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How Outside Actors Hold Sway within the Arctic Council: Benefits of cooperation and the problems when improving them

Timo Koivurova* and Piotr Graczyk**

The predominant inter-governmental forum the Arctic Council has received a lot of criticism over the recent years. This cooperative forum between the eight Arctic States (the five Nordic States, the United States, Canada and the Russian Federation), regions indigenous peoples (permanent participants) and inter-governmental and non-governmental organisations (observers) has had to feel the heat of climate change. The synthesis reports of the Inter-Governmental Panel on Climate Change (IPCC) and other studies demonstrate that Arctic will warm twice the rate as compared to the rest of the world, with associated dramatic changes related to its environment (e.g. decreasing sea-ice coverage), which will open the region to increasing number of new economic activities (shipping for various purposes, offshore hydrocarbon exploitation etc.). With such dramatic changes, there are many who have called for stronger governance regimes for the region, or at least have provoked many to require changes from the moderately structured Arctic Council—a high-level forum that has no permanent funding scheme, no legal status and no secretariat (for a very long time).

Keywords: Arctic Council, Circumpolar Environmental Cooperation, Observer Status, Ottawa Declaration, Nuuk Guidelines

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INTRODUCTION

Inter-governmental cooperation in the Arctic has been developing and expanding into a wide range of circumpolar issues for more than 20 years (Koivurova and Vander Zwaag, 2007). Today, due to climate change consequences, including new opportunities for natural resources exploitation and increase in shipping activities, and geopolitical/globalisation processes (Heinen and Southcott, 2010) its premier institution—the Arctic Council (AC), established in 1996—is at the turning point as it undergoes important changes in the transformation process (Koivurova, 2009). Following Arctic states discussions on the place of the AC in future Arctic governance, states and political entities from outside the region express a growing interest in participation in decision-making processes and the AC as the premier intergovernmental institution. The only way to get involved is to obtain an Observer status at the AC. This makes the AC the focal point of debate on who and in what manner should govern an area undergoing profound transformation.

Therefore, admission of new Observers on permanent basis has become one of the most pertinent issues in debate on the shape and role the AC should play in regional governance structure. Since the external interest in Arctic affairs increased and more and more entities expressed their willingness to participate in the AC works, subsequent chairmanships have tried to resolve this question in a manner acceptable to all, but unsuccessfully so far. At the Ministerial Meeting in Nuuk in May 2011 the Arctic states have made a significant step forward in this regard by issuing new criteria and definition of the observers' role. But what does obtaining of this status imply? What possibilities of action do the AC Rules of Procedure and the newly defined role provide? Do these arrangements fulfil their role in face of developments in the regional international relations?

To address these questions, this paper examines how the new criteria have affected the process of inclusion of non-Arctic entities in circumpolar cooperation/ how the non-Arctic actors can participate in the works of the AC as Observers and how (if at all) this status has changed after issuance of the new criteria. It begins by drawing out some of the main features and remarks on an evolution of the status since the inception of the AC/circumpolar environmental cooperation first under the AEPS and then under the AC. It then outlines the new criteria and definition of the Observer role in more depth, comparing it to the status under the Arctic Environmental Protection Strategy (AEPS) and formerly under AC. The paper concludes by exploring their consequences for external actors' engagement in Arctic affairs and the entire collaboration in the region.

The analysis is based primarily on the AEPS/AC documents, however it derives also from published reports, journal and media articles as a secondary sources of

information, particularly when seeking for stances of the Arctic and non-Arctic actors. At the same time, it is important to bear in mind that the work on Observer's manual is still in progress (with probable deliverable at the Kiruna Ministerial Meeting in 2013) and, therefore, the picture drawn here is not yet complete. The new criteria have not been used yet to assess new applications, thus one cannot assess how the Member States will be using them to either promote or impede cooperation with outside entities having interest in the Arctic. Furthermore, it might be argued that at the same time they have given themselves an additional and highly politicised instrument to block unwanted applications.

EXTERNAL ACTORS IN ARCTIC COOPERATIVE INSTITUTIONS—HOW DID IT START

Non-Arctic actors have been present in the Arctic for decades before the actual intergovernmental cooperation in the region began. Reasons for this engagement range from purely scientific to economic and strategic ones (Graczyk, 2011). It came as no surprise, therefore, that some of those already engaged in Arctic affairs have participated in circumpolar environmental cooperation since the preparatory negotiations leading to signing of the Declaration on the Protection of the Arctic Environment and the launch of the AEPS at the Ministerial Meeting in Rovaniemi in June 1991. At the initial meeting held in Rovaniemi between 20–26 September 1989 the only Observer was a representative of the UN Economic Commission for Europe (UNECE) (Young, 1998: 88). It was decided then that this form of consultations needs to be continued until the final resolution is concluded. In the second meeting in Yellowknife, Canada in April 1990 for the first time participated as Observers two non-Arctic states—the Federal Republic of Germany and the United Kingdom as well as representatives of the only indigenous group—the Inuit Circumpolar Conference (ICC) (*ibid.*: 89), which reflected their tenacious efforts for establishing the circumpolar environmental cooperation during the 1980s. (*ibid.*: 76; Tennberg, 1996).

The First Ministerial Conference on the Protection of the Arctic Environment in Rovaniemi in June 1991 was observed by three non-Arctic states: the Federal Republic of Germany, Poland and the United Kingdom as well as six organisations: the International Arctic Science Committee (IASC); three indigenous peoples' organisations (IPOs)—the ICC, the Nordic Saami Council and the USSR Association of Small Peoples of the North; as well as two UN organs—UNECE and the United Nations Environment Programme (UNEP) (Young, 1998: 90). As the Preface of the AEPS reads "the eight Arctic countries were assisted in the preparation of the Strategy" by these entities. Their possible contribution is

not, however, literally described in the text of the AEPS. To some extent success of the project relied on inclusion of non-Arctic actors, particularly those who could assist the Arctic states in reducing and eliminating contaminants and other environmental concerns for the region, especially those originating below the Arctic Circle (Graczyk, 2011: 587).

