

A new era in the Arctic Council's external relations? Broader consequences of the Nuuk observer rules for Arctic governance

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ABSTRACT. This article studies the role of observers under both the Arctic Environmental Protection Strategy (AEPS) and the Arctic Council (AC) before the Nuuk ministerial meeting that took place in May 2011. In this meeting, the AC actors were able to find consensus on criteria for admitting new observers, an issue that has received much media attention, given that China and the European Union, for example, are queuing to become observers in the AC. It is of importance to examine the content of these recently adopted Nuuk observer rules and their potential to impact decision-making on whether the external actors can be included as observers. Moreover, this article studies how, if at all, the Nuuk observer rules might affect the position of the AC in the broader setting of circumpolar cooperation.

Introduction

Intergovernmental cooperation in the Arctic has been developing and expanding into a wide range of circumpolar issues for more than 20 years (Young 2005). Established in 1996, the region's primary forum today is the Arctic Council (AC), which has reached a turning point and is undergoing important changes to combat rising challenges posed by climate change and globalisation (Koivurova 2010). Prospects for natural resource exploitation and an increase in shipping activities have led to geopolitical ramifications (Dodds 2010), triggering debates inside and outside the AC in regard to the future of Arctic governance (Axworthy and others 2012). Actors outside the region, including powerful states and the European Union (EU), evince a growing interest to participate in AC work since it is perceived as the only formal pathway to gain access to Arctic governance and decision-making systems. The only way of getting involved is to acquire observer status from the AC, which therefore turns the focus of debate to questions such as 'who should be included?' and 'how should those involved govern a region undergoing profound transformation?'

Accordingly, issues surrounding the admission and role of observers have emerged as salient when institutional reform is taking place within the AC. When faced with an increasing number of applications and different voices advocating their will for a stronger AC status, AC chairs have tried to resolve this issue in a manner acceptable to all. This has proved to be a challenging endeavour. At the May 2011 ministerial meeting held in Nuuk (Greenland), the AC made significant progress when it released admission criteria for observers and a definition of their subsequent roles. But what exactly

have the new rules changed for observers, and what possibilities for action do observers hold within the AC? How are such arrangements perceived by non-Arctic actors, and how do observers fulfil their roles within regional international relations? Finally, what wider consequences might observer rules have for governance in the Arctic region?

The aim of this article is to examine the possible effects of the new rules for AC observers when considering external actors' inclusion within Arctic governance. Moreover, this article studies how, if at all, the Nuuk Observer Rules might affect the position of the AC in the broader sense of circumpolar cooperation. The first part of the article sheds some light on the role of observers under the Arctic Environmental Protection Strategy (AEPS) and the external actors' involvement in the AC before the Nuuk ministerial meeting. The article continues with a more in-depth study of the new criteria, followed by a definition of the observers' role and a discussion of the impacts of these regulations on the AC. The article concludes by exploring likely consequences of these criteria for external actors' engagement in Arctic affairs. The focus throughout is on political entities such as states and intergovernmental organisations. Specifically, this article deals with the current six observer states and eight applicants to the status (*ad hoc* observers), including the EU. The terms 'external actors', 'external entities' and 'non-Arctic actors' are used interchangeably and refer to this grouping of states and the EU.

This analysis is primarily based on AEPS and AC documents. However, it also derives from published reports, as well as journals and media articles which provide an alternative source of information, particularly when looking for Arctic and non-Arctic actors' voices.

At the same time, it is important to bear in mind that the work on the AC observer's manual is still in progress (with its probable publication ensuing during the Kiruna ministerial meeting in 2013). Therefore, the picture drawn here is incomplete. The new observer criteria have not been used yet to assess new applications, so one cannot evaluate how the AC will utilise them.

External actors in Arctic cooperation

Non-Arctic actors were present in the Arctic for decades before actual intergovernmental cooperation in the region began. Their interest in the region has a variety of reasons ranging from purely scientific to economic and strategic ones. It came as no surprise, therefore, when some of those already engaged in Arctic affairs became interested in extending their presence within emerging political structures; for example, when Canada, Finland and Norway announced their initiatives to establish multilateral institutions for cooperation in the Arctic and the Barents region (Graczyk 2011).

Non-Arctic states, alongside other global and Arctic organisations, have participated in circumpolar environmental cooperation since preparatory negotiations began for the AEPS. These preparations later led to the launch of the AEPS in Rovaniemi in 1991. The first ministerial conference on the protection of the Arctic environment was observed by various external entities, including three states (Germany, Poland and the United Kingdom), three international organisations of which two were United Nations (UN) organs (the International Arctic Science Committee (IASC), the UN Economic Commission for Europe (UNECE) and the UN Environment Programme (UNEP)), and three indigenous peoples' organisations (IPOs) (the Inuit Circumpolar Conference (ICC), the Nordic Saami Council and the USSR Association of Small Peoples of the North) (Young 1998: 90). As the preface to the AEPS reads, 'the eight Arctic countries were assisted in the preparation of the Strategy' by the above-mentioned entities. To some extent, the success of the project relied greatly upon the inclusion of non-Arctic actors, particularly those who could help Arctic states to reduce and eliminate atmospheric contaminants and other environmental concerns for the region. Some of the six major ecological issues identified in the AEPS, for instance, persistent organic pollutants (POPs) and acidification, originated primarily from an area south of the Arctic Circle (AC 1991a: 12; Oude Elferink 1992: 129; Keskitalo 2004: 56–57).

