

IV. Regional Cooperation

Do We Need a New Legal Regime for the Arctic?

Alf Håkon Hoel
University of Tromsø
hoel@sv.uit.no

The decline in sea ice in the Arctic Ocean has brought increased international attention to the region. A host of issues, including environmental concerns and the perception that there is a race for natural resources which may bring international conflict, has brought calls for a new, legal regime for the Arctic. A comparison is made with the Antarctic. This is misplaced, as the Arctic is an ocean surrounded by land where the sovereignty issues are resolved, while the Antarctic is a continent where no sovereignty is recognized, surrounded by oceans. The idea of an Arctic Treaty also neglects that there is a comprehensive legal regime for the Arctic Ocean, based on the 1982 Law of the Sea Convention. The Law of the Sea Convention and other instruments provides the rules of the game as regards jurisdiction, principles for resource management and environmental protection, and the regulation of economic activities. This is however not to say that the existing governance structure in the Arctic is perfect. The real question for the governance of the Arctic Ocean, therefore is rather: *are there problems or issues that cannot be fixed within the context of existing treaties and arrangements?*

The major issue in confronting climate change and providing for sustainable use of natural resources is first of all the implementation of existing legal instruments - which is indeed the global situation and nothing specific to the Arctic. Implementation is about getting the principles and rules of international agreements to work. This is a demanding task that requires work at the international as well as domestic levels of governance, involving a complex set of activities including science, planning, regulatory work, and enforcement.

Second, there are areas where new instruments are needed. This applies in particular to climate change, where the post-Kyoto regime is under negotiation, but also to some other areas. The appropriate governance response to the issues confronting us in the Arctic depends what is understood by the "Arctic" and "Arctic Ocean".

As to implementation, the Arctic Council works through several work programs pertaining to specific issue areas as sustainable development, protection of the marine environment, and monitoring and assessment. The activities are fundamentally about establishing the status of knowledge in various issue areas, thereby over time building a common understanding among participants on the status and prospects of any given issue. In some instances, building on such consensual knowledge, the Arctic Council has also developed strategic plans and guidelines for action.

The perhaps most successful project to date under the Arctic Council, is the Arctic Climate Impact Assessment (ACIA), which contributed significantly to bringing the issue higher on the political agenda. Other projects that have left a mark is the Status of the Arctic Environment Report (1998), the AMAP Oil and Gas Assessment (2008), the 2004 Arctic Marine Strategic Plan in 2004, revised Guidelines for the exploitation of petroleum in the Arctic to be adopted at the upcoming ministerial in April 2009. An assessment of shipping in the Arctic is scheduled for the 2009 ministerial. In terms of implementation of international commitments the Best Practices in Ecosystems Based Oceans Management Project (BePOMAr) project is particularly interesting. The idea is that there are lessons to be learnt by studying implementation practices in the different countries and comparing those practices. Based on a series of country case studies, a set of "Observed Best Practices" have been derived, pointing to practices that have proved useful in getting ecosystems-based oceans management to work at the domestic level.