OBSERVERS WITHIN THE AEPS—CRITERIA FOR ADMISSION AND ROLE

What was, therefore, the formal position and role of Observers within the AEPS? In the Declaration on the Protection of the Arctic Environment, which accompanied the AEPS, it was only mentioned that the indigenous peoples' organisations will be invited to the future meetings as Observers (Declaration on the Protection of the Arctic Environment, 1991). Formally, however, their status was hardly different from the status of the non-Arctic actors (Graczyk, 2011: 590). Nonetheless, the Declaration recognises aboriginal inhabitants and their traditional ecological knowledge (TEK) as providing a unique contribution to the protection of the Arctic environment and successful implementation of the AEPS partly hinged upon their initiatives in this regard (AEPS, 1991: 6). Furthermore, traditional way of living, including values, needs and practices of indigenous peoples were among the five major objectives of the AEPS (*ibid.*: 9), making the position of IPOs analytically/qualitatively/conceptually distinct from the non-Arctic entities. Although they had to act on the same footing as outside actors, their role was increasingly important throughout the Rovaniemi Process, leading to wide recognition of indigenous communities' political rights and self-determination (Graczyk, 2011: 590).

Whereas the IPOs had the same status as the external actors, the latter did not attract the same attention from the circumpolar states. Their participation, however, was determined based on the same criteria, at least formally, described in the ending part of the AEPS document, entitled 'Further Cooperation':

The decision to invite the Observers should be based on a pragmatic and functional evaluation of their involvement in and contribution to Arctic environmental questions (AEPS, 2011: 42).

This line established the framework for the engagement of non-Arctic actors and IPOs in AEPS activities. However, the actual status of these two participant categories was different. As declared in the next point the three afore-mentioned IPOs would be invited as observers in order to facilitate the participation of Arctic indigenous peoples (*ibid.*) that seemed to be the only possible way to ensure

a continuous participation of aboriginal representatives in AEPS activities in the political circumstances of that time (Graczyk, 2011: 591). This distinction has been further strengthened by creation of the 'AEPS Permanent Participant' status (Nilson, 1997).

In case of states and organisations (both intergovernmental and nongovernmental) decisions were taken based on their authentic commitment to the Arctic environment. In practice, this applied to a limited number of countries that had conducted research in the Arctic for years and were de facto present in the region. Environmental organisations' interest in the situation in the North had been rising since the beginning of the exploration of the Alaskan oil, and even more rapidly since the spill from the *Exxon Valdez* supertanker at the coast of Alaska. However, works under AEPS were observed by only two intergovernmental organisations, narrowly institutions of the UN system focused on the environmental and economic issues and one scientific organisation—International Arctic Science Committee—associating scientists and researchers from 19 countries¹. Although, the Observer corps seemed to be relatively modest, it laid the foundations for the development and influenced the current position of non-Arctic actors in regional affairs.

Throughout the Rovaniemi Process accredited or *ad hoc* Observers could participate in ministerial conferences, Senior Arctic Affairs Officials (SAAOs) meetings as well as works of the Working Groups (WG) (Nilson, 1997: 54). Individual Working Groups could also accredit additional observers, which were, however, restricted only to the particular WG and could not be extended to other AEPS meetings (*ibid.*: 56). Peculiarly, definitions of WG members differed among the Working Groups. For instance, in the Arctic Monitoring and Assessment Programme (AMAP) as members were considered only representatives of the eight Arctic states, while in the Conservation of Arctic Flora and Fauna (CAFF) included to this category also other national delegates, Permanent Participants (IPOs), AEPS Accredited Observers, WG Accredited Observers and *ad hoc* Observers (*ibid.*).

The AEPS documents did not specify an actual role and way of engagement of Observers. It rather crystallised in the course of cooperation on different projects. However, deriving from the only criteria for Observers stated in the AEPS, it is fair to say that the expected role to be played by observing parties was to contribute

¹Today (as of July 2012) the International Arctic Science Committee includes the following members: Canada, China, Denmark/Greenland, Finland, France, Germany, Iceland, Italy, Japan, the Netherlands, Norway, Poland, Russia, Republic of Korea, Spain, Sweden, Switzerland, United Kingdom, USA (<http://web.arcticportal.org/en/iasec/general-information/council/>). Due to caveat made by the representatives of Canada and the USSR during the negotiations there should be a Regional Board limited to the Arctic countries within the IASC. In return organizations and scientists from the non-Arctic states could become members of the IASC's Council and Working Groups (Srivastava, 1996: note 15).

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to AEPS programmes by interest and readiness to engage in protection of the Arctic environment (*ibid.*: 57). This commitment of observing states stemmed from the long-standing tradition of Arctic research and exploration as well as ecological care and concern. Nevertheless, their potential and capabilities were not fully exploited and possibility to participate was severely limited (*ibid.*: 6). In light of a constrained participation on political levels of SAOs and ministerial meetings Observer countries focused their efforts on WGs projects. Non-Arctic states could accentuate their engagement by allocating substantial scientific and financial support for research and activity of AMAP (Germany and the Netherlands, who hosted an AMAP meeting in 1997) and CAFF (Great Britain). It was particularly significant compared to a little contribution from the biggest Arctic states (Young, 1998: 136) as financial support from Germany and the Netherlands was more generous than from the United States and Russia combined (Scrivener, 1996: note 8).