Notable interest from non-Arctic political entities in observer status within the AEPS or the AC has been relatively limited in the early stages of Arctic cooperation. Four European countries (Germany, the United Kingdom, the Netherlands and Poland) contributed to the AEPS process. Japan also attended the September 1996 meeting establishing the AC that was held in Ottawa, Canada, despite not yet having been accorded observer

status (AC 1996a). The extent of non-Arctic interest in the workings of the AC remained at low levels during consequent years. France participated as an *ad hoc* observer in the SAO meeting in Fairbanks, Alaska, in April 2000, and was accorded observer status at the October 2000 second AC ministerial meeting in Barrow, Alaska (AC 2000). The sixth and most recent non-Arctic state to have been accepted as an observer was Spain, which participated for the first time as an *ad hoc* observer at the SAO meeting in Khanty-Mansiysk, Russia, in October 2005, before gaining full observer status at the October 2006 meeting of ministers in Salekhard, Russia.

The number of applications has dramatically increased since the April 2007 meeting of Senior Arctic Officials (SAOs) held in Tromsø, Norway, when China and Italy expressed their willingness to become observers. Following these countries, South Korea and the EU also applied for observer status and participated in the November 2008 SAO meeting in Kautokeino, Norway. Japan joined the group of candidates in July 2009 and participated in the November 2009 SAO meeting held in Copenhagen, Denmark. The last application to date was submitted by Singapore in December 2011 (Molenaar 2012: 166). Today there are six non-Arctic states that are observers and seven entities (China, India, Italy, Japan, Singapore, South Korea and the European Union, which is applying for the status as an intergovernmental organisation) that are currently applicants. It is most likely that decisions on the candidates' admission will be made during the May 2013 eighth AC ministerial meeting, to be held in Kiruna, Sweden.

Observers within the AEPS

The Declaration on the Protection of the Arctic Environment, which accompanied the AEPS, mentioned only IPOs as entities that would be invited to the future meetings as observers (AC 1991b). Formally, however, their status was hardly different from the status of non-Arctic actors (Graczyk 2011: 590). Their participation was determined by the same general criteria described in the end part of the AEPS document, entitled 'Further cooperation'. The decision to invite observers should be based on a pragmatic and functional evaluation of their involvement in and contribution to Arctic environmental matters (AC 1991a: 42).

Nonetheless, the declaration recognises native inhabitants and their traditional ecological knowledge (TEK) as providing a unique contribution to the protection of the Arctic environment; thus the successful implementation of the AEPS partly hinged upon their input and initiatives in this regard (AC 1991a: 6). Furthermore, ensuring a traditional way of living (including values, needs and practices) for indigenous peoples is one of the AEPS's five major objectives (AC 1991a: 9) and distinguishes IPOs' positions from those of non-Arctic entities. As is declared in the AEPS, the three IPOs are invited as

observers in order to facilitate the participation of Arctic indigenous peoples (Arctic Council 1991a: 42). At the time of the declaration's adoption, this invitation was the only way to ensure a continuous representation of indigenous peoples in AEPS activities, given Arctic states' cautious approach to recognition of indigenous groups (Tennberg 2000: 36–37). Although they needed to act on an equal footing with external actors, indigenous peoples' roles were increasingly important throughout the AEPS implementation process (Tennberg 1996, 2000: 37). This distinction was further strengthened by the creation of the term 'AEPS permanent participant' (Nilson 1997: 54), which referred to IPOs.

Whilst IPOs had an identical status to that of external actors, the latter did not attract the same attention from Arctic states and the actual standing of these two types of participants differed. Decisions made on observer status for external states, as well as non-governmental and intergovernmental organisations, were based on an applicant's authentic commitment to the protection of 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 (Graczyk 2011: 578–579). Environmental organisations' interests in Arctic affairs have been rising, in particular since the *Exxon Valdez* supertanker oil spill occurred off the Alaskan coast in 1989. Although observers had been apparently sparse and constrained in their activities, they nonetheless laid a foundation for later developments which came to influence the positions of non-Arctic actors within the AEPS's successor, the AC.

Throughout the AEPS process, accredited or *ad hoc* observers could participate in ministerial conferences, Senior Arctic Affairs Officials (SAAOs) and working group (WG) meetings (Nilson 1997: 54). Individual WGs could also accredit additional observers, though these were restricted to one particular WG and not able to participate in other AEPS meetings (Nilson 1997: 56). Interestingly, definitions of WG members differed among the WGs. For instance, the Arctic Monitoring and Assessment Programme (AMAP) considered only representatives of the eight Arctic states as its members while the Conservation of Arctic Flora and Fauna (CAFF) was open to other national delegates, IPOs, AEPS- and WG-accredited observers and *ad hoc* observers (Nilson 1997: 56).

The AEPS documents specified neither the actual role, nor the mode of involvement, of observers and therefore these issues rather crystallised during the course of cooperation within different projects. According to the only criteria pertaining to observers, it is fair to say that the requirement for observing parties was to contribute their interest and show readiness to engage in the protection of the Arctic environment (Nilson 1997: 57). Nevertheless, their potential and capabilities were never fully explored and the possibility to participate was severely limited (Nilson 1997: 6). In light of their constrained participation, being grounded within

political levels of SAAOs 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 to research, for instance within AMAP and CAFF activities. Germany and the Netherlands focused primarily on the AMAP (for example the Netherlands hosted the 1997 AMAP meeting), while the United Kingdom's interests lay in CAFF projects (Nilson 1997: 32). This involvement was particularly significant when compared to a modest contribution from the largest of the Arctic states (Young 1998: 136), since funding to AMAP from Germany and the Netherlands was more generous than that of the United States and Russia combined (Scrivener 1996: note 8).

