

February 2017

The Arctic Council: Twenty Years in the Making and Moving Forward

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Recommended Citation

Matthew Richwalder, *The Arctic Council: Twenty Years in the Making and Moving Forward*, 22 *Ocean & Coastal L.J.* 22 (2017).

Available at: <http://digitalcommons.maine.edu/oclj/vol22/iss1/4>

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THE ARCTIC COUNCIL: TWENTY YEARS IN THE MAKING AND MOVING FORWARD
BY:
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I. INTRODUCTION

II. THE ARCTIC ENVIRONMENTAL PROTECTION STRATEGY

III. INITIAL GOALS OF THE ARCTIC COUNCIL

IV. HOW THE ARCTIC COUNCIL FUNCTIONS AND WHAT THE COUNCIL DOES IN PRACTICE

A. Senior Arctic Officials (SAO)

B. Working Groups

C. The Secretariat

D. Arctic Contaminants Action Program (ACAP)

E. Arctic Monitoring and Assessment Programme (AMAP)

F. Conservation of Arctic Flora and Fauna (CAFF)

G. Emergency Prevention, Preparedness, and Response (EPPR)

H. Protection of the Arctic Marine Environment (PAME)

I. Sustainable Development Working Group (SDWG)

J. Legally Binding Documents Created by the Arctic Council

V. INCREASING TERRITORIAL CLAIMS

VI. THE UNITED STATES' ROLE IN THE ARCTIC COUNCIL IN THE REGION

VII. MOVING FORWARD

VIII. CONCLUSION

ABSTRACT

This comment is about the Arctic Council. The Arctic Council (the Council) is an inter-governmental forum promoting cooperation and interaction among the Arctic states, indigenous peoples, and other inhabitants of the Arctic region on issues of sustainability and environmental protection. The Council has eight member States: Denmark, Finland, Norway, Sweden, Canada, United States, Russia, and Iceland. There are also observer States, who are non-Arctic countries and permanent participants, six indigenous peoples groups living in the Arctic. This comment delves into the history of the Council, discusses its starting goals, and how it has evolved over the last twenty years. This comment also explores the current state of the Council and the increasing amount of tension between Arctic States and non-Arctic States as the Arctic sea ice disappears, more travel routes open, new territory emerges, and the prospect of natural resources that have yet to be tapped into. Lastly, this comment will present some recommendations for how the Council should handle the changing conditions and relationships amongst the Arctic countries, non-Arctic countries, and indigenous people.

KEY TERMS

Admiralty, Environmental Law, International Law, Law of the Sea, and Natural Resources Law.

I. INTRODUCTION

The Arctic Council (the Council) is an inter-governmental forum promoting cooperation and interaction among the Arctic states, indigenous peoples, and other inhabitants of the Arctic region on issues of sustainability and environmental protection.¹ The Council consists of eight member states: Sweden, Finland, Canada, the Kingdom of Denmark, Iceland, the United States, Norway, and the Russian Federation.² Additionally, the status of permanent participants was given to six organizations representing Arctic indigenous peoples.³ The permanent participant category was created to allow for active participation and consultation with the Arctic indigenous peoples.⁴ The permanent participants include the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North, and the Saami Council.⁵ Lastly, the category of observer status was created for non-Arctic states, along with inter-governmental, inter-parliamentary, global, regional, and non-government organizations for the ability to contribute to the Arctic Council.⁶

Twenty years ago, on September 19, 1996, the Declaration on the Establishment of the Arctic Council was signed in Ottawa, Canada, formally establishing the Arctic Council.⁷ The Arctic Council was created to provide a forum for Arctic states to consider sustainability and environmental issues, but in 2015 there several factors drastically changed the Arctic and calling into question the role of the Council.

The Arctic is a vast ice-covered ocean -- a tree-less, frozen ground replete with life, including fish and marine mammals, organisms living in the ice, human societies, birds, and land mammals.⁸ Climate change is causing global ocean and surface temperatures to rise. Arctic sea ice reaches its minimum in September of each year.⁹ September Arctic Sea Ice is declining at a rate of 13.3 percent per year.¹⁰ Additionally, Arctic Ocean temperatures were as much as four degrees centigrade higher than the 1982-2012 mean temperature in the Bering Strait and Laptev Sea region.¹¹

The rapidly changing Arctic environment has created a host of problems including reduction of sea ice, loss of wildlife habitat, loss of living space for human societies, and rising

¹ *The Arctic Council: A Background*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us> (last updated May 23, 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ The Arctic Council, Declaration on the Establishment of the Arctic Council, Joint Communiqué of the Governments of the Arctic Countries on the Establishment of the Arctic Council, (September 19, 1996).

⁸ *Arctic Report Card*, NAT'L OCEANIC AND ATMOSPHERIC ADMIN. <http://www.arctic.noaa.gov/Report-Card/Report-Card-2016/ArtMID/5022/ArticleID/286/Sea-Ice> (last visited Dec. 27, 2016), <https://www.climate.gov/news-features/understanding-climate/climate-change-minimum-arctic-sea-ice-extent> (last visited Dec. 27, 2016).

⁹ *Arctic Sea Ice Minimum*, NASA: GLOBAL CLIMATE CHANGE, <http://www.climate.nasa.gov/vital-signs/arctic-sea-ice/> (last updated Aug. 29, 2016).

¹⁰ *Id.*

¹¹ M.L. Timmermans & A. Proshutinsky, *Arctic Ocean Sea Surface Temperatures*, in NAT'L OCEANIC AND ATMOSPHERIC ADMIN., ARCTIC REPORT CARD 2014, 39 (M.O. Jeffries et. al. eds. 2014).

sea levels. Additionally, the melting sea ice is opening new shipping lanes and allowing passage to areas of the Arctic Ocean that have not been accessible for thousands of years. This creates problems around territorial rights of the ocean, mineral and oil rights, fishing rights, and shipping routes, and this list is not exhaustive. Given all of these changes in the Arctic, questions of the Arctic Council's role in the region are increasingly important.

This comment will provide an overview of the history and stated goals of the Arctic Council. This comment will, additionally, analyze what the Arctic Council does and what the Council should do. Further, the future of the council and some alternatives to its current organization and role internationally will be discussed. First, this comment will analyze the early manifestations of the Arctic Council as represented by the Arctic Environmental Protection Strategy and the starting goals of the Council. Whether the Council has met these goals and to what extent these goals have evolved will also be discussed. Second, this comment will discuss the history of the Council and its trends over the course of its existence. Third, this comment will analyze what the Council does and its functions and what the Arctic Council should look like and how it should function. Additionally, this comment will discuss the increasing territorial claims being made by Arctic countries and the presence of non-Arctic countries in the Arctic. Considering the United States is an Arctic country and member of the Council, America's actions or inactions will be analyzed. Finally, this comment will explore the Council's alternatives, specifically, whether the Council should continue to function as it currently does or take on new role where the Council becomes a "hard law" generating body, a policy-shaping entity or a policy-making entity, or a combination of the two.

II. THE ARCTIC ENVIRONMENTAL PROTECTION STRATEGY

The first step of an attempt for Arctic-wide cooperation was launched in 1987 by the Soviet Union's then-Secretary General Mikhail Gorbachev in Murmansk, where he proposed that the Arctic countries come together and cooperate on various issues, including protection of the Arctic environment.¹² In 1989, Finland convened a conference in Rovaniemi of the eight Arctic states (Finland, Sweden, Norway, Denmark, the United States, the then Union of Soviet Socialist Republics, Canada, and Iceland) to discuss cooperative measures on the protection of the Arctic environment.¹³ The Rovaniemi Conference agreed to work towards gathering a meeting of the circumpolar Ministers responsible for Arctic environmental issues.¹⁴ Between 1989 and 1990, two preparatory meetings were convened in Yellowknife, Canada and Kiruna, Sweden before the second meeting in Rovaniemi in June 1991, where the eight Arctic states and several concerned nations and groups signed the Rovaniemi Declaration and adopted the Arctic Environmental Protection Strategy (AEPS).¹⁵

AEPS was designed to be carried out through national legislation and in compliance with international law, including customary international law reflected in the 1982 United Nations

¹² For a much more detailed history of the Arctic Council and the early stages of the Arctic environmental protection movement, see Timo Koivurova & David L. Vanderzwaag, *The Arctic Council at 10 Years: Retrospect and Prospects*, 40 U.B.C. L. Rev. 121 (2007).

