

# The Arctic Council at Twenty: How to Remain Effective in a Rapidly Changing Environment

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*The Arctic today differs profoundly from the Arctic twenty years ago at the time of the transition from the Arctic Environmental Protection Strategy to the Arctic Council. In another twenty years, conditions prevailing in the region are certain to have changed again in significant ways. The major changes occurring over the past twenty years are biophysical (e.g., the recession and thinning of sea ice), economic (e.g., the increased accessibility of Arctic energy resources), and political (e.g., Russia's renewed aspirations to great power status) in nature. A common feature of these changes is that they are strengthening the links between what happens in the Arctic, treated as a distinct region, and what happens in the overarching global system. How are these changes affecting the role of the Arctic Council, and how can the Council's members position this body to maximize its effectiveness under changed and changing circumstances? This Article seeks to answer these questions. In the process, it touches on a range of topics, including the legal and political status of the Council, the scope of the Council's mandate, links between the Council and other intergovernmental bodies, and the administrative and material resources needed to enhance the effectiveness of the Council. The concluding section identifies a range of changes that may unfold in the coming years and asks what impacts they are likely to have on the operation of the Arctic Council.*

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#### INTRODUCTION

The Arctic Council, launched in 1996 under the terms of the Ottawa Declaration on the Establishment of the Arctic Council,<sup>1</sup> has proven more effective than most of us who were present at its creation anticipated.<sup>2</sup> The key to the success of the Council lies in the role it has played in identifying emerging issues, framing them for consideration on the part of policymakers, and promoting these issues as matters of priority on a variety of policy agendas rather than focusing on its ability to make formal decisions, much less to play a prominent role in implementing such decisions or moving them from paper to practice. To take a few prominent examples, *Arctic Pollution Issues: A State of the Arctic Environment Report* focused attention on contaminants like persistent organic pollutants and highlighted the need to control transboundary flows of these contaminants; the *Arctic Climate Impact Assessment* empirically documented the tangible effects of climate change in the high latitudes and strengthened the foundations of the global climate negotiations; and the *Arctic Marine Shipping Assessment* provided context for ongoing efforts to devise a mandatory Polar Code for commercial ships operating in Arctic waters under the auspices of the International Maritime Organization (IMO).<sup>3</sup>

This “generative” role does not depend on the authority of a body like the Arctic Council to make formal decisions, much less on the capacity to oversee the implementation of policies once they are in place.<sup>4</sup> Generative activities are modest in some respects. They focus, for the most part, on the early stages of the overall policy cycle rather than on the stages of decision making and implementation. But it is important not to underestimate the significance of this role. As all students of public policy know, the ability to frame the issues and shape the agenda can have profound consequences for the course of public policy.<sup>5</sup> While some participants

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1. Declaration on the Establishment of the Arctic Council, Sept. 19, 1996, 35 I.L.M. 1387 [hereinafter Ottawa Declaration].

2. For an extensive and well-informed account of the founding of the Arctic Council, see JOHN ENGLISH, *ICE AND WATER: POLITICS, PEOPLES, AND THE ARCTIC COUNCIL* (Margaret MacMillan & Robert Bothwell eds., 2013).

3. See Arctic Council, *Arctic Marine Shipping Assessment 2009 Report*, (L. Brigham & B. Ellis eds., 2009), [http://www.arctic.noaa.gov/detect/documents/AMSA\\_2009\\_Report\\_2nd\\_print.pdf](http://www.arctic.noaa.gov/detect/documents/AMSA_2009_Report_2nd_print.pdf) [<https://perma.cc/2Y9Y-Y9S7>]; A. Nilsson, *Arctic Pollution Issues: A State of the Arctic Environment Report*, Arctic Monitoring and Assessment Programme (1997), <http://www.amap.no/documents/doc/arctic-pollution-issues-a-state-of-the-arctic-environment-report/67>; Susan Joy Hassol, Arctic Monitoring and Assessment Programme (AMAP), *Impacts of a Warming Arctic*, Arctic Climate Impact Assessment (Carolyn Symon ed., 2004), <http://www.amap.no/documents/doc/impacts-of-a-warming-arctic-2004/786>.

4. For a general account of the differences between generative, regulatory, and procedural roles, see ORAN R. YOUNG, *GOVERNANCE IN WORLD AFFAIRS* (1999).

5. See JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 205–19 (1984).

have sought to promote the idea that the Arctic Council can and should assume a more prominent role in the making of policy choices, a central premise of my analysis is that the primary role of this body will continue to center on issue framing and agenda formation during the coming years.

At the same time, the broader setting in which the Arctic Council operates has experienced far-reaching changes over the last twenty years. For purposes of analysis, it is helpful to focus on specific changes and to think of them in terms of biophysical, economic, and geopolitical forces. But these forces are interdependent and highly interactive. The impacts of climate change, for instance, have played a critical role in increasing the accessibility of the Arctic's energy and mineral resources. Geopolitical changes may give rise to a securitization narrative that raises questions about the attractiveness of these resources. Taken together, therefore, the impact of these changes on conditions prevailing in the Arctic is greater than the sum of its parts. The consequences are certain to be felt going forward into the future.

How will these changes affect the activities of the Arctic Council, and what can and should be done to maintain the effectiveness of the Council as these overarching conditions change? The first substantive section of this Article provides a brief account of the drivers of change in the Arctic that are likely to have significant implications for the pursuit of international cooperation in the region and for the role of the Arctic Council in particular. A critical observation, in this regard, is that one of the key consequences of these forces of change is a tightening of the links between the Arctic as a distinct region and the global biophysical and socioeconomic setting in which the region is situated. In the next section, I turn to an analysis of the implications of the emergence of what many observers refer to as the "new" Arctic for the operation of the Arctic Council.<sup>6</sup> In the process, I address several questions that have generated considerable interest among practitioners and analysts alike: Would it be beneficial to formalize the status of the Council, making it into a "normal" intergovernmental organization? Is there a case for broadening the remit of the Council beyond the emphasis on environmental protection and sustainable development specified in the Ottawa Declaration? What is the proper relationship between the Council and other intergovernmental bodies, such as the IMO, the OSPAR Commission, or the Northeast Atlantic Fisheries Commission? Are there ways to strengthen the administrative and financial capacity of the Council that are both politically feasible and likely to enhance the effectiveness of the Council significantly? The final section of the Article looks toward the future and reflects both on changes in the Arctic going forward and on ways to maintain (or even enhance) the effectiveness of the Arctic Council in light of changes to come.

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6. For a discussion of the "new" Arctic, see ALUN ANDERSON, *AFTER THE ICE: LIFE, DEATH, AND GEOPOLITICS IN THE NEW ARCTIC* (2009).

