



**Transatlantic Policy Options for Supporting
Adaptation in the Marine Arctic**

Report of the Final Conference on 5 March 2009

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The following report summarises the key Arctic policy insights that emerged at the Arctic TRANSFORM Final Conference held in Brussels, Belgium on 5 March 2009. The Final Conference was funded through the European Commission Directorate General for External Relations with Grant Agreement No. SI2.484596. More than 120 experts in the areas of environmental governance, indigenous peoples, hydrocarbons, shipping, and fisheries participated in the conference. The views expressed in this paper do not necessarily represent the official positions of any institutions or governments with which the participants are affiliated.

ARCTIC TRANSFORM

Transatlantic Policy Options for Supporting Adaptation in the Marine Arctic

The final Arctic TRANSFORM conference, held on 5 March 2009 in Brussels, Belgium, brought together more than 120 decision makers and experts on Arctic policy in the areas of environmental governance, indigenous peoples, hydrocarbons, shipping, and fisheries. The conference presented results from the Arctic TRANSFORM project and discussed policy options for confronting the rapid changes occurring in the Arctic.

Opening presentations

Benita Ferrero-Waldner, European Commissioner for External Relations and European Neighbourhood Policy, made the opening remarks, highlighting the fast pace of change occurring in the Arctic and the impacts it is having on the people, landscape and wildlife. Ms. Ferrero-Waldner noted that making progress on environmental issues is not incompatible with recovery from the current global economic crisis. Additionally, she pointed out that the Arctic's problems can only be successfully resolved with co-operation from the Arctic governments and stakeholders, and that action must be taken now rather than later. In closing, the Commissioner pointed out the strategic positioning of the European Union to contribute to policies regarding Arctic governance and that co-operation should be based on existing frameworks rather than the creation of new institutions.

Andreas Kraemer, Director of Ecologic Institute, (Welcoming remarks)

Diana Wallis, Vice President and Member of the European Parliament, highlighted the last year of policy developments in the Arctic (i.e. the EU Parliament resolution on Arctic governance, the European Commission Arctic Communication, current U.S. Arctic Policy, and the Ilulissat Declaration) and recognised the importance of Arctic policy in combating climate change and how managing the Arctic should be a global concern. Ms. Wallis echoed European Commissioner Benita Ferrero-Waldner's sentiments that international co-operation would be key to solving the Arctic's problems and that the European Union, with its experience in cross-governmental co-operation, could contribute a wealth of knowledge to improving governance in the Arctic. She held the Arctic TRANSFORM project as a good starting point that identified the existing framework and gaps in Arctic governance, but also discussed the omission of parliamentarianism and politics in the current discourse. In her address, Ms. Wallis also warned against retreating to old style treaties and inter-governmentalism and questioned whether traditional structures are sufficient for the Arctic. In closing, she underscored the need to treat the Arctic communities with respect and to take their values and experiences into account when formulating policies.

Dr. Lawson Brigham, Chair, Arctic Council's Arctic Marine Shipping Assessment and University of Alaska Fairbanks, in his keynote address, outlined the commercial uses of the marine Arctic and how these uses are evolving in light of globalisation. According to Dr. Brigham, most of the growth in marine activity will be natural-resource and destination based, rather than trans-Arctic. Increased marine activity will face many challenges, including uncertain international regulations and standards, slow policy responses to rapid development, a lack of infrastructure and environmental monitoring, as well as year-to-year variability in sea-ice conditions. Dr. Brigham also spoke about the Arctic Council's forthcoming Arctic Marine Shipping Assessment, which formulates recommendations around the three pillars of enhancing marine safety, building marine infrastructure and protecting

Arctic peoples. The need for co-operation to overcome the foreseen challenges and to implement recommendations was also stressed.