¹³ Declaration on the Protection of Arctic Environment: Arctic Environmental Protection Strategy, The Arctic Council, (June 14, 1991).

¹⁴ *Id.* at 1.

¹⁵ *Id.*

Convention on the Law of Sea (UNCLOS).¹⁶ The AEPS objectives were ambitious, which is evident in its final, overarching goal, “to identify, reduce, and . . . eliminate pollution.”¹⁷ Other stated objectives included the protection of the Arctic ecosystem including humans, to provide for the “protection, enhancement and restoration of environmental quality and the sustainable utilization of natural resources,” which included the use of natural resources by local and indigenous peoples.¹⁸ Additionally, the recognition and accommodation of the traditional and cultural values and practices by indigenous peoples was to be considered in relation to the protection of the Arctic environment.¹⁹ A final objective was to regularly review the state of the Arctic environment.²⁰

An additional lasting legacy of AEPS was the Arctic Monitoring and Assessment Program (AMAP), which was created in an effort by the eight Arctic countries recognizing the Arctic as a pristine and diverse ecosystem of great “importance to preserve and protect.”²¹ AMAP was further recognition that pollutants arriving in the Arctic originated in the mid-latitudes by anthropogenic activities and transported to the Arctic by oceans and rivers and atmospheric processes.²² The Arctic countries also identified that the exploitation of natural resources paralleling urban and industrial expansion within the Arctic region contributed to the “degradation of the Arctic environment and affected the living conditions for the inhabitants of the region.”²³

Therefore, the principle purpose of AMAP was the observation of the levels of anthropogenic pollutants and the “assessment of their effects in relevant component parts of the Arctic environment.”²⁴ AMAP also was significant in that it noted a major threat to the Arctic environment “may come from climate change, induced by global warming, and the effects of stratospheric ozone depletion.”²⁵ The recognition that anthropogenic activities were the source of harmful pollutants in the Arctic and that changes in the environment were also a result of climate change is significant in that the eight Arctic countries were formally acknowledging that climate change and negative environmental changes were occurring.

AEPS constitutes the early manifestations of the Arctic Council and the acknowledgement by concerned countries of the impact that pollution and anthropogenic activities are having on the natural environment. Now, this comment will shift to the actual birth of the Council and its starting goals.

III. INITIAL GOALS OF THE ARCTIC COUNCIL

The Arctic Council was formally established on September 19, 1996 in Ottawa, Canada with the signing of the Declaration on the Establishment of the Arctic Council (also known as the

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 9 (2.1)(v).

¹⁸ *Id.* at 9 (2.1)(i)-(ii).

¹⁹ *Id.* at 9 (2.1)(iii).

²⁰ *Id.* at 9 (2.1)(iv).

²¹ *Id.* at 30.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Ottawa Declaration).²⁶ The eight arctic states affirmed their commitment to the well-being of the Arctic inhabitants and the commitment to sustainable development of the Arctic region including improved health conditions, social development, and cultural well-being.²⁷ Further, the declaration reaffirmed the commitment to the protection of the Arctic environment, including the overall health of Arctic ecosystems, maintenance of biodiversity, and conservation and sustainable use of natural resources.²⁸

The Ottawa Declaration recognized the traditional knowledge of the indigenous peoples of the Arctic and their communities, and their place within the Arctic community. Additionally, it was considering the role of Arctic science and research to the “collective understanding” of the Arctic.²⁹ The declaration, further, acknowledged the contribution and support of the organized indigenous groups, such as the Inuit Circumpolar Conference and the Saami Council, in the creation of the Arctic Council.³⁰ All of this was meant to provide for “regular intergovernmental consideration of and consultation on Arctic issues,” involving the Arctic states and indigenous communities.³¹

The Council was established as a high level forum to provide “a means for promoting cooperation, coordination and interaction” amongst the Arctic States with inclusion and involvement of the Arctic indigenous communities on Arctic issues of “sustainable development and environmental protection.”³² Additionally, the Ottawa Declaration expressly noted that the Council should not deal with military security.³³

A second stated goal was to “oversee and coordinate” the programs established by the Arctic Environmental Protection Strategy (AEPS) which is accomplished through the Council’s working groups.³⁴ The working groups were established to carry out the primary work of the Council. The third stated goal adopted “terms of reference for, and oversee and coordinate a sustainable development program.”³⁵ Lastly, the declaration sought to “disseminate information, encourage education and promote interest in Arctic related issues.”³⁶

From the declaration of September 1996, it is clear that the creation of the Arctic Council was only a means to establish a cooperative and collaborative forum for the Arctic States, indigenous communities of the Arctic, and observer states to come together and discuss issues concerning the Arctic. To this end, the Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council, specifically stated that the Council will be a “mechanism for addressing the common concerns and challenges faced by their governments and the people of the Arctic.”³⁷ Further, the Communique expressly noted the desire to focus on

²⁶ The Arctic Council, Declaration on the Establishment of the Arctic Council, Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council, September 19, 1996.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 2

³⁰ *Id.* at 3

³¹ *Id.* at 2

³² *Id.* (Art. 1(a))

³³ *Id.* (FN 1)

³⁴ *Id.* (Art. 1(b))

³⁵ *Id.* (Art. 1(c))

³⁶ *Id.* (Art. 1(d))

³⁷ *Id.* at 5

the “protection of the Arctic environment and sustainable development as a means of improving the economic, social, and cultural well-being of the North.”³⁸

The Council was established to promote research and awareness of Arctic specific issues and to facilitate conversations on the particular problems facing the environment and people of the Arctic. Additionally the Council specifically stated in a footnote that it will stay out of matters of military security, indicating that it intended to stay out of the realm of politics and government. Further, the declaration also signaled that the Council will not be a policy making or law producing entity.

The question is, has the Council met the goals laid out in the Ottawa Declaration? The first goal of providing a forum for promoting cooperation, coordination, and interaction for the overarching goal of sustainable development and environmental protection of the Arctic has been met by the Council. The Council allows for the eight Arctic states and indigenous peoples of the Arctic, with the addition of the observer states, a means to meet, interact, and raise issues concerning sustainability of the Arctic and environmental protection. This is further seen in the establishment of the six working groups that carry out the work of the Council.

The second goal to oversee and coordinate the programs established under the AEPS is largely carried out by the six working groups. However, the working groups act independently of each other and are not cohesive as a collective group. The other goals of creating a sustainable development initiative and to encouraging and promoting interest in the Arctic are carried out through the work of the working groups and the overall function and presence of the Arctic Council internationally.

Even though the Council has largely met its stated goals, there remains the question of whether the Council should do more. Should the Council become more than an entity that creates “soft law” or non-legally binding initiatives and directives? Or, should the Council, instead, be a “hard law” creating entity that produces legal doctrine and laws that must be followed by the member states, indigenous groups, observer states, and any other state that seeks to operate in the Arctic region? This will be addressed in more depth in later sections of this paper. For now, the Council has been successful in carrying out its mission in providing a forum for research and cooperation among member states, indigenous inhabitants, and observer states about sustainable development and environmental protection. However, as conditions in the Arctic are rapidly changing environmentally, politically, and economically, the Council’s current role is not as aggressive as it could or should be in facing these challenges. If the Council is to provide a forum for cooperation, interaction, and collaboration, it should seek to be in a more assertive and authoritative position in terms of policy making.