Nonetheless, already at that time, Arctic states did not look favourably on any political involvement from external actors. They were particularly suspicious about decision-making within environmental projects that observers (including NGOs) had offered to fund. Thus, it was not uncommon that work financed by southern states was not recognised as a product of the AEPS (Nilson 1997: 32). In addition, no reference to observers or acknowledgment of their input appeared in declarations made by the successive AEPS ministerial meetings in Nuuk (1993), Inuvik (1996) and Alta (1997). Even though funding concerns were among the chief obstacles to the proper functioning of the AEPS, the Arctic states preferred to limit external entities' involvement instead of utilising their offered financial and scientific resources, which caused growing frustration among observers (Nilson 1997: 32).

Independently, observer states harboured different ambitions in regard to their influence within the AEPS. As stated by Nilson (1997: 33), these ranged from 'an observation post', used for data collection for other purposes, 'to holding strong opinions about playing a political role'. At this early stage of development, such ambitious observer arrangements could have caused further reluctance from Arctic states when asked to increase the scope of their involvement in regional cooperation.

Furthermore, closer inspection reveals that observer status was not permanent, since this is not mentioned anywhere in any AEPS document. This implies both that assessments would have had to be made before each ministerial conference, and that the Arctic states were supposed to embrace a functional and pragmatic evaluation of non-Arctic actors' contributions. In practice, observer status continued throughout the AEPS process as Arctic states united in tacit agreement over the observer question. The terms used in the AEPS text allowed for almost unfettered discretion when granting observer status, which enabled a virtually unrestricted display of national interests within the observer assessment process. Furthermore, as it proved to be impossible to meet the expectations of all eight Arctic states (Nilson 1997: 34), precise procedures and evaluation guidelines were not specified within the admission criteria (Graczyk 2011: 591).

External actors' participation was based on unclear rules pertaining to their rights and duties at all levels of the AEPS structure, primarily within WGs, which added to their confusion about how they were expected to conduct themselves in their activities (Nilson 1997: 32). Whereas access to the political process had been heavily restricted by the *status quo* (for instance, observer states could make only one intervention during an SAAO meeting), additional constraints at the working level were detrimental to non-Arctic actors' overall motivation when cooperating on regional environmental issues. For instance, external entities could deliver scientific data but their scientists' direct involvement in the AEPS's research activities was severely limited (Nilson 1997: 34).

Despite some acknowledgement and recognition of their input, it is fair to say that observers were rather marginalised during the AEPS implementation period (Nilson 1997: 6; Graczyk 2011: 593). Nonetheless, their efforts and commitment to protect the Arctic environment had demonstrated an enhancement in non-Arctic actors' regional presence, which also allowed them to consolidate their position. Although this was not properly reflected in the rules pertaining to observers, it could be assumed that engagement in the AEPS favourably influenced the role of observers later on, when the AC was created.

Observers to the AEPS were recruited from among those actors who had already been present in the Arctic for several decades. Some would argue that the bar was not set sufficiently high, since the only formal requirement was to contribute to programmes conducted under the AEPS. Their participation was widely endorsed and, as a result, many voices later advocated for a better use of observers' potential (Nilson 1997). The fairly low-level requirements found in official documents were probably due to general impressions about the Arctic, which had often been portrayed as a 'frozen desert' (Koivurova 2010), as well as other external actors' interests in the region, which indicated an almost imperceptible degree of attention to circumpolar cooperation. In addition, the final negotiations on the establishment of the AC did not result in an influx of new external entities. Consequently, the accredited observers to the AEPS were seamlessly transferred into the AC and maintained a similar standing (see Russell 1996; Scrivener 1996: 26).

Observers at the Arctic Council

The establishment of the AC as a 'high level forum' was intended to widen and intensify Arctic cooperation, and to provide it with a better organisational framework (AC 1996b). The structures set up within the AEPS were absorbed by the AC as one of its 'two pillars', along with the 'Arctic Sustainable Development Initiative' (Tennberg 2000: 94). Collectively, the WGs, some rules of procedure, and institutional arrangements, such as ministerial meetings and SAAOs (renamed later as

Senior Arctic Officials (SAOs)), soon became a basis for operation within the newly emerging forum.

While negotiating a new cooperation arrangement for the Arctic, it was soon apparent that different forms of participation were highly politicised and were becoming increasingly prevalent within Arctic states' policies (Tennberg 2000: 111). To a certain extent, questions relating to indigenous peoples and external actors' positions served as valuable bargaining chips during negotiations (Scrivener 1996: 25–26, 39–43; Graczyk 2011: 597–598). It was agreed that the mechanism used during the AEPS process for selection of observers and *ad hoc* observers should be retained in the AC (Scrivener 1996: 26). Accordingly, an agreement was reached which claimed that previously accredited observers to the AEPS process should retain their status within the AC (Russell 1996).

The most striking difference between the AEPS and the AC is that the three IPOs (the ICC, the Saami Council and the Russian Association of Indigenous Peoples of the North (RAIPON)) were accorded permanent participant (PP) status within the AC, which stressed their special position in regard to regional cooperation whilst ensuring the pre-eminent role of Arctic states (Koivurova and Heinämäki 2006: 104). Accordingly, the observer category was designed for non-Arctic states, international organisations and NGOs that in the AC's view can contribute to its work (AC 1996b).