## I. THE FORCES OF CHANGE

The Arctic is experiencing transformative biophysical changes, driven for the most part by forces operating beyond the confines of the region. The impacts of persistent organic pollutants (POPs) produced outside the Arctic but transported to the region via waterborne and airborne vectors, where they bioaccumulate in a manner that has detrimental consequences for human health, is now well-known, partly as a result of the work of the Arctic Monitoring and Assessment Programme, operating initially under the auspices of the Arctic Environmental Protection Strategy and subsequently under the auspices of the Arctic Council.<sup>7</sup> The dissemination of up-to-date and reliable information on the impact of POPs on Arctic ecological and human systems is understood to have played a role of some significance in the negotiations leading to the conclusion of the 2001 Stockholm Convention on Persistent Organic Pollutants.<sup>8</sup>

Without doubt, however, the most important biophysical driver of transformation in the Arctic is climate change. It is now well documented and widely acknowledged that the impacts of climate change are unfolding more rapidly in the Arctic than in any other part of the world. The iconic manifestation of this phenomenon is the dramatic recession and thinning of sea ice in the Arctic Basin, which has proceeded at a rate that exceeds the most extreme projections of bodies like the Intergovernmental Panel on Climate Change (IPCC).<sup>9</sup> This impact of climate change has become a focus of intense interest in the private sector as well as the public sector because it is the recession of sea ice that is making the Arctic more accessible to those interested in extracting the region's natural resources, and to those interested in the region's potential for commercial shipping. But the decline of sea ice is by no means the only significant consequence of climate change in the Arctic. Other important impacts include increases in coastal erosion resulting from storm surges, the melting of permafrost, and, above all, ocean acidification, which is particularly severe in the high latitudes due to the fact that carbon dioxide dissolves more rapidly in cold water than in warm water. Positive feedback processes intensify these effects. For instance, open water absorbs more solar radiation than sea ice, a mechanism that increases the rate at which remaining sea ice melts. Beyond these effects lies the impact of climate change on the Greenland ice sheet. This ice sheet is now experiencing seasonal melting on an unprecedented scale.<sup>10</sup> Whether and when this process will lead to the disintegration of the

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7. DAVID P. STONE, *THE CHANGING ARCTIC ENVIRONMENT: THE ARCTIC MESSENGER* 106–80 (2015).

8. See David L. Downie, *Global POPs Policy: The 2001 Stockholm Convention on Persistent Organic Pollutants*, in *NORTHERN LIGHTS AGAINST POPS: COMBATTING TOXIC THREATS IN THE ARCTIC* 136–637 (David L. Downie & Terry Fenge eds., 2003).

9. NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., *ARCTIC MATTERS: THE GLOBAL CONNECTION TO CHANGES IN THE ARCTIC* (2015), [http://nas-sites.org/arctic/files/2015/06/Arctic\\_Matters-booklet.pdf](http://nas-sites.org/arctic/files/2015/06/Arctic_Matters-booklet.pdf) [<https://perma.cc/ZC9U-MVEG>].

10. *Id.*; WORKING GROUP 1, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE,

Greenland ice sheet is a focus of intense interest in the scientific community. But it is worth noting in this regard both that seasonal melt water on the surface of the ice sheet triggers a positive feedback process by absorbing more solar radiation than ice and that the volume of ice locked in the Greenland ice sheet is sufficient to raise sea levels on a global basis by an estimated six to seven meters.

The collapse of sea ice in the Arctic in 2007 triggered an extraordinary wave of speculation about a scramble for the Arctic's natural resources, the dramatic growth of commercial shipping in the Arctic, and the emergence of tensions and even armed clashes associated with potential "resource wars."<sup>11</sup> It is easy enough to grasp the appeal of the Arctic in an era of economic globalization. The U.S. Geological Survey issued a widely read report in 2008 forecasting that the Arctic contains some eleven percent of the world's recoverable reserves of oil and thirty percent of the recoverable reserves of natural gas.<sup>12</sup> Numerous reports based on simple geographical calculations presented projections regarding the attractions of Arctic shipping routes when compared with alternatives like the Suez Canal Route. The apparent political stability of the Arctic enhanced the appeal of Arctic shipping routes in contrast to alternative routes afflicted by political instabilities, like those in the Middle East, and by the growing problem of piracy. In the first flush of enthusiasm, many casual observers concluded that the Arctic was emerging as a critical region with regard to the future trajectory of economic globalization.

Today, less than a decade later, this picture seems far more complex and generally less appealing in economic terms. Arctic energy resources and nonfuel minerals are plentiful, but they are expensive both to extract and to transport to markets. Energy economists, for example, argue that world market prices below \$80–90 a barrel will make Arctic oil uneconomical, an observation of great importance given recent trends in the world oil market.<sup>13</sup> Commercial navigation in the Arctic is fraught with problems, including the continuing dangers of sea ice, the shallow water in key channels, the lack of adequate hydrographic charts, the absence of suitable infrastructure, and the difficulty of adhering to fixed schedules under Arctic conditions.<sup>14</sup> Current thinking is that container ships will not find transit

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CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS (Thomas F. Stocker et al. eds., 2013), [http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_ALL\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_ALL_FINAL.pdf) [[https://web.archive.org/web/20141126061207/https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_ALL\\_FINAL.pdf](https://web.archive.org/web/20141126061207/https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_ALL_FINAL.pdf)].

11. See ROGER HOWARD, *THE ARCTIC GOLD RUSH: THE NEW RACE FOR TOMORROW'S NATURAL RESOURCES* 13–25 (2009); see also RICHARD SALE, *THE SCRAMBLE FOR THE ARCTIC: OWNERSHIP, EXPLOITATION AND CONFLICT IN THE FAR NORTH* (2009); Scott G. Borgerson, *Arctic Meltdown: The Economic and Security Implications of Global Warming*, 87 *FOREIGN AFF.* 63 (2008).

12. See Donald L. Gautier et al., *Assessment of Undiscovered Oil and Gas in the Arctic*, 324 *SCI.* 1175 (2009).

13. Arild Moe, *Potential Arctic Oil and Gas Development: What Are Reasonable Expectations?*, in *THE ARCTIC IN WORLD AFFAIRS: A NORTH PACIFIC DIALOGUE ON THE FUTURE OF THE ARCTIC* (2012 NORTH PACIFIC ARCTIC CONFERENCE PROCEEDINGS) 227, 227–47 (Oran R. Young et al. eds., 2012).

14. Bjørn Gunnarsson, *The Future of Arctic Marine Operations and Shipping Logistics*, in *THE ARCTIC IN WORLD AFFAIRS: A NORTH PACIFIC DIALOGUE ON THE FUTURE OF THE ARCTIC* (2013 NORTH

passage over the Arctic attractive during the foreseeable future. Most Arctic shipping will involve destination traffic carrying bulk cargoes, such as natural gas produced on the Yamal Peninsula in the Russian Arctic and shipped from the new port of Sabetta.<sup>15</sup> This is not to say that the role of the Arctic in the global economic picture will be unimportant. But what does seem certain is that grandiose claims regarding a new Arctic “gold rush” are unjustified, and the economic future of the Arctic will be sensitive to fluctuations in global forces (e.g., the world oil market, the stability of the Middle East) that are hard to forecast with any certainty and that will make investment decisions involving developments spanning several decades risky.

All these economic calculations are complicated by the impacts of geopolitical changes. It is popular in some quarters to focus on renewed Russian military activities in the Arctic, including the reoccupation of military bases abandoned in the aftermath of the collapse of the Soviet Union, the augmentation of the Northern Fleet based on the Kola Peninsula, and the resumption of bomber flights in close proximity to the airspace of other Arctic states. Some western observers immediately jump to the conclusion that we are witnessing a resumption of the Cold War and that the future of the Arctic will be marked by an increase in militarization with all of the attendant dangers of action/reaction processes and unintended clashes.<sup>16</sup> The recent conflict over the future of the Ukraine has intensified such expectations in some quarters. We now find ourselves engaging in serious discussions about the prospects of insulating the Arctic from global geopolitical developments in order to preserve the region as a zone of peace and prosperity. Some concrete spillovers are already occurring, such as the suspension of the collaborative effort between Rosneft and ExxonMobil to drill for oil in the Kara Sea, a result of western sanctions imposed on Russia in connection with the conflict in the Ukraine.<sup>17</sup>

In many respects, these arguments are exaggerated, reflecting an engrained mindset rather than realities on the ground or on the water.<sup>18</sup> The Arctic is no longer an important theater of operations for strategic weapons systems of critical importance to the military balance between the superpowers. There are no conflicts in the Arctic itself that are serious enough to lead to armed clashes between or among the Arctic states. Russian military activities in the Arctic are not remotely on a scale that should be treated as worrisome by observers in other Arctic states. The Arctic states have pledged to resolve issues arising in the Arctic under existing legal

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PACIFIC ARCTIC CONFERENCE PROCEEDINGS) 37, 37–38 (Oran R. Young et al. eds., 2013).

15. *Id.* at 74.

16. Oran R. Young, *The Future of the Arctic: Cauldron of Conflict or Zone of Peace?* 87 INT'L AFF. 185, 186 (2011).

17. See LASSI HEININEN ET AL., RUSSIAN STRATEGIES IN THE ARCTIC: AVOIDING A NEW COLD WAR 24–25 (2014), [http://vid-1.rian.ru/ig/valdai/arctic\\_eng.pdf](http://vid-1.rian.ru/ig/valdai/arctic_eng.pdf) [<https://perma.cc/ΔJ8T-RHQJ>]; Clifford Krauss, *Exxon Halts Oil Drilling in Waters of Russia*, N.Y. TIMES, Sept. 20, 2014, at B6.

18. See HEININEN ET AL., *supra* note 17, at 31.

regimes like the arrangements set forth in the UN Convention on the Law of the Sea. Efforts to address specific issues, such as claims to extended jurisdiction over the seabed in the Arctic, are unfolding in conformity with this pledge.<sup>19</sup> There is no evidence to suggest that the Arctic is becoming a zone of conflict rather than a zone of peace.

Yet it is important not to dismiss the significance of geopolitical developments on a global scale for the future of the Arctic.<sup>20</sup> Russia's recent initiatives, including the annexation of Crimea and interventions in civil conflicts in Syria and the Ukraine, reflect a deep-seated desire to be acknowledged as a great power on the global stage, a desire that is hard to ignore given the fact that Russia remains a nuclear power and that it has emerged as a major player in world energy markets.<sup>21</sup> The rise of China, which is expected to overtake the United States as the world's largest economy in the near future, is another geopolitical development that cannot be ignored. More generally, what we are seeing is a broad shift in the global geopolitical landscape characterized by the (relative) decline in the dominant position of the United States and the rise of a number of new (or renewed) great powers, including India, Brazil, China, and Russia. In political terms, this means that the world is shifting from a unipolar system to a new multipolar system.<sup>22</sup> Whether or not this development will introduce new instabilities on a global scale is a matter of intense interest and debate among both practitioners and analysts.<sup>23</sup> But it is certain to have important consequences for the Arctic as a distinct region, and more specifically, for the activities of the Arctic Council. The Arctic states continue to dominate the work of the Council. Tensions between Russia and the West, even if they are driven by non-Arctic concerns, will complicate efforts to reach a consensus within the Council on a range of substantive issues. It will become progressively harder to ignore the Arctic interests of China and even those of India, Japan, and Korea, which are currently relegated to the rather marginal status of observer states in the Council.

A common theme that runs through all these biophysical, economic, and geopolitical forces of change is the tightening of the links between the Arctic as a distinct region and the global system. One important inference to be drawn from this observation is that global forces beyond the control of regional bodies like the Arctic Council will play a prominent role in determining the future of the Arctic. Although the impacts of climate change are being felt more dramatically in the

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19. YOUNG, *supra* note 16, at 189.

20. I.N. Timofeev, *World Order or World Anarchy? A Look at the Modern System of International Relations* 26, 33–34 (Russian International Affairs Council, Working Paper No. 18, 2014), [http://russiancouncil.ru/common/upload/RIAC\\_WP\\_18\\_EN.pdf](http://russiancouncil.ru/common/upload/RIAC_WP_18_EN.pdf) [https://perma.cc/PVA2-ZYXG].

21. For a generally balanced account on Russia's recent political initiative, see MARLENE LARUELLE, *RUSSIA'S ARCTIC STRATEGIES AND THE FUTURE OF THE FAR NORTH* (2014).

22. JOSEPH S. NYE JR., *IS THE AMERICAN CENTURY OVER?* 95–96 (2015).

23. See Timofeev, *supra* note 20, at 5.

Arctic than anywhere else, climate change is a global phenomenon driven by forces far beyond the southern boundaries of the region. China, for example, now accounts for about twenty-eight percent of the global emissions of carbon dioxide.<sup>24</sup> Similarly, market prices for oil and gas and macro-level trends in patterns of ocean shipping are determined by factors operating outside the Arctic region. An array of factors including conflict in the Middle East, the behavior of OPEC, and advances in extraction techniques, gives rise to a high degree of volatility in the world market price of oil. The same is true of the geopolitical drivers. It would be a mistake to interpret enhanced Russian military activities in the Arctic as a response to emerging conflicts in the region. The shift toward a more multipolar global political system has far more to do with developments outside the Arctic than with any regional developments.

The relationship between the region and the global system is therefore substantially asymmetrical. Global forces will shape the future of the region to a large degree. Yet the flow of influence is not entirely unidirectional. Arctic feedback processes affect the global climate system; the consequences would be particularly dramatic if the Greenland ice sheet should begin to disintegrate. While Arctic oil and gas is expensive, it is largely free of the political uncertainties associated with production in many other regions. As a result, Arctic energy resources may play a welcome stabilizing role in world markets that are known for their disruptive volatility. Even in geopolitical terms, the Arctic may have some influence on global developments. The Arctic region today is a zone of peace and prosperity, in which major issues are resolved in a manner that is largely cooperative. Assuming the Arctic states are able to insulate the region against spillovers from outside conflicts, the Arctic may emerge as a model that those engaged in other regions will find of interest as they consider the prospects for achieving conditions of peace and prosperity in their areas of interest.

One observation that does emerge from this account is that non-Arctic actors, including the European Union as well as states like China and India, must think not only in terms of their Arctic interests, but also in terms of their responsibility for the future of the Arctic. Countries like China and the United Kingdom, for instance, like to characterize themselves as near-Arctic states, to describe the Arctic as part of the common heritage of humankind, and to suggest that these considerations give them a legitimate interest in decision making about Arctic matters.<sup>25</sup> Without attempting to evaluate these types of arguments, however, it is important to balance the articulation of interests with an acknowledgement of responsibility for the

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24. Global Carbon Budget Highlights, GLOB. CARBON PROJECT, <http://www.globalcarbonproject.org/carbonbudget/14/hl-full.htm> [https://web.archive.org/web/20151205023503/http://www.globalcarbonproject.org/carbonbudget/14/hl-full.htm].

25. See SELECT COMMITTEE ON THE ARCTIC, REPORT, RESPONDING TO A CHANGING ARCTIC, 2014-15, HL 115 at 34, 91-93 (UK), <http://www.publications.parliament.uk/pa/ld201415/ldselect/ldarctic/118/118.pdf> [https://perma.cc/76SG-GHF4]; Elizabeth C. Economy, *China's Imperial President: Xi Jinping Tightens His Grip*, 93 FOREIGN AFF. 80, 88 (2014).



biophysical and socioeconomic integrity of the Arctic. There is much to be said for the proposition that a genuine expression of concern about matters of this sort would make a significant difference in the receptivity of Arctic actors to initiatives on the part of outsiders designed to increase their presence in the Arctic.

## II. THE FUTURE OF THE ARCTIC COUNCIL

What are the implications of this characterization of the rapid change in the Arctic for the effectiveness of the Arctic Council? Does this account yield insights that should be of interest to those in a position to make adjustments to the status of the Council, its operating procedures, and its substantive priorities? It is apparent at the outset that a preference for the status quo is not a viable option.<sup>26</sup> The Arctic is changing in ways that will impact the activities of the Council whether those in a position to manage the activities of the Council like it or not. However, this is a sweeping observation with policy implications that are by no means clear.

In this section, I explore the implications of the developments canvassed in the preceding section for the activities of the Council in more concrete terms. Specifically, I examine: (i) the legal and political status of the Arctic Council; (ii) the Council's remit; (iii) relations between the Arctic Council and other intergovernmental bodies; and (iv) the administrative and financial resources available to the Council. I cast the analysis in the form of questions and answers dealing with each of these topics.

Would it be helpful to make the Arctic Council into a "normal" intergovernmental organization? Many practitioners and analysts regard the legal and political status of the Council as a defect to be remedied at the first opportunity.<sup>27</sup> The Council is based on a ministerial declaration that is not legally binding. Unlike many other intergovernmental bodies (e.g., the Antarctic Treaty System, the IMO, the World Trade Organization, the UN Food and Agriculture Organization), the Council lacks the legal authority to make decisions that are binding on its members. Even the recent agreements on search and rescue (2011)<sup>28</sup> and oil spill preparedness and response (2013),<sup>29</sup> both of which were negotiated

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26. For a collection of papers originally presented during the conference, see *THE ARCTIC COUNCIL: ITS PLACE IN THE FUTURE OF ARCTIC GOVERNANCE* (Thomas S. Axworthy et al. eds., 2012).

27. There is a somewhat analogous debate about the status of the UN Environment Programme, which is a body created under the auspices of a UN General Assembly resolution. Some analysts believe that turning UNEP into a UN Environment Organization (UNEO) would enhance its effectiveness substantially. See FRANK BIERMANN, *EARTH SYSTEM GOVERNANCE: WORLD POLITICS IN THE ANTHROPOCENE* 65–77 (Frank Biermann & Oran R. Young eds., 2014).

28. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, May 12, 2011, 13 T.I.A.S. No. 13-119 [hereinafter Search and Rescue Agreement].

29. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, May 15, 2013, [http://arcticjournal.com/sites/default/files/mm08\\_agreement\\_on\\_oil\\_pollution\\_preparedness\\_and\\_response\\_signed\\_appendices\\_original\\_130510.pdf](http://arcticjournal.com/sites/default/files/mm08_agreement_on_oil_pollution_preparedness_and_response_signed_appendices_original_130510.pdf) [https://perma.cc/K8FG-545Q] [hereinafter Marine Oil Agreement].

under the auspices of the Council, are not formal arrangements adopted by the Arctic Council.<sup>30</sup> The informal status of the Council is also reflected in the fact that it is not an intergovernmental organization with the capacity to launch programmatic activities or the authority to adopt an indicative budget that members are expected to fund. This has not prevented the Council from creating a (small) permanent secretariat located in Tromsø, Norway that opened for business in 2013. However, it does limit the capacity of the Council in significant ways and ensures that the Council is dependent on voluntary contributions from members to conduct substantive work on specific topics.

Is this a serious problem? Might there be drawbacks as well as benefits associated with making the Arctic Council into a normal intergovernmental organization? Answers to these questions are rooted in my assessment of the nature of the Council's role and the sorts of resources required to play this role effectively. If, as I have argued, the success of the Council lies in its ability to identify emerging issues, frame them for consideration in policymaking processes, and push them toward the top of the policy agenda, then the current legal and political status of the Council may not be a serious drawback. The authority to make binding decisions is not necessary to play this "generative" role effectively. In fact, a growing preoccupation with policy making as opposed to policy shaping may actually detract from a focus on what the Council does best.

Certainly, some material resources are needed to perform the generative function well. I will come back to the issue of funding later. But it is important to note at this stage that the resources needed to play a generative role effectively are modest compared with the resources needed to address issues of administration, implementation, and compliance that are prominent concerns of many normal intergovernmental organizations.

What about the drawbacks associated with becoming a normal intergovernmental organization? It is probable that such a transition would interfere with some of the most innovative features of the Arctic Council, such as the practice of including the permanent participants in virtually all the Council's deliberations.<sup>31</sup> It might also complicate the efforts of the Arctic states to run the Council as a sort of club, excluding non-Arctic states from the status of members. Perhaps the most serious drawback of such a transition, however, would have to do with the ability of the Council to adapt nimbly to changing circumstances. It is notoriously difficult to adjust the provisions of treaty-based intergovernmental organizations to ensure that the fit, or match, between the organizations and the broader settings in which

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30. They are, instead, multilateral agreements signed by foreign ministers who had come together to participate in ministerial meetings of the Arctic Council.

31. The permanent participants are organizations representing groups of indigenous peoples located in two or more Arctic Council member states (e.g., the Inuit Circumpolar Council) or multiple groups of indigenous peoples located in a single member state (e.g., the Russian Association of Indigenous Peoples of the North). *Permanent Participants*, ARCTIC COUNCIL, <http://www.arctic-council.org/index.php/en/about-us/permanent-participants> [<https://perma.cc/CJ3U-MR5D>].

they operate continues to be good. In many cases—the Antarctic Treaty System is a good example<sup>32</sup>—progress depends on the laborious and often protracted process of negotiating new legally binding instruments. The Arctic Council, by contrast, has exhibited a high degree of nimbleness in adjusting its practices to changing circumstances on a more informal basis. Given the dynamic character of the Arctic region described in the preceding section, there are good reasons to prize this attribute of the Arctic Council.

Would it be advantageous to broaden the remit of the Arctic Council? The mandate of the Arctic Council is well defined and strictly limited. The Council inherited from its predecessor, the Arctic Environmental Protection Strategy (AEPS),<sup>33</sup> a mandate to deal with matters of environmental protection. To this mandate, the Ottawa Declaration<sup>34</sup> added a concern for sustainable development, construed as a “separate but equal” theme alongside environmental protection.<sup>35</sup> In practice this has proven to be somewhat confusing. In the mainstream conceptualization of sustainable development, environmental protection is treated as one of the three pillars, along with economic development and the protection of social and cultural values. In a sense, therefore, the specification of the Council’s remit in the Ottawa Declaration is based on a category error. The Environmental Protection Programme should operate within the overarching framework of the Sustainable Development Programme, rather than as a separate, co-equal, and somewhat autonomous track in the activities of the Council.

