Note

Procedural reform at the Arctic Council: the amended 2015 Observer Manual

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ABSTRACT. This note studies the addendum to the Arctic Council (AC)'s 2013 Observer Manual adopted at the Senior Arctic Officials (SAO) meeting in Anchorage, Alaska, in October 2015. The amendment means another essential step to systematise further and improve the council's working relations with currently 32 entities that hold observer status in the forum. Compared to the initial manual that sketched out the role observers should play in the council's subsidiary bodies, the latest revisions delineate a framework for enhancing observer participation and commitment in working group, task force and expert group meetings. After reviewing the content and practical implications of the addendum in the context of larger reform efforts to adapt the council to the age of a global(ising) Arctic, the article further discusses a number of signals the Anchorage decision sends to observers. These comprise the council's willingness and ability to quick, unified and purposeful action towards institutional adaptation and procedural reform as considered necessary to address organisational deficiencies, strengthened top-down steering of the reform processes by SAOs as related to the work conducted in subsidiary bodies and the overall functioning of the council, and higher expectations on observers to contribute to the AC system and deliver on the new provisions.

Introduction

In its 20th year of existence, the Arctic Council (AC) is at a turning point. Confronted with manifold complex and interlinked environmental, human-societal, economic and political challenges that partly have their origin, partly their consequences far beyond the Arctic region, and driven by the desire to raise international awareness for Arctic concerns and find sustainable solutions for regional developments on many governance levels, the council is on the verge of becoming more of a global arena than to preserve a pure regional character for Arctic governance. The organisation has opened up to ever more non-Arctic actors and voices in past years, and at the same time seeks to influence political authorities in other states, regional and international organisations and multilateral treaty negotiations with relevance for Arctic matters. The AC takes centre stage in this regional-global nexus, not only as the primary highlevel venue for intergovernmental diplomacy and deliberation on Arctic issues but also as an ideal gateway for outside actors to gain formal recognition as Arctic stakeholders through the position of observers, whose rights and duties have been laid down in the council's updated Rules of Procedure (RoP) (Arctic Council 2013a) and the complementing Observer Manual from 2013 (Arctic Council 2013b).

Widely unnoticed by public and academic discourse, the Senior Arctic Officials (SAOs) of the eight AC member states have at their meeting in Anchorage in October 2015 for the first time adopted an addendum (Arctic Council 2015) to the initial Observer Manual with the aim to enhance integration of the plethora of observers in the AC system, particularly with regard to its subsidiary bodies consisting of Working Groups (WGs), Task Forces (TFs) and Expert Groups (EGs). The amendment to the Observer Manual is only one piece in the puzzle of making the council structures fit for the challenges of 21st century Arctic governance that will require more substantive and concerted action from a global community and genuine multilateral commitment to international scientific and political cooperation in the region's best interest, also in the AC. To this end, the addendum specifies the possibilities and technical requirements for observers to step up their efforts at the forum, setting positive incentives for integrating non-Arctic entities into its structures and processes.

On the downside, the apparent necessity for revisions also points to existent shortcomings and misunderstandings in the communication and working relations between the Arctic states and observers so far that have been insufficiently addressed by previous procedural reforms. The Anchorage decision is a course correction in this respect that clarifies old and introduces new provisions, but also carries weight for the future relationship of the AC with non-Arctic actors. This Note contends that the addendum is more than a minor bureaucratic act, but part of a larger reform process at the council that gradually strengthens top-down steering mechanisms of the work conducted in subsidiary bodies, and to that end further empowers the SAOs as guardians of Arctic state interests. The amendment also introduces a wider set of criteria against which observers can be assessed, and hence may turn out to be a decisive component in the multi-annual review process of observer performances currently conducted by the AC with first results expected in 2017. Finally, the amended manual testifies the willingness and ability of a consensus-based organisation to flexible and effective institutional adaptation as new internal challenges for council proceedings emerge, with potentially more revisions to come.

The article will put the recent addendum to the 2013 Observer Manual in its historical and political context and provide an assessment of its development, content, practical implications and the signals that observers are well advised to understand and respond to.

Uniform rules, uniform practices, uniform behaviour?

As a corollary of its own work to provide comprehensive assessment reports and policy guidelines on the dramatic environmental and socio-economic changes with which the Arctic and its people are confronted, the AC is increasingly expected itself to develop effective responses to the regional governance challenges it regularly identifies and communicates to its member states and the wider global community. Some scholars have argued in favour of turning the AC into a fully-fledged international organisation (IO) equipped with sufficient supranational authority to impose Arctic-wide regulations, implement them and monitor compliance of the eight Arctic states (Nord 2016; Ramos 2013). Others have rebuffed this step with the argument that the AC would lose much of its adaptiveness to partly unpredictable regional transformations, or that an IO established by a legally-binding treaty negotiated by such a heterogeneous group as the eight Arctic states, if achievable at all, would have only very limited authority and hence forfeit much of its current mandate (Young forthcoming; Hasanat 2013).

Unlikely as a metamorphosis of the council into an international organisation is in the foreseeable future, not least due to the resistance of several Arctic countries like the United States that already vetoed such plans already at the establishment of the AC in 1996, the current U.S. AC chairmanship (2015-2017) has nevertheless taken efforts to initiate new and continue old procedural reforms on a large scale. In addition to its ambitious political programme around the three focus areas of 'improving economic and living conditions' for Arctic communities, promoting 'Arctic Ocean safety, security and stewardship', and 'addressing the impacts of climate change' (United States 2015: 2), the U.S. chairmanship has emphatically made review and reform of the existing AC workings a top priority with the aim to design international cooperation in the forum more effectively and efficiently. The official chairmanship programme notes that '[a]s the AC reaches its twentieth anniversary, it is vitally important that the council strengthen its cooperation and engagement with accredited observers and outside entities and evaluate its internal structure.' (original emphasis, United States 2015: 1).

For a fairly long time, the working relationship between the AC and especially non-Arctic states has reached an impasse. The Arctic states and indigenous Permanent Participants (PPs) struggled to find common ground on the role observers are supposed to play in the forum, except for the mutual consent that political and decision-making authority is reserved for the eight Arctic states under close consultation with PPs and that observers' rights thus have to be severely restricted. And observers, above all non-Arctic states, were left puzzled concerning how to engage in the council under these circumstances, sought more guidance and ultimately claimed more participatory rights. For almost all actors involved, it has been a no-win situation that was probably even exacerbated by reform efforts in the past, making the more recent addendum to the Observer Manual a logical and necessary next step to improve relations of the Arctic community with external actors.

When the AC started seriously to reconsider its practises on observers under the Danish chairmanship (2009-2011) in light of increasing salience of Arctic affairs in world politics and the rising numbers of interested actors, the organisation had in a first step imposed a quasi-moratorium on further enlargement until Arctic states and PPs would have discussed more general questions about the quantity and actual role intended for observers (Graczyk and Koivurova 2014: 228). Out of these discussions emerged a number of new regulations first agreed upon in 2011 by Arctic ministers in Nuuk and later added as Annex 2 to the council's RoP and further supplemented by an Observer Manual adopted at the Kiruna ministerial meeting in May 2013. Yet, the revised RoP mainly codify specific principles for accreditation and review of observers, irrespective of whether they are state or non-state actors, and make the acceptance of applications conditional on a number of factors, including recognition of Arctic states' jurisdictional and sovereign rights, the legal force of the Law of the Sea and respect for Arctic indigenous peoples, their values, interests and concerns (Arctic Council 2013a: Annex 2, Section 6). The Observer Manual, by contrast, outlines uniform rules for all accredited observers that shall 'ensure that all working groups adopt similar approaches in their logistics and in the role played by observers' (Fenge and Funston 2015: 18).

With regard to the practice of integrating them in council proceedings in the post-admission period, however, there was a 'dearth of provisions determining the procedure and criteria for the incorporation of non-Arctic scientists within WGs and task forces' (Graczyk and Koivurova 2014: 232) which *de facto* checkmated the ever larger group of non-Arctic actors and limited their role in the forum to little more than that of quiet onlookers. The new framework made unambiguously clear that the 'primary role of Observers is to *observe* the work of the AC' (own emphasis, Arctic Council 2013a: 38), and that the best they can hope for is to disseminate relevant documents and make oral or written statements in subsidiary bodies after Arctic states and PPs and only at the discretion of the chair.

Political debates about observers' standing in the Council have intensified since and were fuelled by the failure of the Arctic states to implement consistently the new observer rules at the 2013 Kiruna ministerial meeting. The Arctic states decided to defer the applications for observer status from seven non-governmental (NGOs) and intergovernmental organisations (IGOs) and approved all applications submitted by non-Arctic states, therewith conveying the impression that the new rules do precisely not apply uniformly to all interested actors, but that state applications are favoured over non-state applications (Steinberg and Dodds 2015). Whether the AC was more hesitant to repeat the Kiruna policy or simply unwilling or unable to cope with the sheer seize of new applications at the following 2015 ministerial meeting in Iqaluit, the Arctic states this time deferred decisions on all 17 state and non-state applications.

For those 32 states, NGOs, IGOs and inter-parliamentary organisations that have been admitted as observers to the council in the past twenty years, the 2015 addendum takes the necessary step towards clarifying what the Arctic states expect them to do once they have been accepted as observers. Since it is in the competence of the SAOs to amend the Observer Manual at any time by consensus (Arctic Council 2013b: Section 9), the U.S. chairmanship organised a special session on Observer engagement scheduled on day one of the first SAO plenary meeting during its term in Anchorage from 20 to 22 October 2015. According to the meeting agenda, the session should give SAOs time for a general discussion on the role of observers and to consider ways and means of 'making the participation of Observers in the subsidiary bodies more uniform and exploring additional opportunities for Observers to contribute to the work of the WGs, TFs, and EGs' (SAO 2015a). The result was a three-page addendum that was adopted later on.

The goal of more uniformity in observer performances needs further consideration here. While the call may sound plausible in the light of partially inconsistent practices towards observer participation across WGs and the large variation in their attendance and contributions, to be described in many cases as modest at best, it may actually impose certain expectations that single observers are either not willing or, in many cases, not capable to fulfil. The council's quite unique non-discrimination policy on observers, which treats non-Arctic states, NGOs and IGOs as equals, is problematic if it leads to the conviction that uniform standards could or should result in uniform behaviour. In due consideration of observers' different approaches, interests, agendas, strategies, expertise and resources with regard to Arctic affairs, this expectation is likely to remain wishful thinking in the foreseeable future and would wrong the important contributions of smaller and less powerful observers.

The 2015 addendum to the Observer Manual

The Anchorage decision nevertheless means a further firming of the council's stance on observers and provides them with more guidance on how to actively participate in the council system, while SAOs have at the same time strengthened existing control mechanisms that will allow them to monitor closely the activities of non-Arctic actors. With the amended Observer Manual in place, observers are expected to leave their comfort zone of a passive audience sitting at the periphery (which in terms of seating arrangements they are still required to do) and step up their efforts at the AC. Their participation in council meetings is no end in itself, but shall bring about 'relevant and meaningful contributions to the work of the AC' (Arctic Council 2015: 11). What those relevant and meaningful contributions could possibly be and how they can be facilitated, is further specified in three subsections covering the issues of 'Intersessional Communication', 'Meeting Participation' and 'Project Contributions' (Arctic Council 2015: 11-13). The first two sections are meant to stimulate and maintain a higher level of correspondence between AC bodies and observers at and between subsidiary body meetings, while the one on 'Project Contributions' directly addresses observers and seeks to encourage greater involvement in the AC system.

The first section, 'Intersessional Communication', recapitulates the formal requirements regarding time and information management prior to subsidiary body meetings as they were already outlined in the RoP and the 2013 version of the Observer Manual. Obviously, these provisions are not directed at observers, but rather at the chairs of subsidiary bodies who are reminded to send the meeting invitation and all meeting documents, not just the final agenda as was stated in section 7.2 of the RoP, to observers no later than 30 days before a meeting, except for those documents 'restricted to Arctic States and Permanent Participants' (Arctic Council 2015: 11). Also explicitly mentioned is the need to better inform observers of all continuing and planned projects in subsidiary bodies and to provide contact details of each project leader, so that observers can better prepare for the meeting and more easily identify and communicate potential contributions to individual projects early on.

In very much the same manner, also the provisions for 'Meeting Participation' are par for par taken over from Article 38 of the RoP and section 7.4 of the 2013 Observer Manual and repeat observers' possibilities to speak out and share relevant information at subsidiary body meetings. Substantially different, though, is the wording with regard to the chair's competence. In contrast to what is determined in the RoP, exploiting these possibilities shall not be subject to the discretion of the particular chair anymore, but instead all chairs are expressly instructed to 'make every effort to provide interested Observers with an opportunity' to exercise their participatory rights (Arctic Council 2015: 12). This amendment aims to reduce uncertainty as to the different practices with regard to the integration of observers in subsidiary body meetings and shall assure that external stakeholders do not remain unheard at council meetings for time reasons or to avoid any political controversy, that may have discouraged their participation in the past. Rather, observers can now generally expect to be part of the discussions

and make use of the rights they are entitled to by the RoP and Observer Manual. What precisely those participatory rights are, is then listed under the section 'Project Contributions', and include the following:

- 'Project proposals, through an Arctic State or a Permanent Participant in a collaborative manner;
- Views expressed on projects under development, including Working Group work plans;
- In-kind contributions to existing and developing projects, such as expert involvement and support;
- Financial contributions to existing and developing projects, such as direct project funding (not to exceed the financing from Arctic States, unless otherwise decided by the Senior Arctic Officials) in a transparent manner;
- [And] hosting of project-specific, expert-level workshops or gatherings, as approved by the SAOs on a case-by-case basis'. (Arctic Council 2015: 13)

Two of the mechanisms, proposing projects and contributing financially, are to be found already in Article 38 of the RoP and in section 7.5 of the Observer Manual. Yet, the council further clarifies that observers are invited to comment on projects already in the planning stage and make also non-financial contributions to those and ongoing projects, for example through the provision of services or participation by scientist and expert delegations. If observers should offer to organise and host project-related gatherings, they can do so given the prior consent of the SAOs. It is an unwritten, although not uncontested, rule that Working Group (WG) and Task Force (TF) meetings take place on the territories of the eight Arctic states, and apparently these meetings are excluded from this clause, even though, or in fact because, some observer states have in the past invited subsidiary bodies to host WG and TF meetings in their country.

There are further two footnotes added to the section that detail required information to be sent to the SAOs if any subsidiary body wishes to accept the offer from observers to host a meeting or to receive funding larger than those of the eight Arctic states. Written requests in both cases have to be submitted to the chair of the SAOs by the subsidiary body, not the observer, and must be supported by at least one SAO or PP. In addition, the request for hosting an AC project meeting or workshop must contain information about what kind of meeting the observer wishes to host and why it has an interest to do so. The justification letter for proposed financial contributions from observers to exceed those of the Arctic states, on the other hand, must include a short description of the project concerned, the pledges from both AC member states and observers, as well as an explanation for why SAOs should accept the request.

Paradoxically, the addendum reiterates the original restrictions on observers' financial contributions that were once introduced to limit their influence on the work of the council (Graczyk and Koivurova 2014: 232), whereas the footnote opens the door for observers to be granted an exception to that norm. On the one hand, this 'open invitation' to more external funding is likely the result of two related factors. First, there is still no permanent fund for Council projects and hence many initiatives continue to depend on voluntary contributions first and foremost from Arctic states made either directly or through the Council's Project Support Instrument (PSI) implemented as of December 2014 and administrated by the Nordic Environment Finance Corporation (NEFCO; itself an observer to the Council since 2004); and second, as the Council and its WGs have broadened their spheres of activity and range of topics they address and as accordingly the number of project proposals have also increased over the years, it has become increasingly difficult to acquire sufficient funding from Arctic states for every new project (Fenge and Funston 2015: 17). On the other hand, the detailed application procedure and necessary support by an SAO or PP allows the SAOs to maintain control over which observer wishes to fund which project and weigh the pros and cons of the proposed measures more carefully.

The AC at 20 years

The adoption of this concise and rather technical addendum is way more than just a bureaucratic act to specify the nuts and bolts of observer involvement in AC subsidiary bodies. Observers are encouraged to shoulder a larger share of the financial and organisational burden of running AC projects, but may, hence, also be able to exert more influence. Beyond the practical implications of the revisions, the Anchorage decision also carries some important signals to all accredited observers and those that might want to join in the future, namely i) the council's ability and willingness to quick, unified and purposeful action towards institutional adaptation and procedural reform as considered necessary to address organisational deficiencies, ii) intensified top-down steering of the reform processes by SAOs as related to the work conducted in subsidiary bodies and the overall functioning of the council; and iii) higher expectations on observers to do their part and deliver on the new provisions.

With the 2013 Observer Manual, the AC introduced a flexible complementary mechanism to the RoP to manage relations with a large variety of Arctic stakeholders. Though subordinated to the RoP and with less binding force, it is a powerful tool to steer observer relations and provide guidance to subsidiary bodies. It is through this advisory character that the manual gains in importance as it allows for more precise terms that are, if circumstances so require, much easier to change by consensus than the more authoritative and comprehensive RoP. The 2015 addendum is a case in point and should be seen as a direct response to address evident practical problems in the council's routine business. Concerning these efforts to institutional and procedural adaptation, however, the amended Observer Manual should not be seen in isolation, but as one, albeit central, building block of a larger reform package. The U.S. Chairmanship has together with the other Arctic states initiated or advanced extensive reviews that affect almost all spheres, processes and bodies of the AC and, among others, comprise:

- The development of a tool to track systematically and compare progress of WG projects (so called Amarok: the AC Tracker [AACT]) launched at the Iqaluit ministerial meeting in April 2015 and which includes a capacity check-list to ensure that due regard is given to Permanent Participants (PPs) and their Traditional and Local Knowledge (TLK) when initiating new projects;
- Discussions about how to increase the visibility of policyrelevant WG deliverables in a timely manner, for example through intensified publication in peer-reviewed journals;
- Better information-sharing and coordination of Working Group meetings and the pool of experts invited to them, possibly leading to more joint meetings of several WGs at a time and on specific issues and projects (one such joint

meeting involving the Arctic Contaminants Action Program [ACAP], the Arctic Monitoring and Assessment [AMAP], the Conservation of Arctic Flora and Fauna [CAFF] and the Protection of the Arctic Marine Environment [PAME] took place in September 2015 in Tromsø, Norway);

- An assessment of the form and substance of agreements and partnerships of the six WGs with external bodies compared to other intergovernmental organisations such as the Barents Euro-AC (BEAC), the Council of the Baltic Sea States (CBSS), the North East Atlantic Fisheries Commission (NEAFC) and the International Council for the Exploration of the Sea (ICES), with the aim to formulate guidelines for how to develop and organise these relations;
- A review of the efforts and effectiveness of national implementation of AC declarations and subsidiary body recommendations;
- And a multilateral audit conducted by Danish, Norwegian, U.S., Russian and Swedish Supreme Audit Institutions (SAIs) between 2012 and 2015 of their national authorities' collaboration with the AC. (SAO 2015b)

Common to all of these reform efforts is a creeping tendency towards more and more top-down steering of council activities combined with an increasing regulation and formalisation of institutional practises through guidelines and standard operating procedures set by SAOs. In many of these developments, the SAOs have been strengthened and empowered (themselves) to monitor, with the assistance of the AC Secretariat, the review processes and implementation of their results in accordance with the broader policy guidelines sketched out by Arctic ministers. The odds are that subsidiary bodies may lose more and more of their independence and autonomy and become a playing field for politicised contentions as noted by Fenge and Funston in their review report of the AC's structures and effectiveness:

'Indeed there is some concern in the Arctic science community that its freedom of action has been curtailed by increased political oversight. There will be an ongoing challenge to find the appropriate balance in the sciencepolicy interface. This challenge may increase as scientists from Asian observer states increase their role in working groups'. (Fenge and Funston 2015: 18)

The formalisation of many long-established, also informal, practices has fundamentally affected observers' involvement in council proceedings, not always for the better of either the external actors or the AC itself. With the 2013 Observer Manual, the council has virtually eliminated the possibility for interested parties without accredited observer status to attend council meetings on an *ad hoc* basis, as well as it has ruled out the occasionally used practise by observers to 'assign or designate another entity or organisation to represent them at a meeting' (Arctic Council 2013b: Section 7.3). Without those flexible mechanisms in place, the council's policy to restrict further enlargement may actually backfire if non-Arctic states and other entities that previously had only sporadic interest in the work of the council may now decide to apply for accredited observer status and thus put additional pressure on the organisation, as was the case at the 2015 ministerial meeting in Iqaluit when 17 actors submitted an application.

For those already accredited, the amended Observer Manual introduce some additional hurdles in the review process of observer activities started in 2013 and likely to bring first results at the next Ministerial Meeting in May 2017. SAOs decided

to limit the number of reviews during the U.S. chairmanship to those observers admitted in 1996 and 1998 (SAO 2015b: 24). Out of the pool of currently 32 observers, these still comprise twelve actors evenly distributed across the three observer categories, and include Germany, the Netherlands, Poland and the United Kingdom (non-Arctic states), the Nordic Council of Ministers, the Standing Committee of Parliamentarians of the Arctic Region, the United Nations Environment Programme and the United Nations Economic Commission for Europe (IGOs and inter-parliamentary organisations) and the Northern Forum, the International Arctic Science Committee, the World Wide Fund for Nature and the International Union for Circumpolar Health (NGOs). All other observers to the AC will be reviewed under the next Chairmanship held by Finland from 2017 until 2019, and after that 'under each Chairmanship roughly half of the Observers will be reviewed' (SAO 2015b: 24).

This procedure may produce limited insights for a comparative assessment of accredited observers, and potentially even contravenes the council's ambition to encourage more uniform behaviour among external actors. Nevertheless, it is now the observers' turn to prove they have a real interest and the capabilities to more actively contribute to the work of the council. In fact, observers should be warned to review and adapt their contributions as ever more non-Arctic actors show an interest in the region and knock at the council's door. With further enlargement being unlikely without any improvement in the quality of commitment of the existing club of observers, it cannot be ruled out that at some point of the review process, individual observers will find their status suspended for the first time in the Council's history.

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Conflicts of interest

None

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