Aaron Best, Senior Fellow, Ecologic Institute, summarised the results from the Arctic TRANSFORM project. Over the course of the project, the project partners and experts identified a number of Arctic policy shortcomings, which broadly included the lack of integrated governance frameworks within and among Arctic states and the lack of full participation by various rights holders and stakeholders. To address these policy gaps, Mr. Best offered the concept of policy pathways. In many ways, the idea of policy options is too binary and often implies a zero-sum game. Policy pathways add a temporal and adaptive aspect. Pathways have a starting point and can then emerge, diverge and converge in different ways. Initial steps can be taken now, with further steps being taken later. In creating policy pathways, there is a choice about where to start, where to point to, and how fast to proceed. Especially in the complex policy framework of the Arctic, with its plurality of institutions, instruments and stakeholders, there may be many starting points. Policy pathways can also occur at different scales of action with varying degrees of ambition. For example, scientific research ranges in focus from species-specific to ecosystem-wide; legal structures can be created at the local, national, regional and multinational levels. To conclude, Mr. Best offered a sampling of the specific policy options identified by the project team.

Janos Herman, Principal Advisor, European Commission, Directorate General for External Relations, established the basis of Europe's interest in the Arctic and elaborated on current EU Arctic policy. Reflecting part of Dr. Brigham's keynote address, Mr. Herman pointed out that globalisation and climate change are emerging phenomena that are already having significant impacts on the Arctic. In line with this idea, Mr. Herman discussed the direct connection between global activities and evolution in the Arctic. EU policies, such as those dealing with climate, energy and maritime activities, were given as specific examples. Mr. Herman's speech also focused on the recent EU Arctic Communication, which acknowledged the need for a co-ordinated and holistic approach to achieve the central goals of protecting the Arctic environment; close dialogue with indigenous peoples; sustainable resource development; and development of multilateral governance in the Arctic. He also recognised that the decision to exploit resources is up to the Arctic states, but that a balance between competing considerations is needed.

Julie Gourley, Senior Arctic Official of the United States, U.S. State Department, presented the recently released U.S. Arctic policy and shared the process and institutions behind its development. The current policy does not differ significantly from the last policy (1994), but a review was needed to take into account developments such as evolving national security issues, climate change, new energy discoveries, and the creation of the Arctic Council. The current policy includes the following six thematic objectives: meeting national security needs, protecting Arctic and biological resources, ensuring sustainable natural resource and economic development, strengthening co-operation among Arctic states, involving indigenous communities, and enhancing scientific research. Ms. Gourley also underscored the administration's support for the U.N. Convention on the Law of the Seas and the Arctic Council. According to Ms. Gourley, there is no pressing need to make any structural changes to the Arctic Council, nor is there any need for a comprehensive treaty such as the Antarctic Treaty. Instead, focus should be placed on strengthening the existing body of law, especially with regard to search and rescue, shipping and fisheries.

Panel 1: Understanding sector-specific challenges—key synergies and trade-offs

Moderated by Dr. Jacqueline McGlade, Executive Director, European Environment Agency

Panel 1 identified some of the key challenges facing the three sectors of shipping, fisheries and offshore hydrocarbon, and highlighted some of the synergies and trade-offs involved. Panelists also discussed options for cross-sectoral governance approaches as well as the importance of and basis for participation by indigenous peoples.

Dr. Paul Berkman, Head, Arctic Geopolitics Programme, Scott Polar Research Institute, University of Cambridge, spoke of the need for Arctic nations to commit to the overarching principle of peace and security when engaging the pressing challenges to the Arctic precipitated by climate change. He stated that success will depend on multi-level coordination and a balancing of national and international interests. In his view, the governance of the high seas under the law of the sea provides an entry point for non-Arctic states to engage in the discussion on decisions concerning future governance. Dr. Berkman also highlighted the need to integrate science and diplomacy to address the complex issues in play, with the Arctic Council potentially playing a significant role in addressing these challenges.

