as a Permanent Participant is made by the Council (*Ottawa Declaration*, 1996: 2).
2. For more details on specific initiatives under the U.S. Chairmanship, see the descriptions by the U.S. Department of State at <http://www.state.gov/documents/organization/249166.pdf>.

3. Regional Seas programs aim to address the governance of oceans and seas at the regional level. They are multilateral agreements, usually including an Action Plan and a legally-binding Convention. There are eighteen such programs across the world. The United Nations Environment Programme (UNEP) administers seven programs (Hasegawa, 2016; 10).
4. Observer status is open to non-Arctic states, intergovernmental and inter-parliamentary global and regional organizations, and non-governmental organizations, which the Arctic Council determines can contribute to its work. (*Ottawa Declaration*, 1996: 3).

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