This may account for the somewhat awkward nature of the Council’s activities. Five of the Council’s six working groups deal more or less explicitly with matters of environmental protection.<sup>36</sup> Four of them were inherited from the AEPS and developed personalities of their own prior to becoming Arctic Council working groups. The Sustainable Development Working Group (SDWG), set up to fulfill the terms of the Ottawa Declaration,<sup>37</sup> has struggled to define a clear-cut role for itself within this system. The activities of the SDWG lack a core focus, are sensitive to the activities of the other working groups with regard to turf, and are closely controlled by the country holding the chairmanship of the Council.<sup>38</sup> The Arctic Monitoring and Assessment Programme (AMAP), for example, has produced

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32. Oran R. Young, *Governing the Antipodes: International Cooperation in Antarctica and the Arctic*, 52 POLAR RECORD 230 (2016).

33. Arctic Environmental Protection Strategy, June 14, 1991, 30 I.L.M. 1624.

34. Ottawa Declaration, *supra* note 1.

35. Specifically, the Ottawa Declaration calls on the Arctic Council to “oversee and coordinate the programs established under the AEPS,” Ottawa Declaration, *supra* note 1, at 1(b), and to “adopt terms of reference for, and oversee and coordinate a sustainable development program.” *Id.* at 1(c).

36. See Lawson W. Brigham, *International Cooperation in Arctic Marine Transportation, Safety and Environmental Protection*, in *THE ARCTIC IN WORLD AFFAIRS: A NORTH PACIFIC DIALOGUE ON THE FUTURE OF THE ARCTIC* 115, 121 (Oran R. Young et al. eds., Korea Maritime Institute 2013) (defining the Arctic Council’s six working groups).

37. Ottawa Declaration, *supra* note 1.

38. Sustainable Development Working Group (SDWG), Operating Guidelines, para. 2, (May 14, 2002).

guidelines for oil and gas development,<sup>39</sup> and the Working Group on the Protection of the Arctic Marine Environment (PAME) has conducted the Arctic Marine Shipping Assessment (AMSA).<sup>40</sup> But both of these topics have at least as much to do with sustainable development as they have to do with environmental protection. In short, there are significant issues regarding the allocation of policy concerns among the various working groups of the Council.

Beyond this lie issues relating to efforts to expand the remit of the Arctic Council to address a broader range of issues. Some of this takes the form of establishing task forces to address issues that are regarded as having more or less direct policy relevance, such as oil spill prevention, short-lived climate pollutants, engagement with the business community, and cooperation with the science community. Although not envisioned in the language of the Ottawa Declaration, there is nothing to stop the Council from creating task forces so long as it is clearly understood that their conclusions have no legal status. Individual task forces have produced constructive results. But they can also lead to confusion and frustration regarding the proper role of the Arctic Council. The Circumpolar Business Forum Task Force played an important role in the launching of what is now called the Arctic Economic Council, for example, but it is anything but clear what the relationship between this new mechanism and the Arctic Council itself is or should be.<sup>41</sup> Given the fact that a high proportion of the short-lived climate pollutants originate outside the Arctic and even outside the Arctic states, the capacity of the Task Force on Black Carbon and Methane to address this concern was severely limited. For the most part, its efforts were exhortatory, and there is little evidence to suggest that those with the authority to address these concerns pay much attention to the efforts of the Arctic Council.<sup>42</sup>

More broadly, there are increasing calls for the Arctic Council to take on issues of security, whether these are framed as matters of military security, environmental security, or even human security. The Ottawa Declaration has a (in)famous footnote, inserted at the insistence of the United States, stating explicitly that the Council should not deal with matters of military security.<sup>43</sup> There is a lively debate regarding the extent to which casting issues of environmental protection and human

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39. Henry P. Huntington, Arctic Monitoring and Assessment Programme, *Arctic Oil and Gas 2007*, (Nov. 2007), <http://www.amap.no/documents/download/1017> [https://perma.cc/2WZT-9HCD].

40. *Arctic Marine Shipping Assessment 2009 Report*, *supra* note 3.

41. *See, e.g.*, Michael Stickman, International Chair of the Arctic Athabaskan Council, Remarks at the Arctic Council Ministerial Meeting, Iqaluit 2015.

42. The proper division of labor between the Circumpolar Business Forum Task Force and AMAP is also a source of some confusion. *See, e.g.*, Anastasia Telesetsky, *Overcoming Climate Inertia with Unilateral Action on Black Carbon*, in *THE SEARCH FOR ENVIRONMENTAL JUSTICE OF SPACE LAW* 245 (Paul Martin et al. eds., 2015); *see also* Arctic Monitoring and Assessment Programme (AMAP), Progress Report 2013–2015, at 1.

43. Specifically, the Ottawa Declaration states that “[t]he Arctic Council should not deal with matters related to military security.” Ottawa Declaration, *supra* note 1, at n.1.

well-being as matters of security is a progressive step or a step in the wrong direction.<sup>44</sup> Given what I have said in the preceding section about the forces of change in the Arctic, it is perhaps understandable that some practitioners and analysts have a strong desire to broaden the remit of the Council to allow it to address newly emerging issues and, in the process, to remain relevant to the Arctic agenda. Understandable as this desire is, this could very well prove to be an unproductive strategy.<sup>45</sup> The Arctic Council is not well equipped to become a venue for addressing broader questions of global climate change, and an effort to take on issues of military security could easily undermine or tarnish the efforts of the Council to address other concerns. Perhaps the way forward is to sort out the internal confusion regarding the relationship between environmental protection and sustainable development and to craft a coherent narrative to support efforts to maintain the Arctic as a zone of prosperity.

How should the Arctic Council interact with other intergovernmental bodies whose remit encompasses Arctic issues? Many other intergovernmental bodies have mandates that cover issues that are relevant to the Arctic. At this stage, we are particularly aware of the relevance of the IMO, which is the body with the authority to adopt and promulgate the legally binding rules that will make up the Polar Code applicable to commercial shipping in the Arctic. But there are many other international organizations that can and do play similar roles. These include the Food and Agriculture Organization of the United Nations (FAO), the International Civil Aviation Organization, and the World Trade Organization to name a few. To make the picture more complex, it is worth noting as well that a wide range of nongovernmental organizations, such as the Association of Arctic Expedition Cruise Operators, the International Association of Classification Societies, and the International Organization for Standardization, have also gotten into the act when it comes to dealing with matters that have implications for governance in the Arctic.<sup>46</sup>

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44. See, e.g., Gregory D. Foster, *A New Security Paradigm*, WORLD WATCH, Jan./Feb. 2005, at 39, <http://www.worldwatch.org/system/files/EP181B.pdf> [https://perma.cc/725X-25FT]; Diane French, *A Case for Climate Security in the Arctic Council Agenda*, STIMSON (Feb. 2, 2015), <http://www.stimson.org/content/case-climate-security-arctic-council-agenda> [https://perma.cc/HVA7-REC7]. See generally Sumudu Atapattu, *Global Climate Change: Can Human Rights (and Human Beings) Survive this Onslaught?*, 20 COLO. J. INT'L ENVTL. L. & POL'Y 35 (2008); Richard A. Matthew, *The Environment as a National Security Issue*, 12 J. POL'Y HIST. 101 (2000).