Nonetheless, already at that time, Arctic countries did not look favourably on any political involvement of external actors, also in decision-making related to environmental projects that Observers (including NGOs) offered to fund. It was not uncommon, therefore, that work financed by Observers was not recognised as a part of AEPS (Nilson, 1997: 32). In addition, no references to Observers and recognition of their input appeared in declarations of the successive AEPS ministerial meetings in Nuuk (1993), Inuvik (1996) and Alta (1997). Interestingly, while funding concerns were among chief obstacles in the functioning of the AEPS, the Arctic states preferred rather to limit their involvement than to utilise financial and scientific resources offered, causing a growing frustration among Observers (*ibid.*). Instead, a concept of creation of the AC was advanced (Huebert and Yeager, 2008: 23).

On the other hand, non-Arctic states accorded the Observer status harboured different ambitions with regard to influencing the AEPS. As put by Nilson (1997: 33) they ranged from a role of an observation post useful for collecting inputs to other, more important, processes that they are engaged in; to holding strong opinions about playing a political role. Arguably, this could cause additional reluctance of the Arctic countries to increase a scope of their involvement already at that stage of regional cooperation.

Furthermore, closer inspection reveals that the Observer status was not permanent, as it is not stated anywhere in any document. Decision on the participation of the Observers should have been based on the above mentioned criteria and communicated to the interested parties in advance of the meeting (Graczyk, 2011: 592). It implies that assessment should be made before each ministerial conference, what would be akin to the status of *ad hoc* Observer at the AC before releasing new rules at the Nuuk Ministerial Meeting in 2011.

Decision based on the functional and pragmatic evaluation may suggest that the contribution of the non-Arctic actors must have been considered from the perspective of the Arctic states' interests. Therefore, terms used in the text of the AEPS document allowed for almost unfettered discretion in consideration of applications and granting the Observer status. On the other hand, the actual capabilities and commitment to the regional affairs were taken into account, what prevented randomness and unnecessary expansion of the group of Observers. These determinants caused that the status became exclusive rather than inclusive and allowed to choose suitable and non-controversial candidates. Furthermore, as it proved to be impossible to elaborate access criteria that would meet the requirements of all eight Arctic states (Nilson, 1997: 34), precise procedures and evaluation criteria were not specified (Graczyk, 2011: 591). Nonetheless, there was arguably an informal practice that once granted the status continued, at least in case of state applicants.

An often raised concern by both Observers and experts was that participation of external actors was based on unclear rules pertaining to their rights and duties at all levels of the AEPS structure, and primarily within the Working Groups, adding to confusion about the extent to which they could engage (Nilson, 1997: 32). While access to the political process was heavily restricted (e.g. Observer states could make only one intervention during a SAO meeting, *ibid.*), additional constraints at the working level were detrimental for non-Arctic actors' motivation to cooperate with the Arctic states on regional environmental issues. As such should be perceived, for instance, the system of providing contributions to work of the WGs: outside actors could deliver their scientific data, but direct involvement of their scientists was severely limited (*ibid.*: 34).

Drawing these observations together, it is fair to say that Observers, however acknowledged and recognised as important, were rather marginalised during the Rovaniemi Process (*ibid.*: 6; Graczyk, 2011: 593). Nevertheless, their efforts and commitment to the Arctic environment affairs proved at the AEPS collaboration, enhanced their regional presence and allowed to consolidate their position in the major cooperative forum. Although this was not reflected in the formal rules pertaining to the Observers, it may be assumed that it favorably influenced the shape of the Observer status in the AEPS successor—the AC. Consequently, AEPS Accredited Observers were seamlessly transferred into the new body as permanent Observers.

OBSERVERS AT THE ARCTIC COUNCIL

While negotiating the new form of cooperation arrangement in the Arctic, it became apparent that a form of participation—place in the structure, rights to

speak and vote—is a highly politicised issue that revealed an increasing importance of the region in the Arctic states' policies.

To a certain extent the issue of IPOs and Observers played a role of a bargaining chip during negotiations (Scrivener, 1996: 25–26, 39–43; Graczyk, 2011: 597–598). Ultimately, it was decided that a system of almost self-selecting permanent and *ad hoc* Observers developed during the AEPS implementation should be maintained also in the AC (Scrivener, 1996: 26). Accordingly, there was an agreement that actors already accredited as Observers to the AEPS should retain the status in the AC (Russell, 1996). Negotiations on these issues resulted in emergence of a new institutional structure of the circumpolar environmental cooperation, including new categories of participants.

Establishment of the AC as a 'high level forum' was intended to widen and intensify Arctic cooperation and to provide it with a better institutional framework (Ottawa Declaration, 1996). The structures of the AEPS, including the working groups and institutional arrangements such as ministerial meetings, a concept of Senior Arctic Affairs Officials (renamed to Senior Arctic Officials), certain rules of procedure, also related to Observers were adopted by the Council as one of its 'two pillars' (along with the 'Arctic Sustainable Development Initiative', Tenneberg, 2000: 94) and became a basis for operational capabilities of the newly established forum. The most striking difference between AEPS and AC was, however, that the three IPOs—ICC, the Saami Council and the Russian Association of Indigenous Peoples of the North (RAIPON) were accorded a status of Permanent Participants which both stressed their special position in the regional cooperation and ensured the preeminent role of the Arctic states. Accordingly, the Observer category was designed for non-Arctic states, international organisations and NGOs with an interest in observing works of the Council (Ottawa Declaration, 1996).

Today, principles and rules concerning admission and role of Observers at the AC are contained in three documents: the Declaration on the Establishment of the AC (the Ottawa Declaration), AC Rules of Procedure, developed by the SAOs and included as an annex to the SAO Report prepared for the First AC Ministerial Meeting in Iqaluit, Canada in September 1998, at which they were adopted, and Annex 1 'Framework for strengthening the AC' of the SAO Report to Ministers at the Seventh AC Ministerial Meeting in Nuuk, Greenland in May 2011. While the former two documents have been regulating the leading functioning of the AC since 1996 and 1998 respectively, the latter one emerged only recently in the course of debate on involvement of external actors in AC activities that has been carried on since powerful actors—China, the European Union, Italy, Japan and South Korea—applied for the status and already accepted 'permanent' Observers raised a question of increasing their role within the Council (Graczyk, 2011).