Today, principles and rules concerning the admission and role of observers within the AC are contained in three documents: the *Declaration on the establishment of the Arctic Council* (the Ottawa declaration), the Arctic Council *Rules of procedure*, and Annex 1, 'Framework for strengthening the Arctic Council', of the SAO report to ministers that was presented in May 2011 on the occasion of the seventh AC ministerial meeting in Nuuk, Greenland (SAO 2011). The AC rules of procedure were developed during the first Canadian chairmanship and included as an annex to the SAO report prepared for the first AC ministerial meeting in Iqaluit, Canada, September 1998. The criteria contained in the 2011 SAO report to ministers will probably be incorporated into the rules of procedure. The 2011 Nuuk declaration has mandated the Task Force for Institutional Issues (TFII) to draft necessary consequential revisions of the rules of procedure. The Ottawa declaration and the AC rules of procedure have been regulating the functioning of the AC since 1996 and 1998 respectively. Annex 1 of the May 2011 SAO report from Nuuk emerged as a result of a debate on external actors within the AC, triggered by applications submitted by powerful players such as China, the EU, Italy, Japan and South Korea. Moreover, previously admitted 'permanent' observers had raised further questions in regard to an enhanced role within the AC (Graczyk 2011: 582–583). Problems concerning the roles, justifications and general number of observers appear to have been among the key issues during the AC's reform (SAO 2009a, 2011; Graczyk 2011; Axworthy and others 2012).

The rules of procedure apply to all subsidiary bodies of the AC and are relatively well developed for a forum that has no formal legal foundation (Bloom 1999: 718). There are three categories of participants: 'Arctic States', comprising the eight Arctic nations; 'permanent participants' (PPs), currently consisting of six IPOs; and 'observers' (AC 1996b: Article 2 and 3; AC 1998). Three IPOs are recognised as PPs in Article 2 of the Ottawa declaration: the ICC, the Saami Council and the Association of Indigenous Minorities of the Far North, Siberia and the Far East of the Russian Federation (renamed later to RAIPON). The other three IPOs have been included since then: the Aleut International Association (AIA) in 1998, the Arctic Athabaskan Council (AAC) and Gwich'in Council International in 2000. Unlike the AEPS, the Ottawa declaration clearly defines categories of actors who may apply for observer status. Accordingly, the AC is open to non-Arctic states, intergovernmental and interparliamentary organisations (both global and regional) and non-governmental organisations, which are all judged on the basis of their applications made to the AC. Before the 2011 Nuuk ministerial meeting, decisions on observer statuses were made with no clear or comprehensive criteria for admission. During the time of the AEPS, an external entity was accredited observer status based on a pragmatic and functional evaluation of its involvement in, and contribution to, Arctic environmental issues. In comparison, the only caveat in AC proceedings is that applicants should contribute to the AC's work, which is determined by the AC (AC 1998: 7). Such a formulation has created an interpretational space, which might have been influenced by current politics; yet an ability to provide input for AC programmes has remained the sole criterion for admission as an observer (Molenaar 2012: 164).

The observer problem

A number of factors have brought the Arctic into the limelight since the early 2000s. Perhaps the most important among them was the Arctic Climate Impact Assessment (ACIA), which was released in 2004 and introduced a shift in the way people viewed the north. This shift greatly affected the world's perception of environmental change happening in the Arctic (Koivurova 2010). A collateral symbol to commence a new era within Arctic affairs was the expedition 'Arktika 2007', in which a submarine planted the Russian national flag on the seabed at the North Pole and instantly drew further attention from around the world to a rising geopolitical debate concerning the Arctic. A growing interest in these developments had somewhat highlighted the AC's inadequacy to deal with external pressure, especially in regard to participation in the AC. Since observer status within the AC is the only formal procedure for any continuous political involvement in Arctic cooperation structures, efforts have been made by various external actors to obtain this position. This is a clear sign that

institutional and procedural changes, in particular with respect to the AC, are indispensable (Graczyk 2012: 278).

Arctic states' reluctance to engage with external entities stems from a preoccupation with their own interests, as well as added anxiety surrounding the notion that powerful, global players could be able to jeopardise the current consensus on governance principles established by the Ilulissat declaration (2008; compare Hoel 2009; Stokke 2007, 2011). Another practical reason for blocking unwanted applications is the cautionary argument, that too large a number of entities could become a hindrance, if they were to outnumber member states and PPs. This argument was voiced by an anonymous Canadian diplomat at the Nuuk ministerial meeting, who said that 'the more members in the club, the harder it is to negotiate something', and was then bluntly followed up by his Russian counterpart, who added 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 into the "universal humankind heritage" on the model of the Antarctic' (*Kommersant* (Moscow) 14 May 2011).

Moreover, these concerns are supported by PPs who are anxious because of outsiders' lack of understanding regarding their culture and traditions, as shown, for instance, by the EU's ban on seal products (Wegge 2012: 20). This disquiet is further strengthened by an uncertainty surrounding their privileged position within the AC, and whether it might be retained if powers such as the EU and China were to gain a greater presence within AC proceedings (AAC 2007; ICC 2010). The IPOs have to be fully consulted by the Arctic states on any activity within the AC (AC 1998: 3), but they do not have any formal involvement in decision-making. Due to their unique status, however, they are able to influence Arctic governments' decisions, both internationally and domestically, and to avert admission of undesirable entities (Molenaar 2012: 164).

The formulation and wording of criteria also imply that external actors' (foreign) policy statements now play a significant role in the way Arctic states consider applications for observer status. Key issues invoking remarkable controversy and resentment within Arctic states have included calls for an 'Arctic treaty' and the legal status of certain sea areas within maritime routes. Legally binding instruments were promoted by the WWF (Koivurova and Molenaar 2009) and the European Parliament (2008), and were deemed the most appropriate method of dealing with challenges in the Arctic posed by climate change. In an articulate way, the five Arctic Ocean coastal states have rejected these proposals in the Ilulissat declaration of May 2008. Furthermore, players like China and the EU are suspected of having differing views in regards to the legal status of northern maritime passages, invoking concern in Russia and Canada (compare Franckx 1993: 133, note 426; Jakobson 2010: 6; Lasserre 2010; Huebert 2012).