IV. HOW THE ARCTIC COUNCIL FUNCTIONS AND WHAT THE COUNCIL DOES IN PRACTICE

The Arctic Council is organized into an operational framework through which the Council performs its activities. The framework primarily consists of:

1. Senior Arctic Officials
2. Working Groups
3. The Secretariat

A. *Senior Arctic Officials (SAO)*

³⁸ *Id.*

Each Arctic State designates a SAO, which is generally a senior government official who is responsible for Arctic affairs.³⁹ Permanent participants also designate a representative, to act as a point person for Council related activities.⁴⁰ The chairmanship provides a chairperson for SAO meetings, which is subject to the concurrence of the Arctic States present at SAO meetings.⁴¹ SAOs receive reports from working groups, task forces and other subsidiary bodies; the SAOs then discuss and evaluate reports.⁴² Further, the SAOs coordinate and monitor activities in accordance with decisions and instructions of the Council.⁴³ The SAOs review and make recommendations to the Council on proposals by members that are then submitted to a Ministerial meeting.⁴⁴ Finally, SAO meetings occur at least two times a year.⁴⁵

B. Working Groups

The Council's work is carried out in six working groups.⁴⁶ The themes of the working groups cover a broad range from emergency response procedures to climate change and pollution.⁴⁷ The six working groups of the Council are; the Arctic Contaminants Actions Programme (ACAP), the Arctic Monitoring and Assessment Programme (AMAP), the Conservation of Arctic Flora and Fauna (CAFF), the Emergency Prevention, Preparedness and Response (EPPR), Protection of the Arctic Marine Environment (PAME), and the Sustainable Development Working Group (SDWG).⁴⁸ In addition, the Council has produced legally binding agreements on search and rescue procedures and oil spill preparedness and prevention procedures.

The working groups are made up of expert level representatives from sectoral ministries, government agencies, and researchers.⁴⁹ Each individual working group consists of a specific operational mandate, a Chair, a management board or steering committee, and support by a secretariat.⁵⁰ Included in the management boards are representatives of national governmental agencies of the Council states who are connected to the mandates of the working groups and representatives of the permanent participants.⁵¹ Observer states and groups will attend working group meetings and participate in projects.⁵² Additionally, the working groups have invited guests and/or experts in attendance of their meetings.⁵³ It is the burden of the working groups to

³⁹ Arctic Council Rules of Procedure, ¶ 21 (1998).

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 22

⁴² *Id.* ¶ 23.

⁴³ *Id.*

⁴⁴ *Id.* ¶ 24

⁴⁵ *Id.* ¶ 25

⁴⁶ The Arctic Council: Working Groups, <http://www.arctic-council.org/index.php/en/about-us/working-groups> (last visited Apr. 15, 2016).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

carry out the projects and programs ordered by the Council Ministers.⁵⁴ The mandates are official documents stated in Ministerial Declarations which come out of Ministerial meetings.⁵⁵ Each specific working group will be laid out in more detail below.

C. The Secretariat

The Secretariat performs secretarial and administrative services for the Council and provides various other forms of support.⁵⁶ More specifically, the Secretariat functions as administrative and organizational support, from arranging and servicing meetings to assisting the Chair in drafting meetings documents and final reports.⁵⁷ The Secretariat performs communication and outreach support, financial and human resources support, possessing the capability to translate documents and communications, and any other services and functions as required or directed by the Council and the Chair.⁵⁸ The Secretariat is appointed as Director by the SAOs who are nationals of the Arctic States.⁵⁹ The Director assumes overall responsibility for management and administration of the Secretariat.⁶⁰ Finally, the Director reports to the SAOs, receives tasks from the SAO Chair, consults the Chair for matters of importance, and is responsible for the day-to-day functioning of the Secretariat.⁶¹

Shifting focus back to the working groups, a more detailed view of the various working groups and the two legally binding documents produced by the Council will now be discussed.

D. Arctic Contaminants Action Program (ACAP)

ACAP's current chairmanship is Sweden and the chairperson is Ulrik Westman.⁶² ACAP's objective is to "prevent adverse effects from, reduce, and ultimately eliminate pollution of the Arctic environment."⁶³ ACAP concentrates on Arctic pollution sources and performs as a support mechanism to "encourage national actions to reduce emissions and other releases of pollutants that are relevant in the Arctic."⁶⁴ ACAP became the sixth permanent working group in 2006.⁶⁵ Originally, ACAP was created as a Council plan to target Arctic pollution sources identified through AMAP.⁶⁶ ACAP states that cooperative actions are necessary to make

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Arctic Council Secretariat, Secretariat Terms of Reference, ¶ 2.1 (2012).

⁵⁷ *Id.* ¶ 2.2

⁵⁸ *Id.* ¶ 2.2

⁵⁹ *Id.* ¶ 4.1

⁶⁰ *Id.* ¶ 4.2

⁶¹ *Id.* ¶ 4.4

⁶² *Arctic Contaminants Action Program*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/working-groups/acap> (last updated January 14, 2016).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Arctic Contaminants Action Program Home, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/acap-home> (last updated January 26, 2016).

⁶⁶ *Id.*

“important and significant contributions to the overall international effort to reduce environmental damage on a global level.”⁶⁷

National delegations of the Arctic states represent ACAP and permanent participants participate in ACAP meetings as well.⁶⁸ The chairmanship leads ACAP’s work and rotates between Arctic states every two years.⁶⁹ Organizational issues are handled by the Chair, Vice-Chair, and Executive Secretary.⁷⁰ “The Vice-Chair [typically] represents the State that will [assume] the chairmanship in the [next] term.”

Within ACAP are four expert groups working to develop action plans to reduce pollution in the Arctic environment.⁷¹ The first expert group is the POPs (persistent organic contaminants) & Mercury group which coordinates and facilitates Council projects that reduce the emission of mercury into the environment, presents results, and coordinates between projects.⁷² The second is the expert group on Integrated Hazardous Wastes.⁷³ The third expert group is the Indigenous Peoples Contaminant Action Program (IPCAP).⁷⁴ IPCAP was created through an initiative by permanent participants of the Council to address “contaminant issues in indigenous peoples’ communities in remote areas of the Arctic.”⁷⁵ The initiative was approved by the Council at Ministerial Meetings in Salekhard and Tromsø.⁷⁶ IPCAP works to target reduction of exposure and impact of contaminants in indigenous peoples’ communities.⁷⁷ The fourth expert group is the Short Lived Climate Pollutants Expert Group (SLCP EG).⁷⁸ SLCP EG’s objective is to “facilitate projects with an initial focus on activities that reduce emissions of black carbon contamination that transports and deposits in the Arctic.”⁷⁹

E. Arctic Monitoring and Assessment Programme (AMAP)

AMAP’s current chairmanship resides in Finland and the chair is Martin Forsius.⁸⁰ AMAP is responsible for “providing reliable and sufficient information on the status of, and threats to, the Arctic environment, and providing scientific advice on the actions to be taken . . .

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *POPs and Mercury Group*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/acap-home/pops-mercury> (last updated January 20, 2016).

⁷³ *Hazardous Wastes*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/acap-home/hazardous-wastes> (last updated January 14, 2016).

⁷⁴ *ACAP Expert Group on Indigenous People Contaminant Action Program*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/acap-home/ipcap> (last updated January 13, 2016).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Short Lived Climate Pollutants*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/acap-home/slcp> (last updated August 3, 2016).