The Rules of Procedure apply to all subsidiary bodies of the AC and are relatively

well developed as for a forum which is not a formal international organisation based on legally binding treaty (Bloom, 1999:718). There are three categories of participants in the AC: 'Arctic States'—Member States of the AC (eight Arctic nations), 'Permanent Participants' which are six indigenous peoples' organisations² and 'Observers' (Ottawa Declaration, 1996: art. 2.3; Rules of Procedure, 1998:1). Unlike the AEPS, the Ottawa Declaration clearly defines categories of actors that may apply for Observer status. Accordingly, it is open to non-Arctic states, inter-governmental and inter-parliamentary organisations, global and regional, and non-governmental organisations on the basis of their application and evaluation being made by the Arctic States. Before decisions regarding Observers were taken at the Nuuk Ministerial Meeting, there were not clear and comprehensive criteria for admitting new Observers. Whilst in the AEPS the entity was accredited the status based on a pragmatic and functional evaluation of its involvement in and contribution to Arctic environmental issues, at the AC the only caveat is that they should contribute to the Council's work what is determined by the Member states (Rules of Procedure, 1998). Such a formulation created an interpretational space which might have been influenced by current politics.

Since early 2000s the Arctic has been brought into the global limelight by a number of different factors, particularly the publication of the Arctic Climate Impact Assessment (ACIA) in 2004, which introduced an iconic shift in perception of the North from the picture of a 'frozen desert' to the image of the 'Arctic in change', having a profound impact on global awareness about Arctic affairs (Koivurova, 2009). An additional symbol of the new era in Arctic affairs was the Russian expedition 'Arktika 2007', which planted a Russian flag on the sea bottom at the North Pole, drawing the world's attention and triggering a geo-political debate on the Arctic. The response to these developments showed that the Council was inadequately prepared for this new global attention, especially in regard to the economic interest of outside actors in Arctic natural resources and shipping routes, and consequently, in the involvement in the AC, giving a clear signal for the need for change in this respect (Graczyk, 2012: 278). Several powerful outside players have also expressed their interest in access to both economic opportunities and governance structures in the region (Koivurova, 2009).

Since the AC Observer status is the only way to get a formal confirmation

² Three IPOs are recognised as Permanent Participants in Article 2 of the Declaration...: The Inuit Circumpolar Conference (ICC), the Saami Council and the Association of Indigenous Minorities in the Far north, Siberia, the Far East of the Russian Federation (renamed later to Russian Association of Indigenous Peoples of the North—RAIPON). The other three IPOs have been included later: in 1998 Aleut International Association (AIA), in 2000 Arctic Athabaskan Council (AAC), and Gwich'in Council International.

of involvement into political processes in the Arctic and access to the AC proceedings efforts of outside actors focused on obtaining this position in an official way. At the same time, those already involved in the Arctic cooperation raised the question of improving their position within the AC (Graczyk, 2011: 582-583). Accordingly, the problem of number, role and justification of Observers' presence emerged as one of the main points of discussion on the Council's reform (SAO Report, April 2009; SAO Report, May 2011; Graczyk, 2011: 278). As indicated by the survey conducted by the Danish AC Chairmanship among the eight Arctic governments and the six Permanent Participants, there are still profound differences regarding this issue.

The Arctic states' reluctance towards outside entities stems primarily from a concern over their own interests and an anxiety that they could put their regional position in jeopardy and challenge the current consensus on governance principles in the Arctic based on the UN Convention on the Law of the Sea as its premier legal framework and the AC as the major forum for discussion (Hoel, 2009). Another reason and instrument of blocking unwanted applications is a practical argument of a too large number of entities, which could be more of a hindrance than a help that was well-turned by an anonymous Canadian diplomat at the Nuuk Ministerial Meeting who invoked an example of UNFCCC COP 15 in Copenhagen by saying that "the more members in the club, the harder it is to negotiate something" (Chernenko, 2011). Even more bluntly was it put by a member of Russian delegation at the same meeting, who said that "if you give them the green light, soon there will be one hundred observers on board, who will gradually require more and more rights, and then insist on turning the Arctic in the 'universal humankind heritage' on the model of the Antarctic" (*ibid.*). Moreover, these concerns are supported by some Permanent Participants, who are not only anxious over a lack of understanding of their culture and traditions, as showed for instance, by the European Union's ban on seal products (Wegge, 2012: 20), but above all for their privileged position in the AC, when powerful actors such as the EU and China would gain a greater ability to act than they have now (AAC, 2007; ICC, 2010).

Formulation and wording of the criteria imply that also other external actors' (foreign) policy statements had a significant impact on Arctic states' renewed approach to consideration of applications to Observer status. These issues included raising a question of the Arctic Treaty (Charter) modelled on the Antarctic Treaty System by WWF and the European Parliament as the most appropriate form of dealing with Arctic disputes and challenges or different views on legal aspects with regard to the status of parts of the northern passages and delimitation processes on the Arctic Ocean expressed by China and the EU (however, being in line with American stance) (Jakobson, 2010: 6).

Furthermore, the current role of Observers is rather symbolic compared to their abilities, aspirations and interests (Graczyk, 2011: 614), and does not correspond precisely to a vision of involvement in Arctic affairs presented by some of them. Particular discontent with the status has been voiced by France, who was especially disappointed by being refused to observe and contribute to intergovernmental negotiations within the Search and Rescue Task Force (Graczyk, 2011: 612).