Mr. Kjartan Hoydal, Secretary, North East Atlantic Fisheries Commission, questioned the need for new RFMOs covering the Arctic Ocean. He pointed to several regional conventions that already cover slices of the Arctic Ocean—conventions that have been in place for many years and that have led to fruitful international co-operation. Mr. Hoydal saw institutional change as the most promising way forward for managing new Arctic fisheries, including fully implementing existing frameworks such as OSPAR and expanding existing networks such as the IMO. In response to a comment that current structures did not adequately protect the environment, Mr. Hoydal asserted that many existing instruments and institutions mandate the precautionary approach and ecosystem-based management.

Dr. Timo Koivurova, Professor, Arctic Centre, University of Lapland, described how the concept of self-determination of indigenous peoples within sovereign states has been developing in the context of human-rights discussions regionally and globally. The application of principles of self-determination, however, has had less of an impact on marine areas. Dr. Koivurova spoke of international conventions governing marine areas where indigenous concerns were taken into account, but how the participation of indigenous communities was usually limited. He explained that the Arctic Council differs in that indigenous peoples have the status of permanent representatives and that their input is evident in many of the Council's regional assessments and guidelines. As the effects of climate change mount, indigenous peoples will face increasing challenges to their traditional lifestyles and cultural integrity, both from outside their communities and from within. Reconciling these changes with the principle of self-determination will be a challenge as well.

Mr. Kevin O'Carroll, Chair, OSPAR Offshore Industry Committee (Convention for the Protection of the Marine Environment of the North-East Atlantic), explained that development of oil and natural gas in the Arctic is contingent on a number of factors, such as the commercial availability of new drilling technologies and the expected long-term price of oil. In addition, local factors make large portions of the Arctic unsuitable for drilling, at least for the foreseeable future. Mr. O'Carroll recognised the need to address shortcomings in the current governance framework and cited several policy options, including improving the exchange of information, kick-starting initiatives on emergency response, and co-operating on research efforts focused on understanding the impacts of oil and gas activities. He also

reminded the audience of the upcoming release of the Arctic Council's third edition of the Arctic Oil and Gas Guidelines. In a discussion about conflict and security in the Arctic, Mr. O'Carroll gave the example of the conflict over the Falkland Islands, during which the UK and Argentina were able to cooperate on many environmental initiatives even before all political controversies were resolved.

Dr. Kirsi Tikka, Vice President of Global Technology and Business Development American Bureau of Shipping, pointed out that shipping is an integral, though largely invisible, component of the global economy. She listed several drivers that have led to recent increases in Arctic shipping, namely retreating sea ice, tourism, and expanding fisheries. However, Dr. Tikka cautioned that there are still numerous barriers to shipping expansion, including inter-annual variability in sea-ice extent and poor infrastructure, especially in the area of emergency response. A lack of regional repair facilities also imposes additional burdens on Arctic crews. She emphasised that one must distinguish between trans-Arctic shipping and regional shipping. Shipping into and out of the Arctic has been taking place for many years, typically driven by resource development. Widespread trans-Arctic shipping, however, may still be many years away.

Panel 2: Policy options—how can we improve international environmental governance in the Arctic marine area?

Moderated by Soledad Blanco, Director of International Affairs, European Commission, Directorate General Environment

Panel 2 addressed the key question of how we should manage for resilience in the face of the uncertain but inevitable and rapid changes that are occurring in the region. Central to the discussion was the type of governance institutions and instruments that could be suited to addressing new Arctic challenges.

Dr. Lawson Brigham, Chair of Arctic Council's Arctic Marine Shipping Assessment and University of Alaska Fairbanks, reflected the view that there is no need for new treaties to deal with Arctic issues. Issues should instead be resolved with co-operation of all eight Arctic states and through existing organisations such as the International Maritime Organisation (IMO). Dr. Brigham also pointed out that the Arctic Council is a leader in gathering scientific observations, but that much more information about the change occurring in the Arctic is needed to enhance environmental safety and security. He suggested that the Arctic Council could be the leader in bringing non-Arctic states and stakeholders to the table. Also according to Dr. Brigham, the continental seabed must be delineated before a system of environmental governance can be put in place or installed. In response to a question from the audience, he was optimistic that the U.S. would ratify UNCLOS sometime in the relatively near future.