From the non-Arctic players' standpoint, the current role of an observer is rather symbolic when compared to an entity's actual capabilities, aspirations or interests (Graczyk 2011: 614). Moreover, the role does not correspond precisely to the type of involvement in Arctic affairs that many of them envisage. Particular discontent with the status was voiced by France, who had been especially disappointed when it was refused the right to observe or participate in the intergovernmental negotiations within the Search and Rescue Task Force (Graczyk 2011: 612). A special inventory of concerns was later compiled by Michel Rocard (French Ambassador for the Polar Regions and a former prime minister of France) in a letter dated 8 May 2011 to the Danish Foreign Minister, Lene Espersen, who had been the current AC Chairperson at the time.

Major reproofs touched upon issues related to both the role of observers within the AC and the general manner of governing the region by the Arctic states. According to the French ambassador, a limited right to speak during AC meetings discourages debate and makes the AC 'a likable club for the mutual defence of Arctic States' common interests'. As a consequence, the forum is used to deter outside actors from engagement in Arctic international affairs. Further criticism centred on the Arctic states' beliefs that they were able to cope with the challenges in the Arctic region by themselves. The ambassador called for the creation of the 'Regional Fisheries Organization with competence for the Arctic Glacial Ocean' and 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). A remedy for this situation should be a contribution from 'all potential users of the Arctic' to 'the definition of rules governing such use and to the funding of the major infrastructures without which it will not be possible'. For these reasons, France considers using other forums for discussing its Arctic interests, a notion that has been supported by China (Larsen 2011).

Arctic states are aware of antipathetic attitudes towards the AC and feel the need to respond to the situation. Therefore they decided to conduct the first comprehensive performance review of observers' engagement within the AC and, if applicable, to make 'any amendments to the list of Observers, including to re-accredit Arctic Council Observers, or to withdraw the Observer status' (SAO 2009a: 36). A survey carried out under Danish chairmanship also intended to determine what member states' and PPs' stances were towards observers' roles within the AC. To facilitate this task a special matrix form was distributed to Arctic actors who were asked to define how they each perceived observers' roles in AC work. Results revealed a significant discrepancy between Arctic governments' and IPOs' positions (Graczyk 2011: 621), which incidentally could have influenced a newer approach to observer status.

Formal observer status after the Nuuk ministerial meeting

New observer rules announced in Nuuk have introduced several important innovations regarding formal criteria, admission and accreditation procedures, and have defined external actors' role. Most changes may be considered as supplements to the existing rules of procedure, clarifying the application of the current routine, but some may have had more far-reaching consequences. New regulations have been implemented as a result of SAO recommendations to ministers, contained in Annex 1 to the SAO report to ministers on the occasion of the seventh AC ministerial meeting. The eight Arctic ministers at the Nuuk meeting decided to 'adopt [the criteria] ... as set out in Annexes to the SAO Report, and ... to apply these criteria to evaluate pending applicants for observer status' (Arctic Council 2011). The TFII has been mandated to propose amendments to the rules of procedure in this regard, which may be done at the 2013 ministerial meeting in Kiruna. As consensual declarations are the only form of decision-making within the AC, it can be concluded, however, that the status of the Nuuk rules is identical to that of the rules of procedure, which were adopted in a corresponding way during the 1998 ministerial meeting.

Application procedure

Accordingly, the current application procedure is based on the Ottawa declaration, the AC rules of procedure and the 2011 SAO report to ministers, jointly with the Nuuk declaration. The status is still open to the following: non-Arctic states; global and regional intergovernmental and interparliamentary organisations; and non-governmental organisations (AC 1996b, 1998: 7; SAO 2011: 50). Entities that are interested in obtaining observer status are evaluated according to the 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 form submitted to the AC's chair country (host country) 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 Arctic Council' (AC 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'. This should be done at an appropriate time, as the host country must 'circulate, to all Arctic States and Permanent Participants, a list of entities ... that have applied or been nominated for observer status' no later than 120 days before the specific ministerial meeting they wish to attend (AC 1998: 11).

A verification routine for existing admitted observers has also been strengthened. Whilst previously, observers were required to 'submit to the Arctic Council up to date information about relevant activities' (AC 1998: 11), a novel rule now requires them to also report their activities

and contributions pertinent to AC work no later than 120 days before the specified ministerial meeting, if they intend to continue as observers to the AC (SAO 2011: 51). It is clear that actors accorded a 'permanent' status are now required to submit reports on their actions to the AC every second year (as ministerial meetings are held biennially), whereby their continued participation can be reassessed. Furthermore, 'every four years, from the date of being granted observer status, observers should state affirmatively their continued interest in observer status', although this will be a subject of review by Arctic states during the next ministerial meeting (SAO 2011: 51). This procedure indicates that AC member states have started to focus greater attention upon existing observer corps' actual performances within the region and the AC (see Molenaar 2012: 169).

There have been significant changes made regarding the processing of applications, when compared to earlier procedures concerned with *ad hoc* observer status. According to the rules of procedure, this form of participation may be granted for specific meetings (AC 1998: 7). This means that a qualified entity could apply for observer status to attend a meeting of particular interest while choosing not to participate in other meetings. However, it has been common practice in recent years that actors applying for 'permanent' status are granted *ad hoc* status instead, with the intention of repeating this procedure for every single meeting. New rules redefined this position, since the status can now only be granted to 'the present applicants for observer status according to the Rules of Procedure until the Ministers have decided upon their applications' and 'will no longer be applied otherwise'. This will be appropriately amended in the rules of procedure (SAO 2011: 51; compare Molenaar 2012: 169).