⁷⁹ *Id.*

⁸⁰ *Arctic Monitoring and Assessment Programme*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/working-groups/amap> (last updated December 11, 2015).

to support Arctic governments in their efforts to take remedial and preventive actions.”⁸¹ AMAP’s objectives are to:

- monitor and assess the status of the Arctic region in regards to pollution and climate change;
- to document levels and trends, pathways and processes, and effects on ecosystems and humans, and recommend actions to reduce threats for governments; and
- produce science-based, policy-relevant assessments and public outreach information to educate policy and decision-making processes.⁸²

Further, AMAP is perceived as a process “integrating both monitoring and assessment activities.”⁸³ The process works to produce assessment reports on pollution and climate status and trends in Arctic ecosystems; to identify causes for changing conditions; to detect new problems, their causes and potential risks to the ecosystem and indigenous peoples and residents of the Arctic; and to recommend required actions.⁸⁴

AMAP also measures the levels and assesses the effects of anthropogenic pollutants in all of the Arctic environment; examines the impact of pollutants on the Arctic’s flora and fauna, particularly ones used by indigenous people; reporting on the status of the Arctic environment; and providing advice and recommendations to Ministers on priority actions required to improve the Arctic environment.⁸⁵

AMAP’s priorities include issues surrounding persistent organic pollutants and POPs, heavy metals (in particular mercury, cadmium, and lead), radioactivity, oil and gas pollution, the impacts of acidifying gases and Arctic haze, climate change, and stratospheric ozone depletion.⁸⁶ Further, AMAP’s current priorities revolve around Arctic cryospheric change, Arctic Ocean acidification, and the impacts of short-lived climate forcers such as black carbon, methane, and tropospheric ozone.⁸⁷

F. *Conservation of Arctic Flora and Fauna (CAFF)*

The current chairmanship of CAFF is located in Norway and presided over by the chair, Reidar Hindrum. CAFF represents the “biodiversity working group” of the Council.⁸⁸ Each Council state assigns a National Representative to CAFF, along with representatives of the Indigenous Peoples’ organizations acting as Permanent Participants, and Council observer countries and organizations.⁸⁹ CAFF serves as a mechanism for:

⁸¹ AMAP, ARCTIC MONITORING AND ASSESSMENT PROGRAMME, <http://www.amap.no/> (last visited March 15, 2016).

⁸² *About*, ARCTIC MONITORING AND ASSESSMENT PROGRAMME, <http://www.amap.no/about> (last visited March 15, 2016).

⁸³ *Monitoring and Assessment*, ARCTIC MONITORING AND ASSESSMENT PROGRAMME, <http://www.amap.no/about/the-amap-programme/monitoring-and-assessment> (last visited March 15, 2016).

⁸⁴ *Id.*

⁸⁵ *Arctic Monitoring and Assessment Programme*, ARCTIC COUNCIL, *supra* note 81.

⁸⁶ *AMAP’s Priority Issues*, ARCTIC MONITORING AND ASSESSMENT PROGRAMME, <http://www.amap.no/about/the-amap-programme/amaps-priority-issues> (last visited March 15, 2016).

⁸⁷ *Id.*

⁸⁸ *About CAFF*, CONSERVATION OF ARCTIC FLORA AND FAUNA (March 14, 2016), <http://www.caff.is/about-caff>.

⁸⁹ *Id.*

- cooperation on species and habitat management;
- sharing information on management techniques and regulatory regimes; and
- facilitation of more knowledgeable decision-making.⁹⁰

CAFF also facilitates the development of common responses on important issues for the ecosystem including the “development and economic pressures, conservation opportunities, and political commitments.”⁹¹

CAFF is mandated to target “conservation of Arctic biodiversity, and to communicate its findings to the governments and residents of the Arctic.”⁹² Further, CAFF helps to promote practices to ensure the sustainability of Arctic living resources.⁹³ CAFF carries out this work through expert groups⁹⁴ which provide a forum for scientists, managers, and conservationists to promote and facilitate research, coordinate conservation, and management.⁹⁵ CAFF’s work is also carried out through monitoring assessments which “describe the current state of Arctic ecosystems and wildlife using the best available scientific and Traditional Ecological Knowledge.”⁹⁶

CAFF projects “provide data for informed decision making to resolve challenges arising from trying to conserve the natural environment and permit regional growth.”⁹⁷ CAFF’s work requires cooperation between all Arctic countries, international conventions and organizations, and indigenous groups, and is guided by the CAFF Strategic Plan for the Conservation of Arctic Biological Diversity and biennial Work Plans.⁹⁸

One of CAFF’s missions is to develop the “framework and tools necessary to create a baseline of current knowledge, and to provide dynamic assessments over time.”⁹⁹ This is necessary to conserve the natural environment, promote economic development, and require comprehensive baseline data to record status and trends of Arctic biodiversity, habitats, and ecosystems.¹⁰⁰

G. *Emergency Prevention, Preparedness, and Response (EPPR)*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁵ *Expert Groups*, CAFF (March 14, 2016), <http://www.caff.is/expert-group>. The expert groups include a Flora Group, Circumpolar Seabird Group, Circumpolar Protected Areas Network, Marine, Terrestrial, Freshwater, and Coastal groups. *Id.*

⁹⁶ *Assessments*, CAFF (March 14, 2016), <http://www.caff.is/assessments>. These include an Arctic Biodiversity Assessment, Biodiversity Trends, Sea Ice Associated Biodiversity, Seabird Assessments, and Flora Assessments among others. *Id.*

⁹⁷ *About CAFF*, *supra* note 88.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

EPPR's current chairmanship resides in the United States and is chaired by Amy A. Merten.¹⁰¹ EPPR was established under AEPS in 1991.¹⁰² EPPR reports directly to the Council through Senior Arctic Officials (SAOs) and receives mandates through Ministerial meetings.¹⁰³ EPPR meets two times a year, once in a full meeting and one time where heads of delegation must be present.¹⁰⁴ EPPR's goal is to "contribute to the protection of the Arctic environment from the threat or impact that may result from an accidental release of pollutants or radionuclides."¹⁰⁵

EPPR's role within the Council is to address "various aspects of prevention, preparedness and response to environmental emergencies in the Arctic."¹⁰⁶ Working group members share information on "best practices and conduct projects to include development of guidance and risk assessment methodologies, response exercises, and training."¹⁰⁷ Further, EPPR works with the other Working Groups and organizations to assure that emergencies are correctly addressed in Council work.¹⁰⁸ In addition, EPPR maintains a liaison within the oil industry and other industry organizations to work on strengthening oil spill prevention and preparedness.¹⁰⁹

H. *Protection of the Arctic Marine Environment (PAME)*

Due to increasing economic activity and climate change there is increased use of the Arctic and with that comes threats to the Arctic marine and coastal environment. As indicated in the working group's title, PAME's work is directed towards protection of the Arctic marine environment. PAME is mandated to "address policy and non-emergency pollution prevention and control measures related to the protection of the arctic marine environment from both land and sea-based activities."¹¹⁰ The current chairmanship of the working group is Canada and is chaired by Renee Sauve.¹¹¹

A project under PAME auspices is the Arctic Ocean Review (AOR) led by Iceland, Canada, Norway, Russia, and the United States.¹¹² AOR was agreed on by the Council at its 2009 Ministerial Meeting as a follow-up to the 2004 marine strategic plan which stated that from time to time the Council shall "review the status and adequacy of international/regional agreements and standards that have application in the Arctic marine environment, new scientific knowledge of emerging substances of concern, and analyze the applicability of a regional seas

¹⁰¹ *Emergency Prevention, Preparedness, and Response (EPPR)*, ARCTIC COUNCIL (March 14, 2016), <http://www.arctic-council.org/index.php/en/about-us/working-groups/eppr>.

¹⁰² *About EPPR*, ARCTIC COUNCIL (March 14, 2016), <http://arctic-council.org/eppr/about-eppr/>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ EPPR, *supra.* note 102

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Protection of the Arctic Marine Environment, Arctic Council, <http://www.arctic-council.org/index.php/en/about-us/working-groups/pame> (last visited Mar. 14, 2016).