Ms. Patricia Cochran, Chair of Inuit Circumpolar Council, focused on the issue of sovereignty in the Arctic. According to Ms. Cochran, increasing interest in the Arctic is resulting in unparalleled interest and claims over Arctic lands and resources. Governments are obliged to include indigenous peoples in discussions and decisions, but issues sensitive to nation states are often left off the table. Furthermore, indigenous peoples are being excluded from discussions about Arctic sovereignty. Ms. Cochran pointed out that indigenous peoples are awarded rights through mechanisms such as international law and land claims; therefore, any Arctic governance regime should take into account indigenous rights. In answer to a question from the moderator, Ms. Cochran stated that some of the structures and policies created by indigenous peoples could provide answers to the issues facing the Arctic and relevant states. In conclusion, Ms. Cochran issued a broad call for more inclusive

involvement of indigenous peoples as equal partners and made mention of the Inuit Circumpolar Council's forthcoming Declaration of Arctic Sovereignty.

Dr. Neil Hamilton, Director of WWF-Arctic International Programme, addressed the failures of governance in the Arctic. According to Dr. Hamilton, the current goals to protect the environment, as set forth by the Arctic Council, are much less ambitious than those stipulated in the 1991 Arctic Environmental Protection Strategy. He also pointed out that the Global Marine Species Assessment (Conservation International and World Conservation Union) identified thousands of new species, revealing how little we actually know about the Arctic environment. He warned that we are facing the elimination of the Arctic as we know it, and that we have little time to address the profound gaps in governance. Most importantly, the gradual incremental approach to governance, as suggested by many, is not sufficient to resolve the challenges. What is needed instead is a simple, comprehensive, forceful, and binding framework that includes indigenous peoples as equal partners, incorporates the precautionary principle, and is tailor made for the Arctic.

Dr. David Johnson, Executive Secretary of OSPAR Commission, discussed the OSPAR mandate as it relates to the Arctic. The OSPAR mandate is linked in law to UNCLOS and has power to make legally binding agreements. One of its most notable contributions is that it has invested much time and energy into research and developing practices (e.g. methodology to look at impacts, list of endangered species, marine protected areas, etc.) that can be applied to other areas. Although OSPAR has contributed much to the scientific research done in the Arctic, there are still a number of shortcomings that limit its effectiveness. This includes the fact that it only applies to participating states, which make up only part of the Arctic, that it tends to react slowly, and that it has not included indigenous peoples in the decision-making process. Dr. Johnson indicated that there is a forthcoming restructuring of OSPAR and a developing joint-assessment monitoring program, which should help address some of the shortcomings. Additionally, he suggested that OSPAR should link with the Arctic Council and develop a co-operation memorandum of understanding that could be applied to the wider Atlantic. Dr. Johnson supported the view that we should work with what we have, rather than create a completely new treaty.

Dr. Erik Jaap Molenaar, Senior Research Associate, Netherlands Institute for the Law of the Sea, Utrecht University, stressed the governance gaps in the Arctic. He warned that the law of the sea (LOS) is primarily a framework that expresses the interests of the international community and that its relevance should not be overstated. LOS is also limited in its ability to regulate commercial activities, but there are other regulatory bodies (such as the IMO for shipping and RFMOs for fisheries) that could be adapted to address these issues. Concrete regulations remain largely missing and existing regulatory bodies are not specific to the Arctic. These problems are also becoming more pronounced as the ice melts. In the end, however, LOS is the only option as a starting point.

Ms. Lisa Speer, Director, Water and Oceans Program, Natural Resources Defence Council, emphasised the need for fast and drastic action to protect the Arctic ecosystem. According to Ms. Speer, the choice is not between adjusting the existing system, using a sectoral approach, or creating a new governance regime. Instead, we need to take all possible options. Sectors need to adopt the precautionary principle as mandatory rules; expansion of fisheries and oil and gas exploration should be frozen until rules of governance are in place; and the creation of a protected area beyond national jurisdiction should be considered. In response to a question from the audience, Ms. Speer added that an Antarctic-type treaty is not the only option and that we should be open minded as to how we view a treaty. In any case, all of these actions require political leadership and immediate attention and cannot wait until the seabed delineation is completed or until industrial activities become established in the Arctic.