45. See Proposed U.S. Arctic Council Chairmanship Program 2015–2017, 22 (Feb. 2015).

46. See DAVID VANDERZWAAG ET AL., DALHOUSIE UNIV. MARINE & ENVTL. LAW INST., GOVERNANCE OF ARCTIC MARINE SHIPPING 2, 3, 17, 39 (2008), [http://www.dal.ca/content/dam/dalhousie/pdf/law/MELAW/MELAW\\_AMSA\\_Governance\\_of\\_Arctic\\_Marine\\_Shipping\\_Final\\_Report\\_AUG1.pdf](http://www.dal.ca/content/dam/dalhousie/pdf/law/MELAW/MELAW_AMSA_Governance_of_Arctic_Marine_Shipping_Final_Report_AUG1.pdf) [https://perma.cc/CLE9-5CR5]; see also Ass'n of Arctic Expedition Cruise Operators, *AECO's Guidelines for Expedition Cruise Operations in the Arctic* (Oct. 2013), <http://www.aeco.no/wp-content/uploads/2013/06/2014-10-15-AECO-Operational-Guidelines1.doc>; Int'l Ass'n of Classification Soc'ys, *Requirements Concerning Polar Class* (2011), <http://www.aeco.no/guidelines/operational-guidelines/> [https://web.archive.org/web/0160312064037/http://www.aeco.no/guidelines/operational-guidelines/]; Int'l Org. for Standardization

Under no circumstances will the Arctic Council absorb the functions of any of these other bodies. So, the question becomes how could or should the Council interact with these organizations both individually and collectively? One response to this question focuses on the role of the Council as a catalyst that can prompt action on the part of other bodies and provide useful input into the deliberations of these bodies. A particularly clear case-in-point involves the role of AMSA, a Council effort carried out by PAME, with regard to the development of a legally binding Polar Code under the auspices of the IMO.<sup>47</sup> The Council itself lacks the authority to make formal decisions about such matters. But there is no doubt that AMSA stimulated international interest regarding this issue and provided background information helpful to those negotiating the provisions of the Polar Code.

Conversely, there may be a role for the Arctic Council in overseeing the implementation of the provisions of the Polar Code. The Council lacks both the authority and the resources to assume responsibility for the implementation of the Polar Code. But it may be able to help in monitoring the implementation of the code, drawing attention to what is working well or not so well and engaging in informed discussions of next steps in cases where there appear to be problems with the performance of this regulatory regime. Commercial shipping is just one example of the interaction between the Arctic Council and other intergovernmental bodies with mandates to address matters of interest to the Arctic. Other opportunities of this sort are easy to identify, and it is worthwhile to keep a sharp watch on the emergence of such opportunities in a variety of issue areas.

Another response to the question about relations between the Arctic Council and other intergovernmental bodies involves the adaptation of broader international regimes to the particular circumstances prevailing in the Arctic. The 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, for instance, is designed to be nested into the broader framework of the current version of IMO's Convention on the Safety of Life at Sea (SOLAS).<sup>48</sup> A similar relationship exists between the 2013 Agreement on Cooperation on Marine Oil Spill Pollution, Preparedness and Response in the Arctic and IMO's 1990 International Convention on Oil Pollution Preparedness, Response and Co-

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(ISO), *Petroleum and Natural Gas Industries—Arctic Offshore Structures* (2010), [http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=33690](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=33690).

47. ARCTIC LAW & POLICY INST., UNIV. OF WASH., ARCTIC LAW & POLICY YEAR IN REVIEW: 2014 (2015), [https://www.law.washington.edu/arcticlaw/reports/ArcticLawYearReview\\_2014.pdf](https://www.law.washington.edu/arcticlaw/reports/ArcticLawYearReview_2014.pdf) [<https://perma.cc/F2YF-4E38>].

48. The Search and Rescue agreement, although not primarily designed to prevent shipping accidents, "calls for coordination and communication among the [Arctic States], including the exchange of weather and ocean forecasts and warnings, joint exercises and training, shared support services, and use of ship reporting systems for search and rescue purposes." Andrew Hartsig et al., *Arctic Bottleneck: Protecting the Bering Strait Region from Increased Vessel Traffic*, 18 OCEAN & COASTAL L.J. 35, 66 (2012). See Search and Rescue Agreement, *supra* note 28; see also International Convention for the Safety of Life at Sea, Nov. 1, 1974, 1184 U.N.T.S. 18961.

operation (OPRC).<sup>49</sup> In a sense, this makes the work of the Arctic Council subordinate to the authority of other intergovernmental bodies like the IMO. But this does not marginalize or trivialize the activities of the Council. In many areas, conditions prevailing in the Arctic differ substantially from those prevailing in other parts of the world. Devising regulatory measures that are well matched to Arctic conditions is essential when it comes to maximizing their effectiveness in addressing Arctic problems. And nesting these measures into broader arrangements like SOLAS and OPRC may play an important role in maximizing their legitimacy.

An encompassing role pertaining to relations between the Arctic Council and other intergovernmental bodies has to do with integrating or meshing the activities of a variety of functionally specific arrangements. Thus, there are bodies competent to address matters like safety at sea, marine pollution, fishing, ship-based tourism, scientific research, and so forth.<sup>50</sup> But none of these bodies has a remit to ask how all these functional arrangements affect one another or fit together in such a way as to form a coherent regime governing human activities in the Arctic. This is the issue now discussed in the broader literature on international regime complexes in terms of factors affecting fragmentation and integration.<sup>51</sup> The Ottawa Declaration certainly does not anticipate a role of this sort for the Arctic Council, and the Council lacks the authority to make formal decisions of the sort needed to assemble the pieces of this jigsaw puzzle into a coherent whole. Nevertheless, the Council, operating largely through the activities of its working groups, is in a better position than any other intergovernmental body to identify gaps and overlaps in the initiatives of other bodies applying to the Arctic, to track the development of these concerns over time, and to assess the pros and cons of various measures to address these concerns.<sup>52</sup> This is an ambitious role that could overstretch the capacity of the Council in its current form. But it is worth noting that this important role would not require any formal changes in the terms of the Ottawa Declaration and would fit comfortably with the generative role that is central to the effectiveness of the Council.

Are there opportunities to enhance the administrative capacity and to increase

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49. The agreement includes a number of commitments for the member states of the Arctic Council in order to address oil pollution that may affect the Arctic marine environment, including requirements for preparedness and response systems, notification and information exchange, and coordinated responses. See Sara Vinson et al., *International Environmental Law*, 48 INT'L LAW. 435, 439–40 (2014); Marine Oil Agreement, *supra* note 29; see also International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, 1891 U.N.T.S. 32194.

50. For example, the International Maritime Organization oversees the safety of navigation and prevention of marine pollution. The Northwest Atlantic Fisheries Organization manages fisheries in the northwestern part of the Atlantic Ocean. The International Arctic Science Committee is dedicated to scientific research in the Arctic.

51. For a discussion of this literature, see Amandine Orsini et al., *Regime Complexes: A Buzz, a Boom, or a Boost for Global Governance?*, 19 GLOBAL GOVERNANCE 27, 27–39 (2013).