Observers' participation in Arctic Council work

Even a 'permanent' observer status may only last as long as there is consensus among Arctic member states, as well as mutual agreement that external entities have not engaged in activities that are in conflict with the Ottawa declaration (AC 1998: 7; Molenaar 2012: 167–168). This means that a state (or organisation) may be deprived of its observer status when one Arctic state withdraws its acceptance (Graczyk 2011: 603). Officially, observers' participation takes place on all levels of the AC's structure. Once the status is granted, according to the rules of procedure, they may be invited to observe ministerial and SAOs' meetings, AC subsidiary bodies' sessions (for example as experts within WGs), selected task forces and different projects (AC 1998: 7; SAO 2011: 51). At meetings, observers 'may make statements at the discretion of the Chair and submit relevant documents' (AC 1998: 7). This point has been clarified further within the Nuuk SAOs' report which states that, in accordance with the chair's discretion, an observer may engage in discussions 'after Arctic states and Permanent Participants'. Moreover, they can also

present written statements, submit relevant documents and provide views on issues being considered. Their role during ministerial meetings is limited to the submission of written statements (SAO 2011: 51).

An important improvement in regards to observers' involvement seems to have come about as a result of how higher-level political matters are dealt with, since the AC now convenes deputy ministers' meetings (DMMs) in response to a need for additional decision-making interaction to take place between ministerial meetings. For the first time in history, at the invitation of Norway, deputy ministers convened in Tromsø, in 2008. Officially, this form of deliberation was mandated by the Tromsø Declaration (2009) and commenced a year later in Copenhagen during the Danish Chairmanship. Both meetings were attended by deputy ministers and secretaries of state from France and Poland, as well as other senior officials from observer countries (Graczyk 2011: 601–602), which gave unprecedented opportunities for delivering political statements. Regardless of improved intercourse with observers, this procedure was not received favourably by all Arctic member states and was not followed up by the Swedish chairmanship. Observer deputy ministers were not invited to the May 2012 deputy ministers meeting in Stockholm, but were instead invited to participate in a separate meeting in November 2012. Previously, however, in November 2011 in Luleå, Sweden, the SAO chair, Gustaf Lind, had for the first time invited heads of observer delegations to an informal breakfast in order to have an open discussion on issues concerning the position of external actors. This new channel of communication between the chair and observers seems to have been developed further by the Swedes (for example, at the November 2012 SAO meeting in Haparanda), yet its effects and future standing within the AC remain unclear.

Another idea for increasing observers' participation and interaction with the AC's subsidiary bodies has been the symposium (or information day), which was first proposed in the SAO report to ministers at the Tromsø ministerial meeting of April 2009. The SAOs recommended the establishment of a biennial symposium 'for more general information exchange with both Working Groups and Observers' (SAO 2009a: 36; SAO 2009b). As the recommendation was adopted by ministers, the information day accompanied the deputy ministers meeting in Copenhagen in May 2010, thus giving observers an opportunity to highlight their contributions to the AC's work and related activities. The basic rationale of this form of involvement was to provide an additional opportunity for discussion and information exchange to those previously allowed within SAO meetings. Nonetheless, the Swedish chairmanship did not organise a symposium back-to-back with the DMM in Stockholm in May 2012. Reasons for this have not been officially stated within any available documents so far. Given the diversity of views among Arctic states and PPs in this regard (SAO 2009b: 12), it seems that the symposium did not meet expectations and

it was decided to suspend this formula. It is still unclear at this time whether this will change.

The important thing to note in connection to observer participation is that, despite not being mentioned in official documents, the Arctic states have introduced a special arrangement that is crucial to the functioning and effectiveness of the AC. Having closed meetings among heads of delegations, comprising Arctic governments' representatives and leaders of PPs, during ministerial and SAO conferences allows room for frank and comfortable discussion and ensures that there are no unnecessary disagreements in the presence of observers and other participants. This strategy of exclusion has proved to be a particularly efficient way of resolving contentious issues during meetings (compare Fenge 2012: 56). By the same token, the AC tends to increase its use of task forces that prevent observers and PPs from participating in their work. This form of convening is intended for specific initiatives, such as intergovernmental negotiations on treaties or highly specialised endeavours, which usually require unique expertise. The nature of a particular case determines the composition and mode of operation for each task force (SAO 2011: 49–50).

Observers' role within the Arctic Council

Observers' role within the AC has been frequently referred to as inadequately addressed (Bloom 1999; Haavisto 2001; Koivurova 2010). Different views from Arctic states and PPs have been a hindrance to defining this role. One definition, derived from the rules of procedure, suggests a broad approach that leaves any final decisions concerning observers' activities at the discretion of member states (Graczyk 2011: 605). The Nuuk rules, however, shed more light on the role of external entities. Whereas the rules of procedure provide a single line in regard to an observer's role when describing making statements and submitting relevant documents to meetings (Arctic Council 1998: 7), the new definition clarifies several other issues, such as the limits to which external entities are to be involved in AC work.

First, it is stipulated that decision-making at all levels within the AC is 'the exclusive right and responsibility of the eight Arctic States with the involvement of the Permanent Participants' (SAO 2011: 50). This can be perceived as a response to the joint statement made by state observers, delivered during the November 2008 SAO meeting in Kautokeino, Norway, which articulated how observers wished to contribute not only on matters of science but also with regard to decision-making (Observer states' joint statement 2008; SAO 2008). Furthermore, it is emphasised that 'the primary role of observers is to observe the work of the Arctic Council' (SAO 2011: 51). However, Arctic member states expect observers to continue making 'relevant contributions . . . , primarily at the level of Working Groups' (SAO 2011: 51). Finally, the new definition illuminates the prospect of proposing projects that observers may submit through the medium of an Arctic state or PP. Without a special

SAOs' decision, observers' financial contributions cannot, however, exceed the funding provided by the Arctic states (SAO 2011: 51).