¹¹¹ *Id.*

¹¹² The Arctic Ocean Review, PAME, <http://www.pame.is/index.php/projects/the-arctic-ocean-review-aor> (last visited Mar. 15, 2016).

agreement.”¹¹³ AOR produces reports on global and regional measures in place for conservation and sustainable uses of the Arctic. Further, the program draws from existing research and data and is not a new assessment. AOR was established to provide updates on the state of the Arctic’s natural environment and sustainability practices already in action.

Another important work of PAME was the Arctic Council Offshore Oil and Gas Guidelines report (2009). The report was “intended to be of use to the Arctic nations for offshore oil and gas activities during planning, exploration, development, production, and decommissioning.”¹¹⁴ The oil and gas guidelines are an example of the “soft law” capability of the Working Groups and the Council as a whole. The oil and gas guidelines were “intended to define a set of recommended practices and outline strategic actions for consideration by those responsible for regulation of offshore oil and gas activities.”¹¹⁵ The guidelines were a set of regulations intended to be a reference or a guide to countries and companies exploring and drilling for offshore gas and oil in the Arctic. The introduction to the guidelines acknowledged that the member states have different systems and regulations already in place with varying degrees of emphases and responsibilities between operators and regulators.¹¹⁶ However, the report’s stated goal is to “assist regulators in developing standards, which are applied and enforced consistently for all offshore Arctic oil and gas operations.”¹¹⁷

A third project of PAME is the Arctic Marine Shipping Assessment (AMSA) which was adopted by Council Ministers in 2004 at the 4th Arctic Council meeting.¹¹⁸ PAME was tasked to “conduct a comprehensive Arctic marine shipping assessment” under the auspices of the Arctic Marine Strategic Plan and through the guidance of Canada, Finland, and the United States and in collaboration with the EPPR, other Working Groups, member states, and permanent participants.¹¹⁹ The Council ordered this assessment based on a finding by the Arctic Climate Impact Assessment which recognized the reduction in sea ice will likely increase marine transportation and access to Arctic resources.¹²⁰

AMSA was designed to be circumpolar and consider regional and local perspectives.¹²¹ The central focus was on ships and their use in the Arctic Ocean, potential impacts on humans and the marine environment, and infrastructure requirements.¹²² The AMSA was a collaboration amongst member states, and various stakeholders including shipping companies, designers, shipbuilders, marine insurers, and shipping associations to name but a few.¹²³ The AMSA provided a broad array of recommendations and reports on current and future Arctic marine activity and is a representation of what the Council was designed to do and can accomplish. However, it is another example of “soft law” or non-legally binding directives. AMSA is

¹¹³ *Id.*

¹¹⁴ Arctic Offshore Oil and Gas Guidelines, The Arctic Council, April 29, 2009, http://library.arcticportal.org/1551/1/offshore_oil_and_gas_guidelines.pdf.

¹¹⁵ *Id.* at 4

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Arctic Marine Shipping Assessment 2009 Report, Arctic Council, 2009, http://www.pmel.noaa.gov/arctic-zone/detect/documents/AMSA_2009_Report_2nd_print.pdf.

¹¹⁹ *Id.* at 2

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 3

designed to be used as recommendations or guidelines, which means Arctic countries, non-Arctic countries, and private shipping vessels may or may not even follow or consider them.

I. Sustainable Development Working Group (SDWG)

The current chairmanship of SDWG is the United States and chaired by Roberta Burns.¹²⁴ The mandate and goal of SDWG is clear: to “propose and adopt steps to be taken by the Arctic States to advance sustainable development in the Arctic.”¹²⁵ Further, SDWG provides opportunities to “protect and enhance the environment and the economies,” and the “culture and health of indigenous peoples and Arctic communities.”¹²⁶ Additionally, SDWG is guided by a tenet to “pursue initiatives that provide practical knowledge and contribute to building the capacity of indigenous peoples and Arctic communities to respond to the challenges and benefits” of the opportunities provided in the Arctic region.¹²⁷

In sum, the working groups function as the Council intended them to: to be specialized forums for research, collaboration, monitoring, and assessment among other things. At most, they produce reports, assessments, recommendations, and guidelines. Generally, they do not produce legally binding initiatives nor do they have a policy making agenda.

J. Legally Binding Documents Created by the Arctic Council

The Council has produced two legally binding agreements: Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, and Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. These documents indicate that the Council can mandate the creation and implementation of legally binding documents.

The Arctic Council, at the 2009 Ministerial Meeting in Tromso, Norway, mandated the creation of a Task Force to develop an “international instrument for cooperation on search and rescue operations in the Arctic.”¹²⁸ This undertaking led to the first-ever legally binding document produced and negotiated under the authority of the Arctic Council.¹²⁹ The Agreement on Cooperation on the Aeronautical and Maritime Search and Rescue in the Arctic was signed at the Nuuk Ministerial Meeting in 2011, and became effective in January 2013.¹³⁰ The Agreement recognizes the challenges imposed on search and rescue operation in the “harsh” Arctic climate and the importance of providing rapid assistance to people in distress.¹³¹ Further, the Agreement acknowledged and emphasized the importance of cooperation among the Arctic states in

¹²⁴ Sustainable Development Working Group, Arctic Council, <http://www.arctic-council.org/index.php/en/about-us/working-groups/sdwg> (last visited Mar. 15, 2016).

¹²⁵ *SDWG Mandate*, SWDG.ORG, <http://www.sdwg.org/about-us/mandate-and-work-plan/> (last visited Mar. 14, 2016).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Agreements*, ARCTIC COUNCIL, <http://arctic-council.org/index.php/en/our-work/agreements> (last visited Mar. 15, 2016).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*, ARCTIC COUNCIL (2011), https://oaarchive.arctic-council.org/bitstream/handle/11374/531/EDOCS-1910-v1-ACMMDK07_Nuuk_2011_Arctic_SAR_Agreement_unsigned_EN.PDF.

conducting search and rescue operations and the usefulness of exchanging information and experience.¹³²

The Agreement sets the framework for search and rescue operations in the Arctic and how states should respond and cooperate with other search agencies. For example, under Article 9, Cooperation Among the Parties, parties shall enhance cooperation amongst themselves and “exchange information that may serve to improve the effectiveness of search and rescue operations.”¹³³ The exchange of information may include, and is not limited to, information such as: communication details; lists of available airfields, ports, refueling and resupply capabilities; and knowledge of fueling, supply, and medical facilities.¹³⁴ All of which can be vital in a search and rescue operation where time is of the essence and further allows and encourages cooperation and collaboration. The Agreement establishes rescue coordination centers throughout the Arctic and outlines the conduct of aeronautical and maritime search and rescue operations.¹³⁵ Further, the Agreement provides a means for a party to request entry into the territory of another party for the purpose of search and rescue operations. The requesting party shall send its request to the relevant agency, the receiving party shall immediately confirm the receipt and advise as soon as possible as to whether entry may be permitted and the conditions under which the mission can be undertaken, and both parties shall see to the most expeditious border crossing procedure possible.¹³⁶

The Arctic is a vast, undeveloped, and largely unpopulated region that experiences some of the world’s worst winter weather conditions. When problems occur in the Arctic, the direness of the situation for humans becomes even more immediate and every minute counts for search and rescue operations. This Agreement establishes procedures for search and rescue and facilitates cooperation. In search and rescue, every second counts; territorial boundaries and politics should not hold rescuers back.

