

# Chairman's Conclusions

by Georg Witschel\*

I have been asked to provide for conclusions, based on material presented during the conference and the discussions in the plenary and the fora meetings. These conclusions represent my personal perception of the results of the conference. The purpose of the conference was not to adopt common positions but to engage in discussions and allow for the exchange of views. In order to assist those who might want to follow up on the work done, I have tried to highlight matters which have emerged during the conference and are worth addressing in future by Arctic Ocean coastal States, Arctic States, regional and international governmental and non-governmental organizations, and communities. It is my intent to present a summary that can be used as a practical working tool.

The objective of the conference entitled “New Chances and New Responsibilities in the Arctic Region” was to find out how cooperation between the five Arctic Ocean coastal States and third States, organizations and communities could look like *in concreto*. The Ilulissat Declaration of May 2008 refers in several paragraphs to the necessity of “cooperation”, without, however, describing concrete forms and ways of cooperation. I believe it is important to list the discussion results and conclusion elements identified and leave it not only to Arctic coastal States but also to others concerned to decide who should do what.

At a first glance, the list below may appear extensive, raising matters of greater significance as well as issues of minor importance. It is not my task as a chairman, however, to set priorities. That should be left to the many actors and stakeholders in the Arctic.

With these provisos, the following is the report of my conclusions.

## A. Opening Session: Setting the Scene

Mr Günter G l o s e r, Minister of State for Europe, German Federal Foreign Office, Berlin, offered the welcome address: “The Arctic: A Strategic Challenge for the 21<sup>st</sup> Century”, followed by Dr Joe B o r g, Commissioner, European Union, with his keynote address “Opportunities and Responsibilities in the Arctic Region: the European Union’s Perspective”. Mr Aq q a l u k L y n g e, Vice Chair Inuit Circumpolar Council (ICC) and President of ICC-Greenland presented an Inuit’s view. Mr Arved F u c h s, Polar Explorer, described the standpoint of an explorer.

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## B. Plenary

The plenary on day 1 was highlighted by three kick-off presentations: Prof Dr Rüdiger Wolfrum, Judge at the International Tribunal for the Law of the Sea, Hamburg, addressed the “Arctic in the Context of International Law”. Ms Kirsten Ullbæk Selvig, Director General, Ministry of Fisheries and Coastal Affairs, Oslo, talked about “Arctic in Change: New Prospects for Resource Exploitation and Maritime Traffic” and Dr Erling Olsen, Former Speaker of the Danish Parliament; Board of Governors of the University of the Arctic, Copenhagen, gave a paper on “UArctic—A Most Welcome Tool”.

### Chairman’s Conclusion

Having followed the presentations during the opening session and the plenary which included questions and answers, my conclusions are the following:

The opening discussion revealed that developments in the Arctic entail both new chances and responsibilities, for Arctic coastal States and communities as well as for others.

To realize these chances and to shoulder these responsibilities, a number of questions were raised as outlined by the keynote addresses and the kick-off presentations in the plenary. They covered a broad range of issues ranging from resource management to maritime safety:

- How can we establish an integrated management approach for fishery in the Arctic region?
- How can we build partnerships with indigenous communities in the Arctic to meet shared responsibilities?
- What are the outer limits of the continental shelves in the Arctic Ocean?
- How can international knowledge best be gathered e.g. for ice-monitoring, navigation, meteorological data collection and satellite data exchange?
- What are the best ways to achieve internationally agreed solutions on the appropriate framework for maritime safety?
- How can freedom of research be guaranteed?

The keynote speeches also revealed that there are numerous entry points for policy responses—but also that “business as usual” in Arctic governance is not the solution:

- The first priority in protecting the Arctic heritage is the implementation of existing international agreements, the respect for and support of decisions;
- Recommendations and work of relevant treaty bodies, and the support for on-going activities such as:
  - The Commission on the Limits of the Continental Shelf;
  - The review of IMO Arctic Guidelines which need to be updated and made more binding.

Further priorities might be:

- The consideration of an implementing agreement to UNCLOS to address urgent aspects of environmental protection.
- The strengthening and expanding of existing mechanisms such as those associated with the Arctic Council (including a stronger involvement of third parties such as the EU).

## C. The Fora

### Forum I: Sustainable Development in the Arctic: Challenges for Environment, Societies and Research

The enormous sea and land areas in the Arctic region are vital and vulnerable components of the earth's environment and climate system. Due to the melting of ice, access to Arctic living and non-living resources as well as to new navigation routes will gradually increase. The Arctic will be increasingly at risk from the combined effects of climate change and human activities. Indigenous populations are particularly susceptible to the dire consequences of climate change which affects their fundamental economic and social livelihoods. To formulate appropriate policy responses, long-term assessments of state and development of the Arctic environment are needed. Hence, international research collaboration and open access to information are key pillars for sustainable Arctic governance.

Against this backdrop, this forum was asked to identify the main threats to sustainable development in the Arctic region and the areas of greatest need for policy responses. It was entrusted to ask how existing international institutional arrangements and organizations (e.g. International Maritime Organization, Arctic Council) could address these challenges—and if they needed to develop further their policies and regulatory instruments in the light of a changing climate (e.g. with respect to mandatory measures instead of/or guidelines). And: how can the international community (e.g. the United Nations, European Union, third parties) effectively contribute to addressing these policy challenges in the Arctic region?

Under the moderation of Dr Erling Olsen, Dr Rasmus Ole Rasmussen, Senior Research Associate, Nordic Center for Spatial Development, Stockholm, Mr Brooks B. Yeager, Vice President Clean Air – Cool Planet and Former Deputy Assistant Secretary of State for Environment and Development, Washington, D.C., and Dr Reinhard Priebe, European Commission, Director “Atlantic, Outermost Regions and Arctic” in the Directorate General for Maritime Affairs and Fisheries, Brussels, delivered presentations on day 1. They were followed by Prof Dr Paula Kankaanpää, Arctic Center, University of Lapland, Dr Hanne K. Petersen, Policy Adviser, Danish Agency for Science, Technology and Innovation,

Copenhagen, and Prof Dr Karin Lochte, President, Alfred Wegener Institute for Polar and Marine Research, Bremerhaven, on day 2.

### Chairman's Conclusion

Having followed part of the discussions and having heard the report of the moderator of forum I, my conclusions are the following:

Forum participants stressed that

- climate change presents a major threat to the local populations since permafrost is melting quickly: as the threats of climate change increase, the Inuits struggle to maintain their traditional livelihood;
- this results also in an increasing migration of young people, especially educated women, and poses a threat to sustaining the population in the local communities;
- increased shipping, oil and gas exploration/exploitation, tourism and commercial fishing strain the natural resource systems and local communities.

Forum participants pointed out that

- there is a certain degree of skepticism concerning the current capacities of existing institutions such as the Arctic Council and the reach of UNCLOS to address the challenges in the Arctic;
- UNCLOS, while providing a comprehensive framework also needs to recognize the Arctic people in the decision-making process. In addition, there is a need for an increased Inuit presence in both UNCLOS and in international and regional resource management, i.e. ICES, NAFO, NEAF, etc.;
- the Arctic Council's strength lies in acting as a forum that can mobilize technical activities and set agendas. But it is not able to manage comprehensive governance structures;
- the Arctic Sea as a single unit is too big to be managed by the Arctic Council only.

However, the Council can coordinate approaches that manage Arctic affairs at the national level with annual reviews to help the Council set an ambitious agenda;

- the sustainable development working group of the Arctic Council should address the issue of Environmental Impact Assessment, which would be a crucial tool in reconciling the "chances" of new economic opportunities in the Arctic and the related responsibilities towards people and environment.

Forum participants highlighted

- different sectors which have an impact on the Arctic, such as oil, gas, shipping and tourism and which need to be integrated into an ecosystem-based management approach;

- that a more strategic, integrated approach to sustaining the environment is needed. Reference was made to the example of a common “sea highway” between Norway and Russia;
- that Norway has played a leadership role in the design of a marine plan.

Forum participants stressed that

- there are different levels of responsibility that the international community can assume;
- given the economic implications of the developments in the Arctic region, e.g. on the shipping and fishing industry in the EU or in China, stakeholders with important interests should not be excluded;
- the international community should provide institutional solutions;
- the creation of a global treaty for the Arctic is not a feasible option;
- the International Maritime Organization’s role should be improved within Arctic governance;
- research cooperation in the Arctic is a major issue to tackle. The International Polar Year (IPY) was too limited in terms of time. There is a need for recognizing a legacy after the IPY—a kind of “IPY plus”;
- Arctic and non-Arctic States collaborate in particular research projects but the funding differs significantly from country to country. These funding efforts need harmonization;
- an issue that will come up in the future is to better link the private and public sector;
- more education at the ground level stimulates the next generation of scientists. Such cooperation should also increase the capacity of Arctic residents to support and engage in research activities themselves.

With respect to the role of the EU, forum participants stressed

- that the long-standing Arctic research conducted by the EU must be intensified;
- that EU research projects already involve other Arctic countries outside the EU such as Russia, Canada and the USA;
- the ability of the EU to promote international cooperation and dialogue with indigenous peoples;
- the need to improve the overall monitoring system, for instance the data on marine knowledge and transport. The EU should further ensure that information is exchanged between public and non-public authorities.

## **Forum II: Arctic in Change: New Prospects for Resource Exploitation and Maritime Traffic**

The melting ice in the Arctic improves access to large untapped hydrocarbon reserves. Exploitation will, however, pose a great challenge due to multiple environ-

mental risks in this region. Accordingly, strict environmental standards are needed as well as technologies for sustainable exploitation of resources. In addition, there may be new prospects for fishing due to reduced sea ice coverage which also may require an expansion of international conservation and management regulations to avoid unregulated fisheries. Finally, the melting of sea ice is opening up new opportunities to navigate on routes through the Arctic waters. The development of Arctic commercial navigation can coincide with a number of positive effects (shorter transport routes, energy savings, emissions reduction, trade promotion) but needs to be guided by strict safety and environmental standards to avoid detrimental effects.

Against this backdrop, this forum was asked to discuss

- what the main challenges for resource exploitation and navigation in an increasingly ice-free Arctic region were and
- where the greatest need for policy responses was seen.

It was also asked to analyze how existing international institutional arrangements and organizations (e.g. the International Maritime Organization, the Arctic Council) could address these challenges—and if they needed to develop further their policies and regulatory instruments in the light of a changing climate (e.g. with respect to mandatory measures instead of/or guidelines). Another question was how the international community (e.g. the United Nations, the European Union, third parties) could effectively contribute to addressing these policy challenges in the Arctic region.

The moderation was led by Ms Kirsten Ullbæk Selvig. Presentations were made by Prof Dr Franklyn Griffiths, University of Toronto; Consultant on Canadian and Circumpolar Arctic Affairs, Captain Vladimir Mikhailichenko, Executive Director, Noncommercial Partnership of the Coordination of Northern Sea Route Usages, Moscow, Baron Ruediger von Fritsch, Director General for Economic Affairs and Sustainable Development, German Federal Foreign Office, Berlin, on day 1. On day 2, presentations followed by Prof Dr Paul Berkman, Head of the Arctic Ocean Geopolitics Programme, Scott Polar Research Institute, University of Cambridge, Prof Dr Louwrens Hacquebord, Arctic Center, University of Groningen, and Mr Ole Anders Lindseth, Director General, Ministry of Petroleum and Energy, Oslo.

## Chairman's Conclusion

Having followed part of the discussions and heard the report of the moderator of forum II, my conclusions are the following:

Forum participants stressed that

- the Arctic is an early warning system for current climate changes; the Arctic Ocean is most likely to be free of ice in the summer during the coming decade;

- new and significantly more intense traffic in the Arctic region offers new prospects for international trade, energy security, exploitation of minerals, local development and international transport (e.g. Northern Sea Route as main strait for oil and gas transport) but the rapid and unstable changes also pose serious risk that needs to be addressed by the international community;
- cooperation among the Arctic States and with the private sector is a key requirement to obtain good resource management and sustainability as well as to provide a predictable legal framework for private sector engagement in the region. Of key importance in this regard are the transport fees to be charged in the future;
- activities related to oil and gas transportation and production need to comply with high environmental and safety standards due to sensitivity of the Arctic region. Current technological developments show significant advancement and already take into account the extreme conditions of the Arctic environment;
- however, more time for technology development is needed, since certain technologies (sub-sea stop cocks [e.g. Snøhvit]) are not yet fully developed. In addition, in the light of the global financial crisis and current low world market prices for crude oil, investments in prospect drilling in the Arctic Ocean may be difficult in the near future;
- technical, logistical and environmental challenges will be solved in a step-by-step process, e.g. resource exploitation under extreme temperatures and with difficult access to resources.

As the most urgent needs for policy responses, the participants emphasized

- strict environmental and safety standards;
- a strict regime for environmental impacts assessments;
- internationally coordinated search and rescue efforts;
- increased efforts to provide for energy security, based on the sustainable use of traditional energy sources, improved energy efficiency and increased use of renewable energy;
- effective prevention, preparedness and response to accidents and oil pollution;
- the establishment of advanced monitoring systems for an improved early warning, real time ice information, better satellite coverage, and mapping systems (“disaster management system”);
- legal certainty needed to encourage the engagement of the private sector in the region;
- freedom of research since a robust knowledge base will be a key requirement for sustainable Arctic development. Moreover, international science cooperation can be an important tool of a much broader international cooperation.

Forum participants highlighted that

- existing international cooperation based on UNCLOS and the activities of the IMO are of key importance to address the challenges in the changing Arctic. The current review of the IMO Arctic Guidelines can serve as an opportunity;

- a number of international regulations and institutions are of importance to govern the Arctic Ocean and to guide sustainable economic development: institutions with mandates in regions of the Arctic Ocean, such as the Convention for the Protection of the Marine Environment of the North-East Atlantic or the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries as well as the Northern Strategy;
- the approach of ecosystem-based management of the resources as it is applied in Lofoten and in the Barents Sea. Here the basis is an integrated management plan (Barents Sea Management Plan) that is dynamic and to be adjusted in 2010;
- multiple governance components that are already in operation focus *inter alia* on sectoral strategies for shipping, fisheries and environmental protection with international institutions that are in force among Arctic and non-Arctic nations;
- the deficits in the realm of “search and rescue” indicate a lack of international cooperation and the prevailing of national interests;
- the activities of the Arctic Council have already contributed significantly to a sound scientific basis for Arctic cooperation and should continue to do so in the future. Although the Council is “without legal personality” and without regulatory authority, it has played an important role in generating policy-relevant knowledge about the Arctic and bringing Arctic issues to the attention of global fora;
- a broader involvement of current observers in the Arctic Council may further improve international coordination and communication. Current discussions in the Arctic Council to strengthen the role of observing parties can serve as an entry point;
- one key challenge is to overcome fragmented governance structures in the Arctic region, another to define common interests of members and observers. To this end, it is important to balance coexisting national interests (oil and gas activities, transport, fisheries) and foster dialogue among participants—also to provide for peace and stability in the Arctic region;
- in addition, the current review of the IMO Arctic Guidelines offers further options to address the urgent challenges in the Arctic.

Forum participants pointed out that

- not all Arctic challenges must be addressed by the international community, but can be discussed at a national, bilateral or regional level;
- the EU can act as a broker for increasing knowledge and cooperation in the Arctic region;
- the international community plays an important role in gathering and exchanging information and data, *inter alia* on search and rescue, environment protection standards, climate change research and navigation tools—such as satellite data and mapping;
- the Arctic Council could be enlarged to include further consultative parties to support international engagement and to strengthen stewardship in the region with non-Arctic countries;



- one concrete activity could be the establishment of an Arctic fund. Annual contributions could be earmarked to help indigenous people to build capacities and to address international Arctic affairs;
- the Arctic Council could facilitate dialogue on relevant national strategies by Arctic and non-Arctic States and explore further potential for cooperation;
- research conducted under the Arctic Council should form the basis for an integrated international approach to the Arctic;
- the high seas of the central Arctic Ocean were an international space subject to cooperative decision-making regarding a variety of issues (e.g. fishing and shipping) through regulatory arrangements articulated under the auspices of the United Nations Convention on the Law of the Sea and customary international law.

### **Forum III: An International Governance Framework for the Arctic: Challenges for International Public Law**

An extensive international legal framework exists which is applicable to the Arctic. The provisions of e.g. the UN Convention on the Law of the Sea provide the basis for settling disputes and also contain rules for the use of living and non-living resources and the protection of the environment. In addition, there is a number of multilateral environmental agreements relevant for Arctic governance without including specific references to it.

Among the challenges for the coastal States surrounding the central Arctic Ocean is the need to establish the outer limits of the continental shelves outside 200 nautical miles and to conclude agreements on the delimitation of maritime zones. Also, various interpretations exist pertaining to the conditions of ships passing in parts of the Arctic waters, especially in the Northwest Passage. The Ilulissat Declaration adopted by the five Arctic coastal States in 2008 concluded that the necessary legal framework is in place and that the main challenge is the full implementation of this framework, including the settling of overlapping claims and the need to further develop coherent policies ensuring good Arctic governance on the basis of public international law.

Against this backdrop, the forum was asked how national and public international law could address current challenges in good Arctic governance. What international regulations in accordance with the UN Convention on the Law of the Sea should be considered to respond adequately to concrete needs in the Arctic (e.g. International Convention for the Prevention of Pollution from Ships [MARPOL], Arctic Environmental Protection Strategy [AEPS])? Is there a need to e.g. consider further implementing rules in conformity with the Convention on the Law of the Sea without, in doing so, diverting too much energy from existing implementation priorities? Are the arrangements for dispute settlement sufficient? How can those approaches be brought together to promote a comprehensive understanding of the relationships between relevant international organizations and bodies engaged in

this area? What are the specific roles of the (e.g.) Arctic Council, International Maritime Organization, United Nations and European Union?

Under the moderation of Prof Dr Rüdiger Wolfrum, presentations were made on day 1 by Mr Peter Taksøe-Jensen, Assistant Secretary-General and Deputy to the Under-Secretary-General for Legal Affairs, United Nations Legal Counsel, New York, Mr Tomas H. Heidar, Legal Adviser, Ministry for Foreign Affairs of Iceland, Director, Law of the Sea Institute of Iceland, Reykjavik, Mr Thomas Winkler, Ambassador; Head of the Legal Service, Ministry of Foreign Affairs, Copenhagen. On day 2, presentations by Prof Dr Alexander Vylegzhanin, Moscow State Institute of International Relations (Russian Federation), Mr Rolf E. Fife, Director General, Department of Legal Affairs, Ministry of Foreign Affairs, Oslo, and Dr Marie Jacobsson, Legal Adviser on International Law to the Ministry of Foreign Affairs, Stockholm, followed.

### Chairman's Conclusion

Having followed part of the discussions and having heard the report of the moderator of forum III, my conclusions are the following:

Forum participants expressed the view that

- there is no legal vacuum concerning the Arctic since UNCLOS and additional existing international agreements relevant to the Arctic provide a quite comprehensive legal framework.

They further highlighted that

- the key challenge is the implementation and application of the existing legal framework, and to carefully consider whether further implementing measures are relevant and practicable;
- attempts to improve the “Arctic governance framework” should thus focus on tools and instruments of a complimentary nature;
- the Arctic States are in a unique position but that all other relevant international organizations and States are invited to work closely together in ensuring the implementation of existing law; coastal States are aware of their responsibilities;
- national legislation for Arctic States is highly relevant. Harmonization of national legislation has not yet been finalized.

The forum in particular discussed certain provisions of the UNCLOS in detail. The provisions touched upon were mainly:

- Art. 234 UNCLOS on “Ice-covered areas”: delicate balance between rights and responsibilities of Arctic States applying Art. 234;
- Arts. 122 and 123 UNCLOS on “Enclosed or semi-enclosed sea”: The question of whether these Articles are applicable to the Arctic has not yet been answered, since the legal definition of the term “narrow outlet” was not clear.

In order to strengthen Arctic environmental governance, several proposals were made aiming at

- enhancing or expanding the mandate of existing cooperation and mechanisms such as those associated with the Arctic Council, the Nordic Council of Ministers and others;
- underlining the importance of the Arctic Council and Euro-Arctic Barents Council for regional cooperation; dispute settlements are incorporated in the convention;
- forward planning for an appropriate framework for maritime safety, a consideration of the topic by the International Maritime Organization is useful. IMO could be more active by strengthening the IMO Arctic Guidelines (e.g. by agreeing on a binding nature).

Additional issues raised were:

- freedom of research;
  - the increasingly important role of scientific research in the implementation of legal principles;
    - “historic titles” and the role of customary law in relation to UNCLOS;
    - responsibilities for safety measures and rescue operations (Art. 98 (2) UNCLOS);
    - the need to equip ships adequately;
    - possible parallels between Antarctica and the Arctic that could be drawn.
- However, existing profound differences between the two poles require different political and legal approaches;
- rights of non-Arctic States concerning the delineation of Arctic continental shelves.

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