Panel 3: Next steps—near-term strategies for pursuing our common interests in the Arctic

Moderated by Mr. David Monsma, Executive Director, Energy and Environment Program, The Aspen Institute

Building on the two prior panel discussions, this panel focused on near-term strategies for identifying and pursuing common interests in the Arctic. The panelists discussed short-term strategies for improving transatlantic co-operation in pursuing joint goals, many of which were identified in recent policy statements from the European Commission and the U.S.

Ms. Julie Gourley, Senior Arctic Official of the United States, saw many commonalities between the recent EU and U.S. Arctic policy statements. She emphasized that, in the opinion of the U.S., the current governance structures is largely sufficient, though some modifications are needed. She highlighted several U.S. initiatives to improve the current structure, such as urging that the IMO Polar Code be made binding, pressing for an agreement on search and rescue at the Arctic Council, and proposing the creation of a task force to recommend action on short-term climate forcing agents such as black carbon and methane. Ms. Gourley was encouraged by the co-operation currently apparent among the eight Arctic states, but questioned the need for a new transatlantic dialogue between the EU and the U.S. However, she expressed hope that the EU would be interested in co-operating with the U.S. on a number of Arctic initiatives.

Mr. Janos Herman, Principal Advisor, European Commission, Directorate General for External Relations, began by describing the process by which the EU is reviewing the policy proposals set forth in the European Commission's recent Arctic Communication. The Communication is currently being reviewed by the European Council and the EU member states. Mr. Herman expressed his hope that the Council would develop conclusions to operationalise the Communication some time after the summer. He explained that there are many parallels between the Communication and the U.S. Presidential Directive on the Arctic and that the EU desired to facilitate co-operation on a number of issues of common concern. He highlighted Europe's historical interest in the Arctic and its continuing engagement in the area of scientific research. He felt that the EU could offer experience gleaned from its work as part of the Northern Dimension policy and from its other activities in the Arctic. In answer to a question about the Ilulissat Declaration, Mr. Herman said that while the document supported the current Arctic framework, it clearly left the door open for modifying existing instruments and institutions.

Mr. Sven Roald Nystø, Special Advisor on Northern Affairs at Arran, called for the development and implementation of common standards regarding the rights and participation of indigenous peoples with respect to all economic activity in the Arctic. It's also important to allow indigenous peoples, on their own require, to take advantage of future economic development, while simultaneously safeguarding their traditional industries, cultures, languages and community life. While indigenous peoples enjoy special status within the Arctic Council, Mr. Nystø explained that this is not the case in most other venues. In particular, he recommended that the EU establish an indigenous peoples working group as part of its Northern Dimension policy.

Ms. Helena Ödmark, Senior Arctic Official of Sweden, Ministry for Foreign Affairs, was very supportive of the work of the Arctic Council, with its emphasis on sustainable development and environmental protection. She felt it was a productive arena for international co-operation and that state action at the domestic level could not easily occur without such co-operation. Most issues, she explained, required the consensus of the eight Arctic states before policy could move forward.

Mr. Ole Samsing, Special Advisor, Danish Ministry for Foreign Affairs, supported working within the political framework of the Arctic Council to address the emerging climate-change related challenges in the Arctic. He felt that actions taken at the Arctic Council could inspire other sector-focused organizations to follow its lead and take positive steps. Mr. Samsing highlighted the utility of the Arctic assessments generated by the Council and maintained that indigenous peoples should continue to be included in any of its future activities. Regarding the possibility of creating new legal instruments, he said that there are already over 400 agreements in existence that take the Arctic into account and that efforts should be focused on helping relevant instruments do a better job.