The second agreement produced by the Council is the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. Another Task Force was mandated to prepare an instrument on Arctic marine oil pollution preparedness and response at the Ministerial Meeting in Nuuk in 2011.¹³⁷ This was the second legally binding document created by the Council and was signed at the Kiruna Ministerial Meeting in May 2013.¹³⁸

The objective of the second agreement is to “strengthen cooperation, coordination and mutual assistance among the Parties on oil pollution preparedness and response in the Arctic in order to protect the marine environment from pollution by oil.”¹³⁹ Like the first agreement, the second provides a framework for Arctic States to work from in the event an oil spill occurs and guidance on cooperation and coordination amongst several States. The agreement mandates that each state “shall maintain a national system for responding promptly and effectively to oil

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Agreements, supra* note 129.

¹³⁸ *Id.*

¹³⁹ Arctic Council, Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, Art. 1, May 15, 2013, at 4.

pollution incidents.”¹⁴⁰ The agreement provides that States must establish a system of authorities and contact points for prompt and effective response and for notification of oil spill events.¹⁴¹ The Agreement further provides procedures for monitoring for oil spills and pollution, for the ability to request assistance for response operations, and for the movement and removal of resources across States’ borders.¹⁴²

As described above, the unique environmental and geographic conditions make time of the essence in the Arctic. The Arctic’s ecosystem is very fragile, making environmental impacts from oil spills and pollution all the more hazardous and destructive to environmental quality, marine life, mammals, and the indigenous inhabitants of the region. This agreement establishes the methods and procedures for cooperation and quick response in the event an accident in the open seas or an oil spill occurs.

The agreements are significant in that they show the Council can and is willing to produce legally binding documents to be followed by member States. Further, these documents create the reality that more agreements can be negotiated and produced under the auspices of the Arctic Council.

However, with decreasing sea ice and opening of travel routes through the Arctic, more States are becoming interested in the Arctic and further, Arctic States are beginning to stake their claims as the sea ice disappears and the potential for mineral and natural resource wealth is realized. Do these issues signal that the Council should create more legally binding agreements covering various aspects or should the Council begin creating a stronger body of law governing issues in the Arctic?

In short, the Council, if it views itself as a facilitator, mediator, and a unifying force in Arctic diplomacy, must become a stronger legal authority amongst the Arctic countries in order to protect the Arctic’s environment and maintain the peace in the region that the Council strives for. This issue will be discussed more fully below, first by analyzing the increasing international claims being made in the Arctic by both Arctic and non-Arctic countries, and secondly, by discussing the United States’ actions, or more aptly, inaction in the Arctic region.

V. INCREASING TERRITORIAL CLAIMS

The United Nations Convention on the Law of the Sea (UNCLOS) is a multilateral treaty that clarifies maritime zones and nation-state rights and obligations pertaining to the oceans. The instrument was concluded in 1982 and has been adopted by most nations around the world. The United States is not a party to UNCLOS, but observes its provisions that reflect customary international law. The exclusive economic zone (EEZ) is an area “beyond and adjacent to the territorial sea . . . under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed.”¹⁴³ Further, within the EEZ of a coastal State, the State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources . . . of the waters superjacent to the seabed and of the seabed and subsoil.”¹⁴⁴ Additionally, in instances where the continental shelf extends beyond the 200 nautical mile limit,

¹⁴⁰ *Id.*, art. 4 at 6.

¹⁴¹ *Id.*, art. 5-6 at 6-7.

¹⁴² *Id.*, art. 7-9 at 7-8.

¹⁴³ United Nations Convention on the Law of the Sea, art. 55, Dec. 10, 1982, 1833 UNTS 397, 21 ILM 1280.

¹⁴⁴ *Id.*

the coastal state may claim an additional 150 miles from its baseline.¹⁴⁵ Therefore, countries such as Canada and Russia with a tremendous amount of their Arctic borders touching the Arctic Ocean stand to gain a lot, or lose, depending on how the Arctic is governed moving forward.

In December 2014, Denmark staked a claim to the North Pole, stating that under UNCLOS, more than 900,000 square kilometers of Arctic Ocean north of Greenland belongs to it.¹⁴⁶ Greenland is under Denmark's territorial jurisdiction. However, Denmark's claim is not the most profound statement of Arctic intentions, the most ambitious state appears to be Russia. In August 2015, Russia claimed that over 460,000 square miles of Arctic territory belong to it.¹⁴⁷ Russia has increasingly been showing its desire to be not just a major player in the Arctic but the dominant power in the region. Russia is building 10 new search-and-rescue stations stretched out along its Arctic shoreline and reopening military bases that were abandoned after the collapse of the Soviet Union.¹⁴⁸ Further, in March 2015, Russia carried out one of the largest military exercises the far north has ever seen, involving 45,000 troops, dozens of ships and submarines, and involving its strategic nuclear arsenal.¹⁴⁹ Additionally, Russia has established two new army brigades in the Arctic, one deployed only 30 miles from Finland's border.¹⁵⁰ Finally, in a symbolic gesture dating back to 2007, two submersible Russian vessels planted a titanium Russian flag 14,000 feet below the surface of the ocean on the seabed beneath the North Pole.¹⁵¹

Arctic States are not the only parties interested in the potentially lucrative economic and natural resource prospects in the Arctic; South Korea, China, and Singapore have explored the possibilities of commercial cargo shipments to be sent through the Arctic to European markets.¹⁵² China refurbished an icebreaker in 2012 and sent it across one such Arctic route and is now building a second icebreaker, which would give it an icebreaker fleet in the Arctic equal to that of the United States.¹⁵³ China has even announced that it is entering a new era, "striding toward becoming a polar-region power."¹⁵⁴

The shrinking arctic sea ice will continue and with that comes the presence of Arctic and non-Arctic countries in the region searching for shipping routes. Further, the prospects of mineral wealth and natural resources underneath the Arctic Ocean has Arctic States jockeying for territorial claims of the ocean and the seabed. For example, in January 2015, at a Russian government-sponsored Arctic conference, scientists and economists predicted that in the sea shelf being pursued by Russia, there is 90% of Russia's remaining cobalt, nickel, and platinum,

¹⁴⁵ *Id.* at 49.

¹⁴⁶ *Frozen Conflict: Denmark Claims the North Pole*, *The Economist* (Dec. 20, 2014), <http://www.economist.com/news/international/21636756-denmark-claims-north-pole-frozen-conflict>.

¹⁴⁷ Carol J. Williams, *Russia claims vast Arctic territory, seeks U.N. recognition*, *L. A. Times*, Aug. 4, 2015, <http://www.latimes.com/world/europe/la-fq-russia-arctic-claim-un-20150804-story.html>.

¹⁴⁸ Steven Lee Myers, *U.S. Is Playing Catch-Up With Russia in Scramble for the Arctic*, *N.Y. Times*, Aug. 29, 2015, <http://www.nytimes.com/2015/08/30/world/united-states-russia-arctic-exploration.html>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Bree Feng, *China seeks to Become a 'Polar-Region Power'*, *N.Y. Times* (November 19, 2014), <http://sinosphere.blogs.nytimes.com/2014/11/19/china-seeks-to-become-a-polar-region-power/>.

60% of copper, and almost all of its explored reserves of titanium, tin, and barite.¹⁵⁵ In addition, Russian scientists estimate the Arctic subsoil may hold as much as 70% to 90% of Russian reserves of gold, diamonds, lead, bauxites and other minerals.¹⁵⁶ These figures are just Russian estimates, seven other countries will have claims to Arctic territory and the Russian estimates mentioned do not take into account oil and gas reserves. The economic potential in minerals and natural resources alone are potentially very significant.

The question arising is where does the Arctic Council fit into the equation? The Council and its member States should consider giving the Council greater legal force, evolving it into an organization that can regulate and police the Arctic in conjunction with other international agencies and member States. Looking back on the Council's starting goals, it expressly stated the intention to stay out of military security, which it can still do but have increased political, economic, and environmental authority.