Such a formulation implies, however, that funding provided by a single non-Arctic actor could be larger in total than an amount from any individual Arctic state. Nonetheless, constraining the financial input of observers seems to serve three functions. First, it limits the ability of external actors to influence AC work and decision-making with the economic argument. Investments in large-scale strategic projects could be easily turned into instruments used to exert pressure on Arctic states' decisions, for instance in relation to observers' role. Second, it dismisses the threat of external actors obtaining too dominant a role *vis-à-vis* PPs, which could happen if high stakes were to be negotiated between states in relation to financing of AC activities. Third, it will restrain any possible rise to prominence of observers (Molenaar 2012: 171). More generous financial contributions from external entities could tarnish the image of the Arctic states as good and sufficient stewards of the north (see Rayfuse 2008).

As Molenaar (2012: 171) argues, the upper limit of funding might be less important than the mandatory minimum level, given that it can be derived from the fifth criterion for admission. According to this requirement, candidates must prove that they 'have demonstrated . . . a financial ability to contribute' (SAO 2011: 50). Such a formulation suggests that applicants should engage financially before they are accorded observer status. Indeed, this imposes a mandatory economic endowment for observers which may lead to a cost-benefit reconsideration on the feasibility of holding the status without a clear definition of what is being given in return (Molenaar 2012: 171, 181).

Although rules underline how an observer is expected to focus on its involvement at the working level, there is a dearth of provisions determining the procedure and criteria for the incorporation of non-Arctic scientists within WGs and task forces. Nonetheless, such a mechanism may be developed within an 'Observer manual', which has been communicated within the Nuuk report to ministers. As the manual currently remains a work-in-progress, it is too early to determine whether or not it will suffice as a solution to the problem of modest observer participation within AC subsidiary bodies. Moreover, this instruction will be designed 'to guide the Council's subsidiary bodies in relation to meeting logistics and the roles played by observers' (SAO 2011: 51). Hence, it will not establish any uniform framework to facilitate observers' applications for participation in working groups' projects. On the other hand, it might help to work out a common practice to make this possible. It is most likely, however, that the final decision on admission and procedure will remain at the discretion of particular WGs. By the same token, rules pertaining to sponsoring new initiatives seem rather elusive, as they could easily be used by Arctic states to hinder proposed projects since

this imposes extra pressure upon observers when trying to convince them to provide appropriate funding.

Relative ambiguity remains in relation to the role of *ad hoc* observers. Whilst previous rules allowed observers to participate in a single meeting of interest and not have any connection to the AC, now the status can only be accorded to those willing to participate on a permanent basis, thus creating a sort of continuity. An interested external entity first has to apply for observer status and then, before every meeting it wishes to participate in, it must request *ad hoc* observer status for this specific session. According to official documents (Arctic Council 1998: 7; SAO 2011: 51), there is no practical difference between *ad hoc* and 'permanent' observers, as both have the same rights at any particular meeting (Graczyk 2011: 610). Nevertheless, asymmetries and distinctions between the two sub-categories have been identified in light of current regulation contained in the above-mentioned documents (Graczyk 2011: 610–611; Molenaar 2012: 164). It is not clear, however, if the changed definition of *ad hoc* observers implicates any further consequences for their role.

Here the question emerges of whether *ad hoc* observers can propose projects and participate in WGs' activities on a permanent basis, as there is no evidence of how the Arctic states will apply their rules concerning the status in this regard. A literal interpretation of documents suggests that *ad hoc* observers cannot submit project proposals since they are not formally considered to be observers. In other words, only those accepted as observers according to new regulations can propose projects. Likewise, they cannot contribute by engaging at an operational level, yet they can observe specific WGs' meetings. Moreover, *ad hoc* observers may provide AC subsidiary bodies with their expertise if invited to do so. For instance, at the March 2012 Protection of the Arctic Marine Environment (PAME) meeting in Stockholm, a representative of the European Maritime Safety Agency (EMSA) made a presentation on ship identification and tracking as a part of the Arctic Marine Shipping Assessment follow-up actions. Still left unresolved is the question raised by the ICC (ICC 2010) of whether *ad hoc* observers 'can be granted this status ad infinitum without going through any rigorous application procedure', because no rules determine or restrict time limits for the consideration of applications. As the observer question seems to have been suspended or at least protracted for two consecutive ministerial meetings (in Tromsø and Nuuk), the 2013 conference in Kiruna might prove to be a testing ground for gauging the real intentions of Arctic states.

Criteria for admission

Arguably, the most remarkable aspect of the new rules seems to be their criteria for admitting observers, as these might have wider ramifications for the AC's role in Arctic governance. Until the ministerial meeting in Nuuk, there were no official entries in any documents that determined a basis for decisions made in regard to applications.

This caused frequent concerns among both observers and PPs as the existing, overarching criterion that an applicant should be able to contribute to the AC's work was indefinable and to a large extent created an interpretational space which could be influenced by current affairs (Graczyk 2011: 604). Furthermore, given the significant discrepancy between Arctic states' and PPs' positions, as discovered from the 'observer survey', criteria had to reconcile many diverging interests. Therefore, the criteria can be divided into three categories: 1) confirming the existing ones, 2) underpinning the position of PPs, and 3) introducing a political benchmark, and thus assigning new roles to the AC.

As before, 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 Arctic Council', as well as a 'concrete interest and ability' to support its work (SAO 2011: 50). This criterion is further strengthened by reference to their input when 'bringing Arctic concerns to global decision-making bodies' in partnerships with both the Arctic member states and PPs (SAO 2011: 50). In general, this requirement is a detailed amplification of standards recorded within both the Ottawa declaration and the rules of procedure. Somewhat of a novelty is the emphasis on an applicant's efforts to convey the 'Arctic message' to international institutions (see Stokke 2011: 848).