52. For a general account of “interplay management,” see MANAGING INSTITUTIONAL COMPLEXITY: REGIME INTERPLAY AND GLOBAL ENVIRONMENTAL CHANGE, at vii–ix (Sebastian Oberthür & Olav Schram Stokke eds., 2011).

the financial resources available to the Arctic Council? The Arctic Council is a simple intergovernmental body. Under the terms of the Ottawa Declaration, the chairmanship rotates among the member states at two-year intervals, and the chair takes responsibility for organizing meetings and providing resources needed to underwrite meetings of the Senior Arctic Officials (SAOs) and the biennial ministerial meetings.<sup>53</sup> Over time, this initial arrangement has evolved in a number of directions. The individual working groups have secretariats of their own, mostly supported by the relevant host countries. Individual countries have contributed resources on a voluntary basis needed to carry out specific projects. An Indigenous Peoples' Secretariat has been able to provide some support for participation in Council activities on the part of representatives of the permanent participants.<sup>54</sup> More recently, the member states agreed to establish a permanent (but modest) Arctic Council Secretariat based at the Fram Centre in Tromsø with a budget sufficient to maintain a small professional staff. Nevertheless, the Council remains a lightly administered body lacking the material resources needed to become an influential player in its own right.

Is this a problem? So long as the Council prioritizes its generative role, it does not need to grow into a more substantial organization with a sufficiently large staff to become active in the realm of implementation and a dependable budget to support a role of this sort. To the extent that my answers to the previous questions are convincing, the current situation may not be in need of drastic restructuring. One exception to this observation may relate to the integrative role described in the answer to the preceding question regarding relations with other intergovernmental bodies. If the Arctic Council becomes active in an effort to integrate sectoral approaches to Arctic governance, even as a generative task, additional and dedicated resources will be required. This is not a role that can be assigned to one or another of the working groups, though the Arctic Monitoring and Assessment Programme has sometimes made helpful contributions in this realm in the absence of anyone else able to play the role. In the nature of things, such an integrative role would require personnel able to think systematically about linkages among distinct areas and equipped with a specific mandate to engage in an effort of this sort. A budget for this purpose would be essential, though it would not require additional resources on a large scale.

Where the existing situation does leave a good deal to be desired is in the provision of a regular budget to support normal Arctic Council activities. It is worth differentiating at least three issues in this realm. First, the Arctic Council Secretariat lacks the resources to conduct anything beyond a bare-bones operation. Second, as

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53. Arctic Council, Revised Arctic Council Rules of Procedure, ¶ 10, (May 15, 2013), [https://oaarchive.arctic-council.org/bitstream/handle/11374/940/2015-09-01\\_Rules\\_of\\_Procedure\\_website\\_version.pdf](https://oaarchive.arctic-council.org/bitstream/handle/11374/940/2015-09-01_Rules_of_Procedure_website_version.pdf).

54. Erik Gant, *History of the Arctic Council Permanent Participants*, ARCTIC COUNCIL (July 10, 2012), <http://www.arctic-council.org/index.php/en/our-work2/8-news-and-events/313-history-of-the-arctic-council-permanent-participants> [https://perma.cc/RL35-BF9J].



the activities of the Council expand, the permanent participants are finding it increasingly difficult to mobilize the human and material resources needed to play an active role in the full range of Council activities. Since the development of the role of permanent participants is one of the most innovative features of the Council, this is a matter of considerable concern. Third, the working groups are at the mercy of individual countries (and occasionally non-governmental bodies) willing to contribute to the initiation and conduct of projects on a voluntary basis. This makes it impossible for the working groups to exercise control over their own programs, set priorities and invest resources in projects that they deem to be most important to fulfill the Council's mandate, and track the results of their recommendations on a sustained basis. The result has been a hodgepodge of ad-hoc initiatives, moving forward sometimes on a stop-and-go basis, that do not add up to a coherent program and that often peter out without clear results. The problem is more severe in some cases, such as the Sustainable Development Working Group—which is controlled by the current chair but nevertheless lacks resources of its own—than in others, such as AMAP—which has benefitted from long-term core support on the part of Norway. It is probably fair to say that the resultant lack of programmatic coherence constitutes the most serious organizational problem that the Arctic Council faces today.<sup>55</sup>

What can we say about the feasibility of addressing the issues identified in this section? In some respects, the needs of the Arctic Council are surprisingly modest. As I have argued, it is probably unnecessary to turn the Council into a normal intergovernmental organization. The principal challenge regarding the Council's remit has to do with internal issues, like the relationship between environmental protection and sustainable development, rather than broadening the Council's mandate to tackle a wider range of concerns. The Council will not take over the roles of other relevant intergovernmental bodies, like the IMO, ICAO, or FAO. What is needed in organizational terms is an enhanced capacity to play an integrative role focused on the need to address gaps and overlaps in the activities of other bodies whose work has implications for the Arctic. The need for additional administrative capacity and material resources is not large, at least by comparison with the resources needed to operate most mainstream intergovernmental organizations. Certainly, the bottom line would come to tens of millions rather than hundreds of millions of U.S. dollars.

This is not to say that the status quo is fine, or that a little technical fine-tuning will suffice to address the issues facing the Council today. Clearly, political will is required to enhance the ability of the Council to operate as effectively as possible under current conditions. In bygone days, when the Arctic was largely “out of sight and out of mind” for those interested in international governance, mobilizing the willpower needed to address such issues would have seemed an insurmountable

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55. See Puala Kankaanpää & Oran R. Young, *The Effectiveness of the Arctic Council*, 31 POLAR RESEARCH, 17176 (2012).

barrier. But now, especially in the wake of the events of the last decade, the situation is different. The Arctic has become a focus of unprecedented interest, not only for the Arctic states, but also for states like China, Japan, and Korea and international bodies like the European Union.<sup>56</sup> The number of high-level conferences and workshops dealing with Arctic issues is astonishing to those of us who worked on Arctic issues when they were of interest only to a narrow band of Arctic specialists. In such an environment, the level of effort required to come to terms with the issues I have articulated in this section should not loom as an insurmountable hurdle.

### III. WHAT LIES AHEAD?

There is every reason to expect the dynamism that has characterized the Arctic in recent years to continue to be a prominent feature of the region during the foreseeable future. Some of the resultant developments will have important implications for the work of the Arctic Council. The forces at work are complex; there is no way to predict exactly what form major changes in the Arctic will take. Still, it is possible to identify and comment on a range of plausible developments that illustrate types of change likely to have significant implications for the operation of the Arctic Council. Consider, in this light, the following possibilities: (i) the need to relocate whole communities in the Arctic due to the impacts of climate change, (ii) changes in sea ice allowing for transpolar shipping that avoids both the Northern Sea Route and the Northwest Passage, (iii) the growth of mining (including rare earth elements) as an economic activity rivaling oil and gas development in the Arctic, (iv) the emergence of an independent Greenland altering the composition of the group of Arctic states, (v) the intensification of bilateral relationships (e.g., China/Russia, China/Greenland) as a major feature of Arctic politics, and (vi) the development of more proactive policies on the part of non-Arctic states regarding the high seas in the Central Arctic Ocean (i.e., the roughly 2.8 million square kilometers of high seas that lie beyond the limits of national jurisdiction). How would these sorts of developments affect the operation of the Arctic Council, and what steps could be taken to maintain the effectiveness of the Council under the circumstances?