Considering the potential mineral, oil, and gas reserves in the Arctic seabed, environmental concerns should be at the forefront. This is an issue where the Council could play a major role in influencing development and research of natural resources, maintaining high environmental standards, and holding member states and non-member states accountable to standards and rules. The Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic is a starting point for environmental accountability in the Arctic, but the Council must go further. The Council should create an environmental standards policy and set of rules that must be agreed to and followed by all of the Arctic countries, indigenous groups, and observer states. Additionally, the Council should seek the authority to reprimand violators of environmental standards and even punish with fines or other measures.

In terms of security, the Council is in the position to facilitate an Arctic-wide security policy. Through the Agreement on the Aeronautical and Maritime Search and Rescue in the Arctic, the Council has a starting point for security and safety agreements in the region, but as mentioned above, the Council must go farther in protecting the region. The Council sits in a position to serve a mediating function in gathering Arctic and non-Arctic countries and negotiating issues such as maritime security, territorial claims, and other issues like military security.

VI. THE UNITED STATES' ROLE IN THE ARCTIC COUNCIL AND THE REGION

The United States became an Arctic nation in 1867 through the purchase of Alaska from Russia.¹⁵⁷ The U.S. continues to have many different, diverse, and compelling interests in the Arctic including environmental protection, economic interests, national and homeland security, sustainable development, promoting cooperation and collaboration with the other Arctic states, involving indigenous Alaskans in decisions that concern them, and promoting and supporting scientific research.¹⁵⁸ The Council is the primary forum by which the U.S. engages in Arctic

¹⁵⁵ Carol J. Williams, Russia claims vast Arctic territory, seeks U.N. recognition, L.A. Times (August 4, 2015), <http://latimes.com/world/europe/la-fg-russia-arctic-claim-un-20150804-story.html>.

¹⁵⁶ *Id.*

¹⁵⁷ United States of America, Arctic Council, <http://arctic-council.org/index.php/en/about-us/member-states/ united-states-of-america> (last visited March 15, 2016).

¹⁵⁸ *Id.*

diplomacy.¹⁵⁹ The U.S. Department of State leads the development of Arctic policy and working in conjunction with other U.S. government agencies in promoting and driving policy objectives in the region.¹⁶⁰ Further, the Chairmanship of the Council currently resides with the United States, which has a two year term in this role (2015-2017).¹⁶¹ The U.S. Chairmanship has “three focus areas: Improving Economic and Living Conditions for Arctic Communities; Arctic Ocean Safety, Security, and Stewardship; and Addressing the Impacts of Climate Change.”¹⁶² Additionally, the Council will hold its Senior Arctic Officials meeting in Portland, Maine in October 2016.¹⁶³

In 2013 the *National Strategy for the Arctic Region* was released. President Obama stated that the “Arctic is one of our planet’s last great frontiers.”¹⁶⁴ Further, the President stated that the “Arctic region is peaceful, stable, and free of conflict,” where the U.S. and its Arctic allies “seek to sustain this spirit of trust, cooperation and collaboration, both internationally and domestically.”¹⁶⁵ The strategy is put together through three goals: advancing U.S. security interests; pursuing responsible Arctic region stewardship; and strengthening international cooperation.¹⁶⁶ The strategy’s main purposes are to protect U.S. interests both domestically and internationally, to pursue and promote conservation efforts in the Arctic, and to strengthen cooperation in the region among Arctic states and the entire international community.

Given that the U.S. was an original member of the Council, has various and significant interests in the Arctic region, and is currently the chairmanship of the Council, the U.S. presumably would be a leader in the Arctic region. Nevertheless, the U.S. is often viewed as lagging behind the other Arctic and non-Arctic states, particularly economically, politically, and militarily. As discussed above, Russia has made serious strides in the Region, so has Denmark, and even Asian nations such as China, which has led to criticism of the U.S. for falling behind in the region and possibly providing for the potential that the U.S. will need to undertake a major catch-up operation in the area.

In September 2015, President Obama visited Alaska and became the first sitting U.S. President to travel above the Arctic Circle. While there, the President’s major focus was on the impact of climate change. The trip also included Mr. Obama’s national security advisor, Susan Rice, possibly signaling that the melting ice in the Arctic has more consequences than just environmental impact.¹⁶⁷ As mentioned in the previous section, territorial claims and expansion are increasing, and this has national-security implications for the United States. The U.S.,

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ U.S. Chairmanship, Arctic Council, 2015-2017, <http://arctic-council.org/index.php/en/about-us/arctic-council/u-s-chairmanship> (last visited March 15, 2016).

¹⁶² *Id.*

¹⁶³ Dawn Gagnon, *Portland Wins Bid to Host 2016 Arctic Council Meeting*, BANGOR DAILY NEWS, June 13, 2015, 5:38 PM, <http://bangordailynews.com/2015/06/12/news/portland/portland-wins-bid-to-host-2016-arctic-council-meetings/>.

¹⁶⁴ National Strategy For the Arctic Region, May 10, 2013,

https://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 2.

¹⁶⁷ Jeff Goodell, *Obama Takes on Climate Change: The Rolling Stone Interview*, ROLLING STONE, Sept. 23, 2015, <http://www.rollingstone.com/politics/news/obama-takes-on-climate-change-the-rolling-stone-interview-20150923?page=5>.

however, is poorly equipped to operate in the Arctic. The U.S. has two ice breakers to the Russians' forty.¹⁶⁸ Further, during Mr. Obama's visit of Alaska, five Chinese warships were in international waters nearby, which can be viewed more as a power play than a mere coincidence.¹⁶⁹ Lastly, the Canadian military had finished Operation Nanook, an annual large-scale military exercise to assert its Canadian sovereignty over its Arctic possessions.¹⁷⁰

The current tension with Canada over the Northwest Passage further illustrates the diplomatic quagmire facing the United States. Canada claims the channels between its Arctic Islands connecting the Atlantic Ocean with the Beaufort Sea and north of Alaska are Canada's internal waters.¹⁷¹ The U.S., on the other hand, claims that the waterway is an international strait where ships and aircraft from all countries have the right of uninterrupted transit passage.¹⁷² This dispute has led to calls for the U.S. and Canada to resolve an agreement before "it is too late . . . [t]he sea-ice is melting, foreign ships are coming, and there is little to stop an increasingly assertive Russia from sending a warship through."¹⁷³

An August 30, 2015 New York Times article further highlighted the slow reaction the U.S. has had in the region. Quoting Coast Guard commandant, Admiral Paul F. Zukunft, on U.S. presence in the area the admiral stated, "We have been for some time clamoring about the nation's lack of capacity to sustain any meaningful presence in the Arctic."¹⁷⁴ Further, the admiral stated that the U.S. "really isn't even in this game," referring to the America's lack of updated Coast Guard and Navy fleets, icebreakers, and overall presence in the Arctic.¹⁷⁵

President Obama has shown increased interest in the Arctic, mostly through his climate change initiatives and his trip to Alaska in 2015, but that trip resulted in little more than a well-timed publicity stunt in the run up to the 2015 Paris climate change conference. Further, the U.S. in its chairmanship role of the Council has an increased interest and presence in the Arctic diplomacy field as well. However, the U.S. must do more not only in climate change matters, but also in national-security and international diplomacy.

The United States must increase its role in the Arctic in order to preserve peace among Arctic States and to promote environmental and cultural sustainability. The U.S. will need to update its Coast Guard fleet, search and rescue stations, and icebreakers in the region. Further, the U.S. may need to consider a greater naval presence in the area as well. The U.S. is, additionally, positioned to be a world leader in research and finding preventative and restorative methods for climate change. Additionally, the U.S. must be willing and even play a facilitating role in encouraging the cooperation amongst Arctic states.