An inventory of concerns was compiled by Michel Rocard—French Ambassador for the polar regions and Former Prime Minister of France—in a letter dated 8 May 2011 to Danish Foreign Minister Lene Espersen, who was a Chairman of the AC at that time. His major reproaches touched upon issues related to a right to speak during meetings (the AC has no wish to encourage debate), use of the Council to deter outside actors from engagement in Arctic international affairs ("[AC] is a likable club for the mutual defence of the Arctic States' common interests. (...) [and] a collective tool for countering intrusion into Arctic affairs by the rest of the world"), Arctic states' belief that they are able to cope with the challenges in the Arctic alone and an insufficiency of nations based measures to provide "financing for infrastructures and safety (...) for its own coastline and Exclusive Economic Zone", as well as a lack of "Regional Fisheries Organisation with competence in the Arctic Glacial Ocean" and a need for a "study of the fisheries species living in the Arctic (...) accompanied by a ban on all fishing in these waters until the conclusions of that study become available" (Rocard, 2011). These problems, according to French Ambassador, are caused by a sort of 'misunderstanding', as "long years of friendship, trust and alliance between us forbids me to see in this any commencement of or search for conflict" (*ibid.*).

A remedy for this situation should be a contribution of 'all potential users of the Arctic' to both "the definition of rules governing such use and to the funding of the major infrastructures without which it will not be possible". Whereas it is not the goal of the AC, and it would not be advisable to 'subject it to more pressures' (*ibid.*), France considers finding other place to discuss its Arctic interests, in which it is supported by China (Larsen, 2011).

Arctic countries, aware of such attitudes and the need to respond to this situation, decided to carry out (under the Danish Chairmanship) the first comprehensive review of Observer engagement to evaluate their performance, and, if applicable, to make any amendments to the list of Observers, including to re-accredit AC Observers, or to withdraw the Observer status (SAO Report, April 2009: 36). The survey was also meant to determine what are the Member States and Permanent Participants' stances on Observers' role in the AC. To facilitate this task a special matrix form was distributed, and Arctic actors defined how they would see involvement of Observers in the Council's work from the least to the most

controversial issues. The results revealed a significant discrepancy between states and IPOs' positions (Graczyk, 2011: 621), what arguably influenced a new approach of the Member States towards the Observer issue that was presented at the 7th Ministerial Meeting in Nuuk, Greenland in May 2011. It had to be congruent with an outcome of all the Arctic states' interests.

FORMAL STATUS OF OBSERVERS AFTER NUUK MINISTERIAL MEETING

The rules concerning Observers announced in Nuuk have introduced several important innovations to admission and accreditation procedures, criteria used in these processes, as well as the role of Observers. Most of them is of a supplementary nature to the existing Rules of Procedure, but some records may have much more profound consequences. As for an official status of the new rules and their place among other documents, they are formal SAO recommendations to Ministers, (contained in the Annex 1 to the SAO Report to Ministers on the occasion of Ministerial Meeting) that in the Nuuk Declaration concluding the Danish Chairmanship at the AC they decided to adopt (...) as set out in Annexes to the SAO Report, and (...) to apply these criteria to evaluate pending applicants for observer status (Nuuk Declaration, 2011). As declarations adopted by consensus are the only form of decision-making within the AC, it can be concluded that the status of the Nuuk rules is identical to these contained in the Rules of Procedure, which were adopted in a corresponding way at the Ministerial Meeting in Iqaluit, Canada in 1998 and, therefore, should be applied together.

APPLICATION PROCEDURE

Accordingly, the procedure currently in force should be considered based on the Ottawa Declaration, AC Rules of Procedure and the SAO Report to Ministers on the Occasion of the Nuuk Ministerial Meeting in May 2011 jointly with the Nuuk Declaration. The status is still open to 1) non-Arctic States, 2) inter-governmental and inter-parliamentary organisations, global and regional, and 3) non-governmental organisations (Ottawa Declaration, 1996; Rules of Procedure, 1998: 7; SAO Report, May 2011: 50). Entities interested in obtaining the position are verified through an applicable procedure described in Annex 2 to the Rules of Procedure and Annex 1 to the SAO Report to Ministers published in May 2011.

An application, submitted to the AC's Host Country on the standard application form, must be accompanied by a memorandum setting out relevant information

including (...) a written description of the proposed Observer's ability to contribute to the work of the AC (Rules of Procedure, 1998: 11). Organisations are supposed to provide additional information on the purpose of the organisation, including a copy of its annual report as well as a description of the organisation's activities and information on the organisation's governance and the total number of members (*ibid.*). This should be done at appropriate time as the Host Country ought to circulate, to all Arctic States and Permanent Participants, a list of entities (...) that have applied or been nominated for Observer status not later than 120 days before a ministerial meeting they would like to participate in (*ibid.*).

In addition, a verification routine of already admitted Observers has been strengthened. While the Rules of Procedure stated only that Observers shall submit to the AC up to date information about relevant activities (Rules of Procedure, 1998: 11), a novel requirement for Observers announced in Nuuk is a necessity to submit not later than 120 days before a Ministerial meeting, up to date information about relevant activities and their contributions to the work of the AC should they wish to continue as an Observer to the Council (SAO Report, May 2011: 51). As it can be easily seen, actors accorded the 'permanent' status are now required to submit reports on their actions to the AC every second year (as ministerial meetings are held biennially) and their further participation will be assessed on this basis. Furthermore, every four years, from the date of being granted observer status, observers should state affirmatively their continued interest in observer status that will be a subject of review by the Arctic States at the following ministerial meeting (*ibid.*). This may indicate that the AC Member States have started to attach much greater attention to the existing Observer corps' actual performance in the region and within the Council.