The principal effects of some of these changes will take the form of impacts on the range of issues competing for the Council's attention. American policymakers have identified "Arctic climate adaptation and resilience" and "improving economic and living conditions" in the Arctic as priorities for the U.S. Chairmanship during 2015–2017.<sup>57</sup> Most mining activities in the Arctic are likely to take place on land controlled by individual states. But large-scale mining has

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56. See Juha Käpylä & Harri Mikkola, Finnish Inst. of Int'l. Aff. (FIIA), *The Global Arctic: The Growing Arctic Interests of Russia, China, the United States and the European Union*, 3, 8, Briefing Paper 133, (Aug. 2013), <http://www.fiaa.fi/assets/publications/bp133.pdf> [<https://perma.cc/QTLL6-XBF4>].

57. See John Kerry, Sec'y of State, U.S. Dep't of State, Remarks at the Presentation of the U.S. Chairmanship Program at the Arctic Council Ministerial (Apr. 24, 2015), <http://www.state.gov/secretary/remarks/2015/04/241102.htm> [<https://perma.cc/QE2N-X8Y6>].

important implications for sustainable development in the Arctic, and the operations of bulk carriers carrying ore may loom large in the development of commercial shipping in the region. The challenge for the Arctic Council in this connection will be to devise a method to set priorities in the interest of concentrating its efforts on issues of particular importance from a circumpolar perspective rather than following the scattershot approach that has characterized its activities in the past. A particularly important challenge will be to strengthen the capacity of the Council to address issues that belong first and foremost to the domain of sustainable development. In the past, the Council has done a better job of dealing with matters of environmental protection than matters of sustainable development. While environmental protection will continue to occupy an important place in the work of the Council, both the biophysical and the economic forces at work in the Arctic will highlight issues of sustainable development and put pressure on those responsible for the activities of the Council to exhibit leadership in an effort to find ways to foster sustainability in a dynamic region.

Other developments will pose challenges regarding the composition and character of the Council itself. A dramatic case in point would be the emergence of Greenland as a fully independent state with an overwhelmingly indigenous population.<sup>58</sup> There would be no reason to deny full membership on the Council to an independent Greenland. But how would this affect the status of Denmark, whose only remaining claim to membership on the Council would stem from its jurisdiction over the Faeroe Islands? It might make sense in this situation to drop Denmark as a member of the Arctic Council, though the Council has no explicit procedure either for the accession of new members or for the de-accession of existing members. And what would be the consequences of this stream of developments for the role of the permanent participants? Greenland has been a prominent force in the activities of the Inuit Circumpolar Council, one of the most active and effective of the permanent participants. It seems clear that significant adjustments would be called for in conjunction with this set of circumstances. It is difficult to anticipate what form these adjustments could or should take. But the basic point is clear: changes in the Arctic during the foreseeable future may raise important questions not only about how to prioritize issues on the Council's agenda but also about how to adjust important features of the Council itself in the light of major changes.

Beyond these considerations lie changes that would raise questions about the relevance of the Arctic Council as the proper body to address Arctic issues. Bilateralism that is largely economic in nature is a routine matter that has few implications for the work of the Council. There is nothing out of the ordinary, for example, about Daewoo Shipbuilding and Marine Engineering (DSME), a Korean

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58. The total population of Greenland is less than 60,000, but over eighty percent of those living in Greenland are indigenous. See Michael Byers, *Arctic Region*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 36 (2010).

company, constructing LNG tankers for Novatek, a Russian company that is the lead developer of Yamal gas reserves. But there is a more political form of bilateralism that can become a competitor to the multilateral approach to regional cooperation embedded in the work of the Arctic Council. China, in particular, has often exhibited a preference for bilateral versus multilateral forms of cooperation.<sup>59</sup> Recent developments involving Chinese-Russian agreements regarding Arctic energy resources and Chinese-Greenlandic discussions regarding the exploitation of mineral resources in Greenland exemplify this preference.<sup>60</sup> Similarly, the growth of Arctic activities in areas beyond national jurisdiction (e.g., transpolar shipping) would pose a difficult problem for the Arctic Council. Regardless of the ultimate disposition of coastal state claims to jurisdiction over the seabed in the Arctic, the water column and the surface of the Central Arctic Ocean along with the superjacent airspace will remain open to activities on the part of all signatories to the UN Convention on the Law of the Sea. No agreement regarding this area would be possible without the inclusion of a larger group of states than the eight members of the Arctic Council. The recent European Union proposal regarding the establishment of a marine sanctuary in the area around the North Pole is illustrative in this connection.<sup>61</sup> Developments along these lines would raise serious questions about the scope of the Council's remit and generate pressure either to alter the composition of the Council or to acknowledge that some important Arctic issues must be dealt with in other venues.

The changes discussed in this section should not be treated as predictions; they are meant only to illustrate types of changes likely to occur during the foreseeable future that will affect the operation of the Arctic Council. But they do suggest that those responsible for the operation of the Council will need to confront three classes of pressures on an ongoing basis: (i) those requiring the setting of priorities for the work of the Council, (ii) those raising questions about the organizational character of the Council, and (iii) those involving issues framed in such a way that they lie outside the remit of the Council. There is every reason to expect that all three types of issues will arise (often simultaneously) in the future and that an ability to address them properly will have major consequences for the effectiveness of the Council.

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59. Elizabeth C. Economy & Michael Levi, *BY ALL MEANS NECESSARY: HOW CHINA'S RESOURCE QUEST IS CHANGING THE WORLD* 74 (2014).

60. *See, e.g.*, Press Release, Novatek, Novatek and the Silk Road Fund Conclude Framework Agreement on Acquisition of Stake in Yamal LNG (Sept. 3, 2015), [http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/press/\\_ENG.pdf](http://www.novatek.ru/common/tool/stat.php?doc=/common/upload/press/_ENG.pdf) [<https://perma.cc/U7FV-PNUU>]; Press Release, Marketwired, Greenland Minerals and Energy Limited: Kvanefjeld Feasibility Study (May 25, 2015), <http://www.marketwired.com/press-release/greenland-minerals-and-energy-limited-kvanefjeld-feasibility-study-asx-ggg-2022780.htm> [<https://perma.cc/76SV-Z4N8>].

61. Resolution on the EU Strategy for the Arctic, EUR. PARL. DOC., 2013/2595(RSP) ¶ 38 (2014).

## CONCLUSION

The Arctic Council is dedicated to the promotion of peace and prosperity in a rapidly changing region. Its particular focus is on issues that fit within the rubrics of environmental protection and sustainable development. Since its establishment in 1996, the Council has proven surprisingly effective, but not because it has acquired the capacity to make authoritative decisions about transboundary issues arising in the Arctic. The key to its success lies in its ability to play what I have called a generative role. Maintaining the effectiveness of the Council during the foreseeable future will be a challenging task. Success will depend on two critical factors: (i) an understanding of roles or functions where the Council has a comparative advantage and (ii) an ability to adapt to the changing circumstances of the region in a prompt and nimble fashion. There are reasons to be optimistic about the ability of those responsible for the work of the Council to understand and act on these requirements. But success will require resistance to certain embedded assumptions about the operation of intergovernmental bodies (e.g., the view that the work of the Council should be underpinned by a legally binding instrument). Managed properly, the Arctic Council can continue to exemplify an approach to international cooperation that is not only well-suited to conditions prevailing in the Arctic but also worthy of consideration when addressing issues arising in other parts of the global system.