The existence of the Arctic Council provides (or could provide) the forum for Arctic nations to address these national security issues that are arising with the melting sea-ice. Instead of relying on talks between just the parties in a dispute, like the Northwest Passage dispute, the

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Scott Borgenson and Michael Byers, *The Arctic Front in the Battle to Contain Russia*, WALL STREET JOURNAL, Mar. 9, 2016, <http://www.wsj.com/articles/the-arctic-front-in-the-battle-to-contain-russia-1457478393>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Steven Lee Myers, *U.S. is Playing Catch-Up With Russia in Scramble for the Arctic*, N.Y. TIMES, Aug. 29, 2015, <http://www.nytimes.com/2015/08/30/world/united-states-russia-arctic-exploration.html>.

¹⁷⁵ *Id.*

Council could serve as a facilitator, negotiator, and a mediator in disputes. Council members could create a procedure for resolving disputes before having to resort to international litigation at the International Court of Justice in the Hague. However, all of this requires the participants to be willing to come together and achieve peaceful methods of resolution.

VII. MOVING FORWARD

In May 2013, the Arctic Council Secretariat released “Vision for the Arctic” at a meeting in Kiruna, Sweden. This declaration came at the end of the first round of eight successive chairmanships of the Council, meaning all eight original members had finished their first two-year stints in the chairmanship position.¹⁷⁶ This document first acknowledged and celebrated the achievements that the Council has had since its inception and uses this forum to set forth the Council’s mission or “vision” for the future.¹⁷⁷ The document acknowledged the changes taking place in the Arctic and the attention it is now receiving from around the globe, stating that the Council must “look to the future, [] build on [their] achievements and [] continue to cooperate to ensure that Arctic voices are heard and taken into account in the world.”¹⁷⁸

Next, the Council maintains its core value, a peaceful Arctic, where there is no problem that cannot be solved through cooperative relationships on the foundation of international law and “good will.”¹⁷⁹ Further, peace can be maintained through the foundation of the Law of the Sea and through peaceful resolution of disputes.¹⁸⁰ Here, the Council strives to maintain peace among Arctic nations, peoples, and non-Arctic nations and will do so through established methods such as international law, the Law of the Sea, and the Council’s past resolution of disputes.

The Council, secondly, addresses the importance of the Arctic as a home and the well-being of the Arctic people as fundamental in regional development. The Council reaffirms its commitment to the Arctic people to “safeguarding indigenous peoples’ rights, [] by creating conditions for the preservation and development of social structure, cultural traditions, languages and means of subsistence.”¹⁸¹ The Council’s undertaken responsibility for indigenous people of the Arctic is admirable and something all nations, including the U.S. should strive for.

Third, the Council re-establishes its goal for a prosperous arctic, stating that the Arctic has “enormous” economic potential and its “sustainable development is key to the region’s resilience and prosperity.”¹⁸² The declaration stresses the importance of transparent and predictable rules amongst Arctic nations along with continued cooperation and coordination in the sustainability and development of the Arctic economy. The Council’s goal is to “build self-sufficient, vibrant and healthy Arctic communities for present and future generations.”¹⁸³

¹⁷⁶ Vision for the Arctic, Arctic Council, (2013).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 2.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

Fourth, the Council declares that the Arctic must remain and be safe both in the environmental field and civil security.¹⁸⁴ Fifth, the Council focuses in on a healthy Arctic environment, citing the uniqueness and fragility of the Arctic environment. The Council is highly concerned with climate change and will “continue to take action to reduce emissions of greenhouse gases and short-lived climate pollutants, and support action that enables adaptation.”¹⁸⁵ The Council’s stated goal is to continue and strengthen work globally, address the environmental challenges of the region and further, “remain committed to managing the region with an ecosystem-based approach which balances conservation and sustainable use of the environment.”¹⁸⁶

The Council wants and desires a safe and healthy Arctic, not just for the indigenous peoples of the region, but also for people and countries in the Arctic. The effects of climate change has been an enormous concern of the Council since its birth and will continue to be. In part, the Council will attempt this through continuing the tradition of Arctic knowledge, research and interdisciplinary scientific approaches.¹⁸⁷

Finally, the Council’s mission ends with the reinforcement of the need of a strong Arctic Council. The declaration reaffirms the senior status and decision making power of the Arctic States, stating “[d]ecisions at all levels of the Arctic Council are the exclusive right and responsibility of the eight signatories to the Ottawa Declaration.”¹⁸⁸ However, the declaration encouraged participation by observers and the “full consultation” of the Arctic indigenous peoples.¹⁸⁹ Lastly, the declaration proclaims that the Council will “pursue opportunities to expand the Arctic Council’s roles from policy-shaping into policy-making.”¹⁹⁰

The “Vision for the Arctic” contains the sound and tone of a mission statement akin to the Ottawa Declaration. To draw on an analogy, the “Vision for the Arctic” is the renewal of the Arctic Council’s vows. There are many similarities between the two and the newer declaration largely reaffirms the starting goals of the original and renews the Council’s commitment to these goals. The newer declaration harkens on similar notions of finding peaceful resolutions to problems and following international law in disputes. The Council asserts its commitment to the indigenous peoples of the Arctic and to inhabitants of the region generally. Further, the Council solidifies its stance on climate change and increasing research on environmental issues that are Arctic specific and globally.

Most significantly, the “Vision for the Arctic” addresses the need for a strong Arctic Council. This signals the Council’s recognition that it should act in a policy-making capacity as opposed to a policy-shaping entity. By being a policy-making entity the Council can create policy and drive those policies to meet its goals and the goals set for the Arctic countries and indigenous groups, in contrast to adopting a policy created by another entity or country and molding or forming it to fit the Council’s goals.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 3.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 4.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

VIII. CONCLUSION

The concluding question is how should the Arctic Council function moving forward? Arctic sea ice is and will continue to shrink thus opening the Arctic Ocean to shipping, tourism, mineral exploration, oil and gas exploration and drilling, and territorial disputes, and this list is not exhaustive. Further, how will disputes between various nations be dealt with and who will deal with these disputes that arise? For example the current dispute over the Northwest Passage. Should the resolution be left solely between the U.S. and Canada or does there need to be another body that can mediate and negotiate a peaceful resolution without litigation in international court? What would stop another nation like Russia or China from sailing into Canada's waters or Finland's or Sweden's?

The Arctic Council functions as a soft law body, meaning the Council does not create legally binding law that binds its members. The Council has shown initiative in creating legally binding documents such as the search and rescue plan and the oil spill and pollution prevention plan. These two documents show the Council's desire to unify its members on common issues concerning the region. However, outside of these documents, unity and cohesion on other matters are not present. Arctic and non-Arctic nations continue to squabble over territorial boundaries and shipping lanes. As the sea ice melts and more of the Arctic Ocean is ice free, tensions between nations will continue.

As it stands, the Council stays out of legal issues and leaves UNCLOS to address law of the sea issues, as well as the International Maritime Organization. The "Vision for the Arctic" indicates that the Council is willing to delve into the realm of policy making. More recently, the Arctic Council held their Senior Arctic Officials meeting in Portland, Maine from October 4-6, 2016.¹⁹¹ The Senior Arctic Officials used this meeting to review and approve an updated strategic plan for the ACAP working group, a new communication strategy, and agreed to develop a new long-term strategic plan for the Council.¹⁹² The Portland meeting illustrated, according to Ambassador John Bolton, Chair of the Senior Arctic Officials, the "cooperative spirit and the urgency of the tasks at hand."¹⁹³ The Portland meeting signals that Arctic officials recognize the need for cooperation and unity. However, in order to become an entity that creates hard law or legally binding agreements that bind its members, more unity amongst the eight member nations and agreement on common issues must occur.

¹⁹¹ *Arctic Council advances environmental protection and sustainable development in Portland, Maine*, The Arctic Council, <http://www.arctic-council.org/index.php/en/our-work2/8-news-and-events/425-sao-oct-2016-post-release> (last updated Oct. 6, 2016).

¹⁹² *Id.*

¹⁹³ *Id.*