There are minor changes in processing applications compared to the earlier situation stemming from the change of the *ad hoc* Observer status. According to the Rules of Procedure this form of participation may be granted for specific meetings (Rules of Procedure, 1998: 7). It means that an entitled entity could apply for a status at the meeting that was of its particular interest and do not continue to participate in other meetings. However, it was a prevalent practice in recent years that the *ad hoc* Observer status had been accorded to actors that applied for a 'permanent' one and repeated at every single meeting. The new rules, therefore, introduced a redefinition of this position, which now can be granted only to the present applicants for ['permanent'] Observer status according to the Rules of Procedure until the Ministers have decided upon their applications and will no longer be applied otherwise, what will be appropriately amended in the Rules of Procedure (SAO Report, May 2011: 51). amendments to the existing regulating documents.

OBSERVERS' PARTICIPATION IN THE ARCTIC COUNCIL WORKS

Observer status, even 'permanent' one, lasts as long as there is a consensus on this issue among the Arctic states, and entity which holds it has not engaged in activities that are in conflict with the Ottawa Declaration (Rules of Procedure, 1998: 7). This means that a state (or organisation) may be deprived of that status when one Arctic country withdraws its acceptance of certain entity as Observer at the Council (Graczyk, 2011: 603). Officially, participation of Observers is provided at all levels of the AC structure. According to the Rules of Procedure they may be invited (once the status is granted) to ministerial and SAOs meetings, sessions of the Council's subsidiary bodies including delegating their experts to the working groups, selected task forces and projects (Rules of Procedure, 1998: 7; SAO Report, May 2011: 51). At the meetings Observers may make statements at the discretion of the Chair and submit relevant documents (Rules of Procedure, 1998: 7). This point has been further clarified in Nuuk SAO Report to Ministers that their statements (also at the Chairs' discretion) may be delivered after Arctic states and Permanent Participants (SAO Report, May 2011: 51). Moreover, they can also present written statements, submit relevant documents and provide views on the issues under discussion to consideration of the AC participants. Their role during Ministerial Meetings is limited to submission of written statements (*ibid.*).

An important improvement of Observer participation on higher political levels of interaction in the AC seemed to be a new formula of deputy minister's (primarily of foreign affairs) meetings (DMM) in response to the need for additional interaction at a political level taking place between ministerial meetings. For the first time deputy ministers convened informally on Norwegian initiative in Tromsø in May 2008, while officially this form of deliberation, mandated in the Tromsø Declaration (2009), has commenced two years later (May 2010) in Copenhagen during the Danish Chairmanship. Both meetings were attended by deputy ministers and secretaries of state from France and Poland and other senior officials from Observer states (Graczyk, 2011: 601-602), that gave an unprecedented opportunity for participation on political level. It was not, however, received favourably by all the Member States and this formula has not been followed up by Swedish Chairmanship as Observer deputy ministers were not invited to the DMM in Stockholm in May 2012. Instead they were offered to have a separate meeting in Autumn 2012. Notwithstanding, at the first SAO meeting ever held in Sweden, in Luleå in November 2011, the SAO Chair Gustaf Lind invited Heads of Delegations (HODs) of Observer delegations to an informal breakfast to have an open discussion on issues concerning the position of external actors.

Another idea of increasing Observers' participation and interaction with AC's subsidiary bodies was the Symposium (Information Day), first proposed in the SAO Report to Ministers at the Tromsø Ministerial Meeting in April 2009. Along with better engagement of Observers by more direct discussions at SAO Meetings, the SAOs recommended establishment of a biennial Symposium for more general information exchange with both Working Groups and Observers (SAO Report, April 2009: 36; SAO Report, November 2009). As the recommendation was adopted by ministers the Information Day accompanied the DMM in Copenhagen in May 2010 giving Observers an opportunity to highlight their contributions to the work of AC and related activities. The basic argument behind this form of involvement was to give an additional time for discussion and flow of information than allowed at SAO meetings. Nonetheless, the Swedish Chairmanship did not organise Symposium together with the DMM in Stockholm. Reasons for that have not been officially stated in any document so far. Given diverse views of Arctic states and Permanent Participants on this format (SAO Report, November 2009: 12), it seems that it did not meet their expectations and thus they decided to suspend holding Information Days. Yet it is not clear if they will be continued.

The important thing to note in this connection is that there is also a prohibited area for Observers not anchored in official documents, still crucial for its functioning and effectiveness. The practice of having closed meetings of Head of Delegations comprising Arctic governments representatives and leaders of Permanent Participants during Ministerial and SAO conferences allows frank and comfortable discussion to smooth and sort out all the issues to be touched upon to make sure that during the formal session attended by Observers and other participants there are no additional disagreements. Such a form proved to be a particularly efficient way of resolving contentious issues and seamless conduct of conferences (cf. Fenge, 2012: 56). By the same token, the AC tends to increase use of Task Forces that prevent participation of Observers and Permanent Participants, as it was in the case of the SAR agreement. According to SAOs Task Forces may be necessary for specific initiatives that require unique expertise and, in those instances, the composition and mode of operation of the Task Force would be determined on a case-by-case basis (SAO Report, May 2011: 49-50).

OBSERVERS' ROLE IN THE ARCTIC COUNCIL

Question of the Observers' role within the AC had been present since the inception of the AC and been frequently pointed out throughout its history as one of the pending issues (Bloom, 1999; Haavisto, 2001; Koivurova, 2009). Though better developed and coherent compared to AEPS, its definition derived from the Rules

of Procedure suggests a general and broad approach leaving final specific decisions concerning Observer involvement at the discretion of the Member States (Graczyk, 2011: 605). Different views of the Arctic states and Permanent Participants for a long time had been hindering an unambiguous definition of Observer's role in the Council. Only "The criteria for admitting observers and role for their participation in the AC" contained in the Annex 1 'Framework for Strengthening the AC' of the SAO Report to Ministers adopted at the Nuuk Ministerial Meeting shed new light on the role of outside entities. While the Rules of Procedure provide exclusively a single line on Observers' role concerning making statements and submitting relevant documents to the meetings (1998: 7) that the Council determines can contribute to their work (Ottawa Declaration, 1996), the definition presented in Nuuk clarifies several issues related to their engagement in AC activities. Besides the above described rules that pertain to statements, the Arctic states determined limits to which external actors may be involved.