A new feature, which has emerged as a result of an increase in PPs' political self-awareness, has been the introduction of indigenous cultural norms within the framework of the AC as a counter to any likely threat from powerful external entities to their unique position within the AC. Therefore, a successful applicant must respect 'the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants' (SAO 2011: 50). It comes as no surprise that these entries occur primarily as a result of restrictions by the EU on the marketing of seal products, which, despite several exemptions made by the EU including one for indigenous peoples, have caused a collapse in the global seal market (Carter 2009; Peter 2010). Another criterion that relates directly to PPs' concerns is that observers must prove their political willingness and concrete actions with regard to economic support for PPs and other Arctic indigenous peoples (SAO 2011: 50). As discussed above, it implies a mandatory financial input imposed on observer candidates.

The third group of criteria reflects differing views on jurisdictional and legal issues that are currently under debate in the Arctic. Given that Arctic states attach a great deal of attention to their sovereignty and leading roles in regional affairs, it becomes increasingly apparent that they decided to harmonise their actions in order to protect common interests against external actors. First of all, a candidate is supposed to 'recognise Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic' (SAO 2011: 50). Based on this statement, it seems

fair to conclude that the AC has established itself within the regional discourse on sovereignty. It also implies that these issues will need to be taken into consideration and decided upon within the AC, which is something that has never been discussed before. Since Arctic states do not fully agree on certain matters, it remains unclear how they will confront the highly contentious issue of sovereignty and assess the extent to which applicants fulfil this criterion. Furthermore, it has not yet been determined whether sovereignty issues related to the fulfilment of this criterion by non-Arctic actors will be debated during AC meetings.

Simultaneously, the applicants are all 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' (SAO 2011: 50). This item implies that Arctic states have formally and *de facto* incorporated the principles of the Ilulissat declaration of the five Arctic Ocean coastal states of May 2008, which was arguably issued in response to outside rather than regional factors. Such external factors included media-expert- and EU-driven debates on the possibility of an Arctic treaty or any other form of a legally binding basis for Arctic governance. To a certain extent, it is fair to say that the 'Arctic five' formula (Arctic Ocean coastal state meetings) has been refurbished to address challenges for Arctic states' sovereignty and jurisdiction arising from the south (Young 2011: xxiv). The emergence of this grouping of Arctic players has been recognised as detrimental to circumpolar cooperation, not only by excluded Arctic nations and PPs, but also by the United States government (Graczyk 2012: 280). The inclusion of key principles from the Ilulissat declaration within AC documents may suggest, therefore, that Arctic states have chosen to move these discussions into the AC's forum and attempted to bridge the gap between the Arctic five and the Arctic eight in political terms (Young 2011: xxiv).

According to AC member states, the Nuuk rules will 'strengthen the Arctic Council and solve the observer question while maintaining the key role of the Arctic States and Permanent Participants' (SAO 2011: 3). Works undertaken in regard to strengthening the AC institutionally are carried out by the TFII, which is mandated to recommend appropriate procedures for the implementation of new regulations and the development of consequential amendments to the rules of procedure (SAO 2011: 3). As reiterated by the AC deputy ministers at their meeting in Stockholm in May 2012, the decision on observer applications, based on the criteria described above and 'a close dialogue between applicants and the Member States', will be taken at the next ministerial meeting in Kiruna, in May 2013 (AC 2012).

Conclusions

The new rules on admissions criteria and observers' role have unquestionably led to a richer understanding of the

AC's rationale when assessing applications. They have also helped to clarify ambiguities in the interpretation and application of the rules of procedure and the Ottawa declaration regulating observers' participation in AC work. It is not a secret that existing observers, as well as candidates to the status, are being evaluated on the basis that they are not seen as a challenge to Arctic states' and PPs' regional interests. In these terms, the Nuuk observer rules have elucidated upon political requirements that must be met by applicants. Since the criteria have a highly political profile, they also have some important implications for the role of the AC in regional sovereignty and legal discourses, which the AC has never engaged in before. It thus seems obvious that the Nuuk observer rules will elevate the status of the AC in the broader setting of circumpolar cooperation, as discussed above.

The current observer status gives an opportunity to follow the vast majority of the AC's work and enables participation in projects and activities undertaken by its subsidiary bodies. Nonetheless, it is important to realise that Arctic states have left themselves notable discretion in determining the activity of observers, a stance that is fully in line with international law. Observers' fairly general engagement in AC activities may be welcomed or to some extent restricted, depending on the nature of various projects, enterprises or policies administered by Arctic states. To some extent, Arctic states' anxiety over observers' engagement may be perceived as justified with regard to their respective national interests as they seek to maintain control over the situation in the AC and within the region in general. The admission of more actors could dilute or hinder it considerably. This scenario also gives rise to the impression that an intensified presence in the region, especially from non-Arctic states, could make it difficult to govern circumpolar collaboration or even impede national sovereignty. Furthermore, a larger and robust observer corps may discourage or incite reluctance from Arctic states, even though observer status is limited and entirely dependent on a consensus among member states.

The paramount emphasis in defining observers' roles could be grounded in their ability to contribute at the working level, which would eventually reveal their intentions and interests in regard to observing the AC. Bearing in mind many observers' statements, it is difficult to assess whether they will be satisfied with enhanced rights guaranteed by the rules of procedure. Suggestions have already appeared which indicate that the existing framework may not be sufficient anymore. Financial support and major economic interests in the Arctic (handled in bilateral relations with Arctic states) may become the main argument made by external actors, such as the EU and China, when compared to the modest financing provided by member states. Therefore, it is critical to develop an appropriate and constructive mechanism for introducing non-Arctic actors into WG activities, and to commence an unequivocal cooperation between them and the AC.

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