

## **Transboundary Governance Capacity in the Arctic: Insights for Effective Arctic Governance**



### **Overview of the Issue**

The Arctic is one of the Earth's most sensitive and vulnerable ecosystems impacted by climate change. Countries are jockeying to claim territory, exert political control and capture the vast natural resources this region possesses – resources that are becoming increasingly accessible due to warming temperatures. Proper governance therefore is critical to preserving the Arctic's future.

But what constitutes “good,” or perhaps more appropriately – effective governance? Arctic governance research generally focuses on single institutions within the Arctic; this approach lends itself to deep knowledge of a single entity, yet gaps remain in understanding the broader context of a system as complex as the Arctic (Friedman, 2016). The *Transboundary Governance Capacity (TGC)* framework (VanNijnatten, et al., 2016), which was constructed and applied to the Great Lakes St. Lawrence River Basin, serves as a unique approach to exploring and better understanding Arctic governance capacity. The TGC framework uses four indicators – *compliance* (evaluates the strength of existing rules and enforcement mechanisms), *functional intensity* (evaluates whether the members are cooperative and collaborative), *stability and resilience* (determines longevity of the institutions in place and their ability to adapt to changing contexts) and *legitimacy* (evaluates the presence of participatory governance, accountability and transparency) to evaluate institutions that are part of the transboundary governance system to which it is being applied.

### **Most Relevant Existing Policies and Legislation**

Viewing the Arctic as a transboundary system, a number of formal institutional mechanisms come to light that affect Arctic governance:

#### *United Nations Convention on the Law of the Sea (UNCLOS)*

- A multilateral treaty with the purpose of managing the world's oceans (its space and uses) and settling disputes. Aspects of UNCLOS pertinent to Arctic governance include: 1) the establishment of jurisdictional zones; 2) Setting norms for navigation and transit regimes; 3) establishing provisions for resource exploitation (e.g., mining); 4) provisions for the protection of the environment; and 5) Principles for scientific research.

#### *World Trade Organization (WTO)*

- With its focus on trade, the WTO applies to all products, including energy-related products, associated with the Arctic. An important component of the WTO with respect to Arctic trade is its provisions for dispute resolution for trade policy, which involves the Dispute Settlement Body.

*International Labor Organization Convention on Indigenous and Tribal Peoples (No. 169) (ILO Convention)*

- The ILO offers provisions to ensure equality of treatment, basic protection against arbitrary administrative procedures, vocational and literacy training, social security and health, and protection of the land base for indigenous peoples (Swepston 1990 p. 681). The spirit of consultation and participation constitutes the cornerstone of Convention No. 169.

*United Nations Framework Convention on Climate Change (UNCFCC)*

- The UNCFCC is a multilateral agreement that recognizes climate change as a problem in the Arctic and binds member

## **Stakeholders**

A number of stakeholders play a role in Arctic governance. Eight Arctic states come into play – the United States of America (via Alaska), Denmark (via Greenland), Canada, Norway, Russia, Finland, Sweden and Iceland. These Arctic states are each trying to claim parts of the Arctic for three strategic reasons: natural resources, waterway passage and national security for existing territory and proposed claims. Also, transboundary institutions throughout the Arctic are found at the global, regional and domestic scales, as well as arrangements within individual nations (Arctic Governance Project 2010).

Key stakeholders also include the following:

*The Arctic Council (AC)*

- The AC comprises the eight member states listed above in addition to states recognized as permanent participants and those granted observer status. The aims of the AC, an outgrowth of the *Arctic Environmental Protection Strategy (AEPS)*, are to protect the ecosystem (including humans), provide protection and restoration of environmental quality and sustainable natural resources, recognize and accommodate indigenous peoples'

states, including the industrialized countries largely responsible for increases greenhouse gas activity and climate change, to act in the interests of human safety even in the face of scientific uncertainty. A "soft law" (e.g., public shaming) approach is employed when a party has been found to non-compliant with agreed-upon targets.

*Stockholm Convention on Persistent Organic Pollutants*

- Another multilateral agreement, this convention restricts the production and use of persistent organic pollutants (which can accumulate at northern latitudes) and regulates additional chemicals, even when scientific evidence of adverse effects is lacking.

needs, review the state of the environment regularly and identify, reduce and eliminate pollution (Bloom 1999 p. 713).

*The Northern Forum*

- A non-profit organization that involves countries including Canada, Iceland, Japan, the Republic of Korea and the Russian Federation.
- Brings together subnational leadership to discuss political, economic and environmental issues.