First and foremost, they stipulate that decision-making at all levels within the Council is the exclusive right and responsibility of the eight Arctic States with the involvement of the Permanent Participants (SAO Report, May 2011: 50). This can be perceived as response to the joint statement of State Observers delivered during the SAO meeting in Kautokeino, Norway in November 2008, in which it was articulated that Observers wish to cooperate not only on science but also on decision-making (Observer States' Joint Statement, 2008; SAO Report, November 2008). Furthermore, it is emphasised that the primary role of observers is to observe the work of the AC (SAO Report, May 2011: 51). However, the Member States expect Observers to continue making relevant contributions (...), primarily at the level of Working Groups (*ibid.*). Finally, the new definition illuminates the issue of proposing projects, what Observers may do through an Arctic State or Permanent Participant. A caveat was, however, made that Observer's financial contributions to any given project may not exceed the financing from Arctic States, unless otherwise decided by the SAOs (*ibid.*).

Although the rules underline that Observers should focus on involvement at the working level, there is a dearth of entries determining procedure and criteria for incorporation of non-Arctic scientists into working groups and task forces. Nonetheless, such a mechanism may be developed in an 'Observer manual', which was also announced in the Nuuk Report to Ministers. As the works on the manual are still in progress, it is too early to determine if it will suffice to solve the problem of rather modest Observer participation in AC's operative organs. Moreover, this instruction will be designed to guide the Council's subsidiary bodies in relation to meeting logistics and the roles played by observers (*ibid.*). Hence, it will arguably not establish any uniform framework that would facilitate Observers' applications for participation in working groups projects. On the other hand, it may help to work

out a common practice that would make it possible. Most likely, however, the final decision on admission and procedure will remain at the discretion of the particular working group. By the same token, the rules pertaining to sponsoring new initiatives seem rather elusive, as it can be easily used by the Arctic states to hinder proposed projects as it imposes on Observers an additional need to convince the Arctic states to provide appropriate funding, what proved to be problematic within the AC.

Yet ambiguity remains in relation to the role of *ad hoc* Observers. According to all the documents (cf. Rules of Procedure, 1998: 7; SAO Report, May 2011: 51) there is no practical difference between these two sub-categories of participants as both have the same rights at the particular meeting for which they were approved (as we can speak about *ad hoc* Observer only in relation to particular meeting) (Graczyk, 2011: 610). Since the *ad hoc* Observer status relates only to applicants to 'permanent' one (SAO Report, May 2011: 51), it is not perfectly clear whether this triggers further consequences for their role. A number of asymmetries and distinctions between Observers and *ad hoc* Observers can be identified in light of the current regulation (Graczyk, 2011: 610-611). While the previous rules concerning *ad hoc* Observers allowed to participate only in one meeting of interest and do not have further links to the Council, now the status can be accorded only to those willing to participate on perpetual basis, and thus creating a sort of continuity. An interested external entity must first submit application for Observer status and then, before every meeting it wishes to participate in, it is supposed to apply for *ad hoc* Observer status for this specific session.

Yet here the question emerges whether they can propose projects and participate in Working Groups' activities on permanent basis. As there is no evidence how the Arctic states will apply rules concerning the status in this regard, a literal interpretation of documents suggests that *ad hoc* Observers cannot do that as they are not formally considered as Observers and only those, according to May 2011 SAO Report to Ministers, can propound new projects. Likewise, they cannot contribute through their engagement at the operative level, but they can observe specific meetings of the Working Groups. Moreover, *ad hoc* Observers may provide AC subsidiary bodies with their expertise on invitation. For instance at the PAME Meeting in Stockholm in March 2012, where a representative of the European Maritime Safety Agency (EMSA) made a presentation on ships identification and tracking as a part of the Arctic Marine Shipping Assessment follow-up actions. Still unresolved is also the question raised by the ICC (2010) on whether *ad hoc* Observers can be granted this status ad infinitum without going through any rigorous application procedure. As the Observer question seemed to be suspended or at least protracted at two subsequent ministerial meetings (in Tromsø and Nuuk), the next Ministerial Meeting in Kiruna in May 2013 may prove to be a test for the real intentions of the Arctic states.

CRITERIA FOR ADMISSION

Arguably the most remarkable part of the new rules are criteria for admitting Observers that may have wider ramifications for the AC's role in Arctic governance. Until the Ministerial Meeting in Nuuk, there were no official entries in any document determining on what basis decisions are made with respect to applications for Observer status. This was causing frequent concerns among both Observers and Permanent Participants as the existing general criteria were indefinable and to a large extent created an interpretational space which could be influenced by current politics (Graczyk, 2011: 604). Also, as the survey carried out by the Danish Chairmanship revealed that there is a significant discrepancy between the Arctic states and Permanent Participants, the new criteria had to reconcile many diverging interests. Therefore, the criteria can be divided into three categories: i) confirming the existing ones, ii) underpinning the position of Permanent Participants, and iii) introducing a political benchmark, and thus assigning new roles to the Council.

As before, therefore, outside actors are assessed based on the extent to which they accept and support principles of the Ottawa Declaration and have demonstrated their Arctic interests and expertise relevant to the work of the AC as well as a concrete interest and ability to support its work (SAO Report, May 2011: 50). This criterion is further strengthened by reference to their input into bringing Arctic concerns to global decision making bodies in partnerships with both the Member States and Permanent Participants (*ibid.*). In general, it is a detailed description of the standards recorded in the Ottawa Declaration and the Rules of Procedure. Something of a novelty is an emphasis on applicants efforts to convey the Arctic message to international institutions.

A new feature that have emerged in recent years, also in relation to increased political self-awareness of Permanent Participants and their concerns that new powerful actors could possibly dilute their role is an introduction of norms pertaining precisely to their position. Therefore, a successful applicant to Observer status must respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants (*ibid.*). It comes as no surprise that these records primarily are the result of the restrictions on the marketing of seal products imposed by the European Union, which despite inclusion of exceptions for seal products derived from indigenous peoples' traditional hunt have caused a collapse of the market (Carter, 2009; Peter, 2010). The second criterion that falls under that category is the requirement to demonstrate a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples (SAO Report, May 2011: 50).

The third grouping of criteria resembles a fact of different views on jurisdictional and legal issues in the Arctic expressed by some of current applicants to Observer

status. Given that the Arctic states attach much attention to their sovereignty and leading role in regional affairs, it becomes more and more apparent that they decided to harmonise their actions and protect common interests against external actors, despite differences between themselves in this regard. First of all, an applicant to the status is supposed to recognise Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic (*ibid.*). It is fair to conclude that by this act the AC has established its place in the regional discourse on sovereignty. It also implies that these issues will need to be taken and decided upon on the AC forum—an advancement that has not been present before. Since the Arctic states do not fully agree on certain issues among themselves it still remains unclear how they will assess the recognition of their sovereignty. Furthermore, it has not been determined yet whether sovereignty questions related to non-Arctic actors will be debated at the AC meetings.

The second criterion that falls into that category obligate applicants to recognise that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea, and that this framework provides a solid foundation for responsible management of this ocean (*ibid.*).

This record implies that the Arctic countries have formally and de facto included the principles of the Ilulissat Declaration of the five Arctic Ocean coastal states from May 2008, which arguably was issued in response to outside rather than regional factors, primarily media, experts and the EU driven debate on an Arctic treaty or other form of a new legally binding basis for Arctic governance.

It is fair to say that the Arctic Five formula (Arctic Ocean Meetings) has been refurbished to address challenges for Arctic states sovereignty and jurisdiction rising from the south (Young, 2011: xxiv).

Emergence of this grouping of Arctic players has been seen as detrimental circumpolar cooperation not only by excluded Arctic nations and Permanent Participants, but also by the U.S. Government (Graczyk, 2012: 280). Inclusion of the key principles of the Ilulissat Declaration into the AC documents may suggest, therefore, that Arctic states have chosen to move these discussions into the Council's forum and attempted to bridge the gap that has opened between the Arctic Five and the Arctic Eight in political terms (Young, 2011: xxiv).

According to the Member States these measures will strengthen the AC and solve the observer question while maintaining the key role of the Arctic States and Permanent Participants (SAO Report, May 2011: 3). Currently, under the Swedish Chairmanship, the works on strengthening the AC institutionally are carried out by the Task Force on Institutional Issues (TFII) which is supposed to make recommendations to the SAOs on the implementation of the decisions in this paper [the SAO Report to Ministers, May 2011] as necessary and also propose consequential amendments to the Rules of Procedure (*ibid.*). As reiterated by the

AC Deputy Ministers at their meeting in Stockholm in May 2012 the decision on Observer applications, based on the above-described criteria and a close dialogue between applicants and the Member States, will be taken at the next Ministerial Meeting in Kiruna in May 2013 (DMM, 2012).

CONCLUSION

Without doubt the new rule pertaining to criteria for admission and Observers' role within the AC has added to understanding of reasons taken into consideration when assessing applications to the status and has helped to clarify ambiguities in interpretation and application of the Rules of Procedure and the Ottawa Declaration regulating Observers' participation in the Council's work. It is not a secret that candidates and already admitted actors are being evaluated according to a degree to which they are not a challenge to Arctic states' regional interests. In these terms, the Nuuk guidelines have elucidated the picture of political requirements which must be met by applicants. Since the criteria have a highly political profile, they also involve some important implications for the role of the AC in regional sovereignty and legal discourses, to which it has not engaged before.

The current status gives an opportunity to follow the vast majority of the Council's work and enables participation in the projects and activities of the subsidiary bodies. It is important, however, to realise that the Arctic states left themselves much discretion in determining the activity of Observers within the AC. Their fairly broad access to the Council's activities may be verified and to some extent restricted, depending on the importance of the projects or enterprises, and policies carried out by the Arctic countries towards specific issues. To a certain extent it may be perceived as a justified anxiety about national interests and intention to maintain control over the situation in the forum and the region. Admission of more actors could dilute or hinder it considerably. There might arise an impression that the intensified presence of non-Arctic states would make it difficult to govern circumpolar collaboration or even impede exercise of national sovereignty of the northern countries. Furthermore, a numerous and robust Observer corps may raise concerns and reluctance of the Arctic countries, even though the status is limited and entirely dependent on a consensus among the Member states.

The paramount emphasis in defining Observers' role is placed on their ability to contribute at the working level, what may reveal their real intentions and actual interests related to the AC. Bearing in mind Observers' statements, it is difficult to assess whether they will be satisfied by enhanced and more efficiently executed rights guaranteed to them in the Rules of Procedure. Suggestions already appeared that the existing framework may not be sufficient anymore. Financial support

and major economic interests in the Arctic (handled in bilateral relations with the Arctic states) may become the main argument of actors such as the European Union and China, especially in relation to modest financing provided by the Member States. It is critical, therefore, to develop an appropriate and constructive mechanism for introducing non-Arctic actors into the Working Groups' activities and to commence an unequivocal cooperation between them and the Council.

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Theme B

Ice Core for Polar Climate, Southern Ocean and Solar Impact: Sea Ice Melting, Ice Core Studies, Southern Ocean Experiments Paleoclimate Studies