THE ARCTIC COUNCIL AND MULTILATERAL ENVIRONMENTAL AGREEMENTS

Several multilateral environmental agreements (MEAs) could contribute to an international legal framework for Arctic protection but are not being used to their potential. Among the most important are the United Nations Convention on the Law of the Sea (UNCLOS); treaties adopted by the International Maritime Organization, such as the International Convention for the Prevention of Pollution from Ships (MARPOL); and the Convention on Long-Range Transboundary Air Pollution (LRTAP).

UNCLOS and the Treaties of the International Maritime Organization

UNCLOS establishes the obligation of all states to protect and preserve the marine environment and requires all states to cooperate in formulating rules and standards and in taking measures to prevent, reduce and control pollution. The conventional specifically addresses six main sources of ocean pollution: land-based pollution and coastal activities; continental shelf drilling; seabed mining; ocean dumping; vessel-source pollution; and pollution from or through the atmosphere. The coastal states bordering the Arctic Ocean have recognized that UNCLOS applies to the Arctic,[i] and the convention remains an important tool for management and conservation of the Arctic environment.

The International Maritime Organization has adopted several agreements on maritime safety and pollution from ships that apply to the Arctic. These include the International Convention for the Prevention of Pollution from Ships, the Convention for the Control and Management of Ships' Ballast Water and Sediment, the Convention on the Control of Harmful Anti-fouling Systems on Ships, and the Convention on Oil Pollution, Preparedness, Response and Cooperation. In addition, the IMO has adopted non-binding guidelines for ships operating in ice-covered waters that include provisions to promote the safety of navigation and prevent pollution from ship operations. Although the guidelines are currently recommendatory, the IMO is working on a Polar Code that would set legally binding standards for safety, navigation, and the prevention of pollution from ships in Arctic waters.

Legal Instruments to Mitigate the Impacts of Climate Change in the Arctic

Climate change is already causing the Arctic to warm about twice as fast as the rest of the earth, causing sea ice to retreat and permafrost to melt.[ii] These changes are triggering feedback mechanisms that are accelerating the pace of climate change and intensifying the impacts of this change throughout the Arctic and globally.[iii] In addition to the global climate effects of long-lived greenhouse gases, short-lived pollutants such as ground-level ozone and black carbon have a disproportionate impact on the Arctic. Black carbon deposition increases surface melt on ice masses, and the melt water spurs multiple radiative and dynamic feedback processes that accelerate ice disintegration.[iv] While the United Nations Framework Convention on Climate Change and the Kyoto Protocol are important tools for slowing warming globally, other instruments can be utilized to mitigate Arctic warming specifically. In particular, the Convention on Long-Range Transboundary Air Pollution could be used effectively to protect the Arctic from warming.

LRTAP establishes a framework under which parties cooperate to reduce transboundary air pollution. Eight protocols to the convention establish obligations with respect to specific pollutants. Black carbon is often transported long distances from the source of emissions: most black carbon that currently falls out of the atmosphere onto Arctic snow and ice is emitted as a by-product of fuel combustion in North America, Europe, and South and East Asia.[v] In December 2010 the LRTAP Executive Body amended the protocol to LRTAP to add black carbon to the list of long-range transboundary air pollutants covered by the treaty. This decision enables the treaty parties to mitigate black carbon for health purposes while also achieving climate benefits of particular importance to the Arctic. While LRTAP applies primarily to Europe, engaging in other countries outside the region, especially countries in Asia, would enhance the effectiveness of the agreement.

Action the Arctic countries should take to establish a stronger international legal framework for protecting the Arctic include

- Ratification by the United States of the United Nations Convention on the Law of the Sea. Although much of UNCLOS is customary law and is thus already applicable to the United States, ratification would signal clear U.S. support for protecting the Arctic environment.

- Unequivocal leadership of all the Arctic states for IMO's adoption of a strong, mandatory Polar Code governing shipping.

- Leadership by the Arctic states in implementing the amendments to the protocol to LRTAP relating to reductions in black carbon emissions.

- Collaboration by Arctic states with major emitting countries in Asia to expand the effectiveness of black carbon controls established under LRTAP.

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[i] See the Ilulissat Declaration, 28 May 2008, at http://oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf.

[ii] *See, e.g.*, ACIA, *Arctic Climate Impact Assessment,* Cambridge University Press (2005), available at http://www.acia.uaf.edu; IPCC, *Climate Change 2007: the Physical Science Basis, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change,* (Feb. 2007), available at http://www.ipcc.ch/spm2feb07.pdf.

[iii] *See* Arctic Monitoring and Assessment Program, *AMAP 2009 Update on Selected Climate Issues of Concern (Observations, Short-lived Climate Forcers, Arctic Carbon Cycle, Predictive Capability)*, available at http://amap.no/documents/.

[iv] *See* Hansen, J. & Nazarenko, L., Soot Climate Forcing Via Snow and Ice Albedos, 101 Proc. Of the Nat'l Acad. Of Sci. 423 (13 January 2004).

[v] Ramanathan, V. & Carmichael, G., Global and Regional Climate Changes Due to Black Carbon, Nature Geoscience (2008).