#### *Norwegian-Russian Fisheries Regime*

- Bilateral institution that monitors the stocks of cod, haddock and capelin in the Barents Sea, shared between Norway and Russia.
- The main objective is to ensure cooperative and rational management of ocean fisheries.

#### *Co-management Regimes*

- Such domestic-based regimes are designed to ensure a sharing of power and responsibility between national governments and local resource users; it is achieved by various levels of integration of local-and-state-level

management systems. Such regimes are particularly important for both aboriginal and non-aboriginal use of renewable resources (Notzke, 1995).

#### *Non-Governmental Organizations*

- A number of non-governmental organizations have strong interests in Arctic governance. One of the most important is the *International Arctic Science Committee (IASC)* whose mission is to encourage the coordination and execution of research between countries to create a more thorough understanding of the Arctic region relative to other of earth's ecosystems.

### **Important Policy Challenges**

The TGC framework and four indicators (VanNijnatten et al., 2016) shed light on governance strengths and challenges facing the Arctic regime.

Generally, Arctic governance can be understood to have a high degree of legitimacy (countries are part of international law and institutions; governance is inclusive of Aboriginal Peoples; and stakeholders and institutions promote global awareness of Arctic issues) and strong stability and resiliency (institutions, stakeholders and policies have persisted and evolved over time). In contrast, current Arctic governance institutions struggle with functional intensity and compliance. With respect to functional intensity, Arctic institutions promote extensive information sharing, consultation, cooperation and collaboration. However, these institutions have not yet developed a strong degree of harmonization and integration. With respect to compliance, enforcement of most laws and policies is achieved through "soft law" mechanisms. Although dispute resolution mechanisms are in place, most are voluntary. Increasing interest in accessing Arctic resources will likely present greater enforcement challenges in the future.

### **Policy Alternatives and Policy Futures**

At present, the Arctic is governed through a decentralized, transboundary system, much like the Great Lakes. A key advantage of a decentralized governance structure is that it does not involve a singular leader, allowing for greater flexibility in decision-making and thereby imparting greater resilience in the face of global economic and environmental change. This resiliency, coupled with a process to engage relevant stakeholders on issues across the transboundary system when needed, will be critical to sound Arctic governance in years to come.

## **References**

Arctic Council. 1996. *Declaration on the establishment of the Arctic Council*. Ottawa, Ontario, Canada: Arctic Council.

Arctic Governance Project. 2010. Arctic governance in an era of transformative change: Critical questions, governance principles, ways forward. *Report of the Arctic Governance Project*. Retrieved from <http://arcticgovernance.custompublish.com/agp-report-and-action-agenda.156784.en.html>.

Bloom, E. T. 1999. Establishment of the Arctic Council. *American Journal of International Law*. 93(3): 712–722.

Friedman, K. 2016. Institutions and Transboundary Governance Capacity (TGC) in the Arctic: Insights From the TGC Framework. *International Journal of Water Governance*. 4:133-154.

Notzke, C. 1995. A new perspective in aboriginal natural resource management: co-management. *Geoforum*. 26(2): 187–209.

O'Rourke, R. 2014. *Changes in the Arctic: Background and issues for Congress*. Washington, DC: Congressional Research Service.

Swepston, L. 1990. New step in the international law on indigenous and tribal peoples: ILO Convention No. 169 of 1989. *Oklahoma City University Law Review*. 15: 677-714.

United Nations. 1982. *United Nations Convention on the Law of the Sea*. Retrieved June 12, 2014, from [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

United Nations. 1998. *United Nations Framework Convention on Climate Change*. Retrieved June 16, 2014, from <http://unfccc.int/resource/docs/convkp/kpeng.pdf>

United Nations Industrial Development Organization. 2001. *Stockholm Convention on Persistent Organic Pollutants*. Retrieved June 18, 2014, from [http://www.pops.int/documents/convtext/convtext\\_en.pdf](http://www.pops.int/documents/convtext/convtext_en.pdf)

VanNijnatten, D. L., Johns, C., Friedman, K. B., & Krantzberg, G. 2016. Assessing adaptive transboundary governance capacity in the Great Lakes Basin: The role of institutions and networks. *International Journal of Water Governance*. 1: 7-32.

World Trade Organization. 2014. *A unique contribution. Understanding the WTO: Settling disputes*. Retrieved July 22, 2014, from [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm)