

The analysis of the relationship between major East Asian countries and the Arctic Council

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ABSTRACT

In recent years, with the debate over rights in the Arctic regions among coastal and world's major countries, the Arctic issue has rapidly become a hot spot of global concern. The East Asian countries should also give active responses towards this issue. Given that the Arctic Council, as an intergovernmental organization consisting of eight Arctic countries, plays a significant leading role in Arctic affairs, by providing an overview of the work and developing trend of the Arctic Council, this paper analyzes the necessity and feasibility for East Asian countries (mainly refer to China, South Korea and Japan) of their participation in the Council and also proposes the suggestions on this basis to promote these countries' position and their role in Arctic affairs.

Key words: East Asia countries, Arctic Council, observer status

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1. Overview of the Arctic Council

1.1 *The AEPS and the Arctic Council*

In 1989, Finland proposed that the eight Arctic States (Canada, Denmark, Finland, Iceland, Norway, Sweden, Union of Soviet Socialist Republics and United States of America) should adopt a regional strategy towards protecting the Arctic environment. In 1991, the Declaration on the Protection of the Arctic Environment was signed by all eight countries declaring the foundation of the Arctic Environmental Protection Strategy (AEPS).

The Declaration states that the eight signatory nations commit themselves to “a Joint Action Plan of the [AEPS]”, which includes:

- i) Cooperation in scientific research to specify sources, pathways, sinks, and effects of pollution, in particular, oil, acidification, persistent organic contaminants, radioactivity, noise and heavy metals as well as sharing of these data;
- ii) Assessment of potential environmental impacts of development activities; and
- iii) Full implementation and consideration of further measures to control pollutants and reduce their adverse effects to the Arctic environment.¹

In order to ensure the continuity of the AEPS, all countries were committed to the regular meetings at ministerial level. The major work of AEPS was to be completed by its four working groups: Arctic Monitoring and Assessment Program (AMAP), Protection of the Marine Environment in the Arctic (PMEA), Emergency Prevention, Preparedness and Response in the Arctic (EPPR) and Conservation of Arctic Flora and Fauna (CAFF).²

In 1993, the Second Ministerial Conference of the AEPS was held in Nuuk, Greenland. Countries signed the Nuuk Declaration on Environment and Development in the Arctic with emphasis on the importance of sustainable development of the Arctic environmental protection. The meeting decided to create the fifth working group of the AEPS: the Task Force on Sustainable Development (TFSD).

On September 19, 1996, the eight Arctic States signed the Declaration on the Establishment of the Arctic Council in Ottawa and the AEPS was thus replaced by the Council.³ The members of Arctic Council including the eight Arctic countries and four Arctic indigenous peoples’ organizations had all permitted the participation of invited observers. The main difference between the Arctic Council and the AEPS is that the Arctic

1. Arctic Council (1999) Arctic Environmental Protection Strategy, pp.1631-1655.

http://arctic-council.org/filearchive/artic_environment.pdf (last accessed 20 Feb. 2010).

2. *Ibid.* pp.1631-1664.

3. Vanderzwaag, D., R. Huebert and S. Ferrara (2002) The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering While the Arctic Marine Environment Totters, *Denver Journal of International Law and Policy Spring* 151.

Council not only shows concern about environmental protection, but also carries out sustainable development projects and “disseminate information, encourage education and promote interest in Arctic related issues”.⁴

1.2 The goal of the Arctic Council

The Arctic Council is established as a high level forum to: provide i) Means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular, issues of sustainable development and environmental protection in the Arctic, ii) Supervise and coordinate the programs created under the AEPS on the Arctic Monitoring and Assessment Program (AMAP); Conservation of Arctic Flora and Fauna (CAFF); Protection of the Arctic Marine Environment (PAME); and Emergency Preparedness and Response (EPPR), iii) Organize and coordinate a sustainable development program, iv) Disseminate information, encourage education and promote interest in Arctic-related issues.⁵

The main tasks of the Arctic Council include the protection of the Arctic eco-environment and its sustainable development. To achieve these two goals, the Council has created a number of projects. The Arctic Council not only continued to complete the work under the former AEPS, but also set up two new work plans – a Sustainable Development Framework Document and the Arctic Council Action Plan to Eliminate Pollution of the Arctic (ACAP). The Council also specifically provides indigenous peoples with the opportunity of participation in the working schedule of the Council. The Council has recognized four groups working on behalf of indigenous peoples as “Permanent Participants” in every area of the Council’s work.⁶

The Arctic Council is the first and “only major inter-governmental initiative for the Arctic involving all eight Arctic states”.⁷ The character of the Arctic Council is a unique partnership among Governments and organizations representing indigenous peoples and communities in the Arctic.⁸ The Arctic Council “seeks to protect the Arctic’s pristine environment through a quasi-legislative inter-governmental forum charged with recommending,

4. Arctic Council (1998) Report of the Senior Arctic Officials to the Arctic Council, Iqaluit, Canada, September 17-18, Part I(A). http://arctic-council.org/meeting/sao_meeting%2C_autumn_1998 (Last accessed on 12 Feb. 2010).

5. Declaration on the Establishment of the Arctic Council, p.1. <http://arctic-council.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20Arctic%20Council-1.pdf> (Last accessed on 12 Feb. 2010).

6. Verhaag, M. A. (2003) It Is Not Too Late: The Need For A Comprehensive International Treaty To Protect The Arctic Environment. *Georgetown International Environmental Law Review* 15, p.570.

7. Bloom, E. (1999) Current Development: Establishment of the Arctic Council.93 AM. J. INT’L L. 712:1.

8. INARI DECLARATION on the occasion of the Third Ministerial Meeting, p.1. http://arctic-council.org/filearchive/inari_Declaration.pdf (Last accessed on 12 Feb. 2010).

implementing, and developing environmental policies” instead of a patchwork quilt of eight legal regimes trying to protect one extremely fragile area during the APES time.⁹ Notwithstanding that the Arctic Council seems to be an important step towards a the cause of creating a sound regional legal system, its existence is only to facilitate cooperation between Arctic States in the realms of environmental protection and sustainable development, and does not require any binding commitments.¹⁰ Was this lack-of-binding legal system capable of coordinating the different interests of multiple power entities on the Arctic issue? And will it lose its power when facing great issues in the region? All these issues need to be further addressed by the Arctic Council in the future.

2. Major concerns of the Arctic Council

In the past 10 years the Arctic Council has enhanced the common understanding and promoted cooperation in the Arctic region. It has become the most important forum in the region and has been playing a leading role for the Arctic affairs. The environmental protection and sustainable development in the Arctic is the main topics of Arctic Council, and also as key issues in the future development. These issues specifically include the following aspects.

2.1 Climate change

The Arctic Council is looking forward to an effective global response that will address the challenge of climate change, and confirm the commitment of all Arctic States to actively contribute to reaching a well-consented outcome at the UNFCCC 15th Conference of the Parties (CoP15) in Copenhagen in December 2009. The Council decided to deliver the Snow, Water, Ice, and Permafrost in the Arctic report to the UN CoP15, and looking forward to the delivery of the full results of the Arctic Cryosphere: Snow, Water, Ice, and Permafrost in the Arctic (SWIPA) project in 2011.

The Council urged Member States to perform the early actions where possible on methane and other short-lived climate forcers, and encouraged the cooperation with the Methane Marketing Program as well as with other relevant international organizations to take measures to reduce methane emission and other short-lived forcers. Meanwhile, it decided to establish a task force on short-lived climate forcers to identify existing and

9. Ansson, R. J. (1998) The North American Agreement on Environmental Protection and the Arctic Council Agreement: Will These Multinational Agreements Adequately Protect the Environment?, 29 CAL. W. INT'L L.J. 101, 103:103.

10. Vanderzwaag, D., R. Huebert and S. Ferrara, *supra* note 3, p.142.

new measures to reduce emissions of these forcers and also recommend further immediate actions. And all these progresses should be reported by task force at the next Ministerial meeting.

2.2 Maritime environment

The Arctic Council is now cooperating within the International Maritime Organization (IMO) on development of relevant measures to reduce the environmental impacts of shipping in Arctic waters. The Council is stepping up its update of the Guidelines for Ships Operating in Arctic Ice-Covered Waters and the mandatory application of some of its terms.

The Council carried out consultation with the IMO to make sure that the global IMO ship safety and pollution prevention conventions be augmented with specific mandatory requirements or other provisions for ship construction, design, equipment, crewing, training, and operations, aimed at safety and protection of the Arctic environment.

2.3 Energy

The Council agreed on the findings and recommendations of the assessment of oil and gas activities in the Arctic: effects and potential effects. It emphasized that while there has been significant progress in technology, management, and regulations that have greatly reduced the impact of oil and gas activities, environmental risk still remained. Recently, the Arctic Council is urging Member States to apply the precautionary approach and polluter-pays principle as reflected in Principles 15 and 16 of the Rio Declaration, respectively, and conduct risk and environmental impact assessments for the exploration, development, transport and storage of oil, and enact and/or enforce appropriate laws and controls.

2.4 Contaminants

The fifth Ministerial Meeting of the Arctic Council approved the ACAP as a formal working group. The Arctic Pollution 2009 report highlights that progress has been achieved through political actions to reduce the threats from some legacy persistent organic and radionuclide pollutants, but concerns remain regarding new chemicals occurring in the Arctic environment and their potential threat to people and wildlife.

The contaminants with persistent organic pollutant (POP) characteristics in the Arctic region are not subject to international controls. The Council is now considering the possibility of deliver it to international communities.

The Arctic Council hopes to strengthen its cooperation with UNEP Chemicals Agency (UNEP Chemicals) and United Nations Development Program (UNDP) for the ACAP projects. The Council is preparing to set up a new Project Steering Group to address contaminants in indigenous peoples' communities in remote areas of the Arctic.

2.5 Biodiversity

The Arctic Council's contribution to the United Nations International Biodiversity Year in 2010 was the Arctic Highlights Report of Arctic Biodiversity Assessment (ABA). This report can also serve as a tool to measure progress towards the United Nations 2010 biodiversity target which was set by the Convention on Biological Diversity.

The Council recognized the community-based monitoring as a valuable means of observation in the Arctic, and encouraged further development of projects with participation of local residents.

2.6 Security

The Arctic Council is preparing for establishing a search and rescue task force in the Arctic, and negotiations are expected to be completed by 2011. Besides, the sixth Ministerial Meeting accepted the Russia's initiative of 'Developing Security Systems in the Realization of Economic and Infrastructure Projects in the Arctic' which presupposes the elaboration of common approaches and mechanisms for the prevention and neutralization of various man-made disasters that may arise owing to more active economic development of the region.

Russia hopes that any likely proposals in this sphere will be regulated by mechanisms of the Arctic Council. "That's the exact decision of last year's Arctic Ocean Conference at Ilulissat".¹¹ However, the U.S. does not agree with the views of Russia. The new American Arctic policy which is contained in National Security / Homeland Security Presidential Directive on Arctic Region Policy specified that "the Arctic Council should remain a high-level forum devoted to issues within its current mandate and not be transformed into a formal international organization, particularly one with assessed contributions. The United States is nevertheless open to updating the structure of the Council, including consolidation of, or making operational changes to, its subsidiary bodies, to the extent such changes can clearly improve the Council's work and are consistent with the general mandate of the Council".¹²

11. Russian foreign minister's statement at Arctic Council meeting, April 29, 2009. http://www.regjeringen.no/en/dep/ud/Whats-new/Speeches-and-articles/speeches_foreign/2006/concluding-statement-at-the-arctic-council.html?id=420889 (Last accessed on 12 Feb. 2010)

12. U.S. (2009) National Security / Homeland Security Presidential Directive on Arctic Region Policy. The

East Asian countries should pay close attention to the opposing stand points of the two great powers. Since this is related to the scope of discourse power of the Arctic Council on Arctic affairs, we should take further measures based on the latest change of this situation.

3. The analysis and suggestions regarding the relationship between East Asian countries and the Arctic Council

3.1 The necessity for East Asian countries to participate in the Arctic Council

The climate and environmental change in the Arctic has a significant impact on surrounding countries in East Asia and is also directly related to the sustainable development of national economy of China, Japan and South Korea due to the following reasons.

Firstly, Climate change and its effects in the Arctic may be the most serious environmental issue threatening the Arctic environment. Average annual temperatures in the Arctic have increased by approximately double the increase in global average temperatures.¹³ The direct impacts of global warming include higher temperatures, sea-level rise, melting of sea ice and glaciers, increased precipitation in some areas and drought in others. Indirect social, environmental, economic and health impacts will follow, including increased death and serious illness in poor communities, decreased crop yields, heat stress in livestock and wildlife, and damage to coastal ecosystems, forests, drinking water, fisheries, buildings and other resources needed for subsistence.¹⁴ The East Asian countries shall pay more attention to these problems and take measures to mitigate harmful influences caused by climate change in the Arctic.

Secondly, Although coastal states in the Arctic regions enjoy exclusive management authority over resources found in the continental shelf, including those parts that extend beyond 200 miles from the baselines, the resources found on the deep seabed beyond the continental shelves are defined in the United Nations Convention on the Law of the Sea (UNCLOS) as the ‘common heritage of mankind’ and made subject to a specific

directive “establishes the policy of the United States with respect to the Arctic region and directs related implementation actions. This directive supersedes Presidential Decision Directive/NSC-26 (PDD-26; issued 1994) with respect to Arctic policy but not Antarctic policy; PDD-26 remains in effect for Antarctic policy only.” See http://www.cfr.org/publication/18215/national_security_homeland_security_presidential_directive_on_arctic_region_policy.html (Last accessed on 3 Feb. 2010)

13. Union of Concerned Scientists, Fact Sheet, Early Signs of Global Warming: Arctic and Antarctic Warming. <http://www.ucsusa.org/warming/gw<uscore>arctic.html>.

14. Intergovernmental Panel on Global warming (2001) Global warming 2001: Impacts, Adaptation and Vulnerability, Summary for Policymakers and Technical Summary of the Working Group Two Report 26.

regime. Besides, the most significant impact of the retreat of the Arctic sea ice will be the opening of the northern sea routes, which will be further advanced by technical developments in the building of icebreakers. The opening of these sea routes have great significance for global economic development and security. It is suggested that shipping routes from the east coast of North America or from Europe to destinations in the Pacific could thus be shortened by up to 40%, but at present sea transport must be directed either through the Suez Canal in the east or the Panama Canal in the west. UNCLOS provides for freedom of navigation on the high seas and within the exclusive economic zone of coastal States, as well as for the right of innocent passage in the 12-mile territorial sea of coastal States. UNCLOS also provides for the right of transit passage through straits used for international navigation.

The economic and social development of East Asian region has also developed the demand for the natural resources and the sea route use in the Arctic region. China, Japan and South Korea shall realize that UNCLOS, which is the only comprehensive treaty concluded in this field, applies to the Arctic Ocean in general. So far, UNCLOS has been ratified by four of the five countries that border the Arctic Ocean, while the United States accepts the relevant provisions as customary international law.¹⁵ UNCLOS contains detailed provisions on all uses of the ocean, the seabed and the air space above, and also includes provisions on, inter alia, navigation, fishing, exploitation of oil, gas and other resources of the continental shelf, maritime delimitation, prevention of marine pollution and on marine scientific research. Under the framework of UNCLOS, China, Japan and South Korea shall be responsible and capable of participating in the peaceful using sea route and common natural resources in the Arctic regions.

Thirdly, the Arctic possesses a very high scientific value, and it is an ideal place for a number of science and research activities. In this way, China, Japan and South Korea should actively carry out the cooperation in scientific research in the Arctic region and spare no effort to make their due contribution to the human understanding of nature as well as the Arctic.

The Arctic Council, as the major international organization in the Arctic region, takes the initiative in the Arctic affairs. Consequently, China, Japan and South Korea's participation in the Arctic Council will not only enable them to participate in the latest trends and focus in Arctic regional affairs, but also promote sharing of the latest technology as well as expertise by participating in the working teams and projects of the Arctic Council. In addition, the Arctic Council values regional and international cooperation. Therefore, by involving in the Arctic Council's affairs, China, Japan and South Korea could promote the cooperation and exchange with members, observers and its relevant international organizations within the Arctic Council's framework. Most importantly, the Arctic Council

15. Norway ratified in 1996, Russia ratified in 1997, Canada ratified in 2003 and Denmark ratified in 2004.

is now discussing issues regarding the reform of Arctic governance, hence, China, Japan and South Korea should seize this opportunity to reach a consensus on the Arctic issue through the negotiations, and then, hold the necessary discourse by actively participating in the relevant activities of the Council and eventually, propose programs that are beneficial to East Asia regions.

3.2 The importance of being permanent observer

“Observer” means an entity described in Article 3 of the Declaration which has been granted observer status in accordance with these Rules.¹⁶ Observer status in the Arctic Council is open to the following entities: non-Arctic states; global, regional intergovernmental organizations and inter-parliamentary organizations; non-governmental organizations.¹⁷

The United Kingdom, France, New Zealand, Poland, Spain and Germany, etc. are permanent observers of the Arctic Council, in which the United Kingdom, New Zealand, Poland and Germany are the successors of their observer status in the former organization of the Arctic Council, the AEPS.¹⁸ China, South Korea, Italy and the EU are currently ad-hoc observers. And Japan has submitted the application for observer status to the chairman on duty, Norway, in April 2009.¹⁹

China is the earliest to participate in the activities of the Arctic Council in East Asia and submitted the application for the permanent observer status of the Sixth Ministerial meeting in the “Senior Arctic Officials” (SAOs) held in April 2007, and the final report of that SAOs granted China ad-hoc observer status and allowed China to participate as observer in the Senior Officials Meeting and working group meetings of the Arctic Council, and meanwhile, it also claimed that, it will later consider granting China permanent observer status on the Sixth Ministerial Meeting.²⁰

The Senior Arctic Officials meeting was held in Nordland, Norway from 23rd to 24th April, 2009 and Chinese delegation participated again as ad-hoc observer.²¹ On 29th April, 2009, the Arctic Council Sixth Ministerial Meeting was held in Tromsø, Norway, both China and South Korea participated as ad-hoc observers and had some exchanges of ideas with other participants.²² Unfortunately, the Ministerial Meeting did not adopt China, Italy, South Korea and the EU as permanent observer, only claiming that the role

16. Arctic Council Rules of Procedure, *supra* note 11, p.1.

17. Declaration on the Establishment of the Arctic Council, *supra* note 5, p.3.

18. Annex 2 to Arctic Council Rules of Procedure, Art. 1. <http://arctic-council.org/filearchive/official%20rules%20and%20procedures.pdf> (Last accessed on 8 Feb. 2010)

19. Japan applies for Arctic Council observer status. <http://arctic.foreignpolicyblogs.com/2009/04/20/japan-applies-for-arctic-council-observer-status> (Last accessed on 4 Jun. 2010)

20. Arctic Council Meeting of Senior Arctic Officials, FINAL MINUTES. 12-13 Apr. 2007, Norway, Item 3.

21. List of participants, SAO Meeting, Svolvær, 23-24 Apr. 2009.

22. Final List of Participants, 6th Ministerial Meeting of the Arctic Council, 29 Apr. 2009, Tromsø, Norway

of observers in the Arctic Council should be further discussed. The reason of Canada and Norway's rejection of the EU's application for observer status is mainly due to EU's ban on import of hunted seal products, which was considered as damaging the fundamental interests of Arctic countries and people.²³

Observers shall be invited to the Ministerial meetings and/or to other meetings and activities of the Arctic Council, observer status shall continue for such time as consensus exists at the Ministerial meeting. Any observer that engages in activities which are at odds with the Council's Declaration shall have its status as an observer suspended.²⁴ The biggest difference between ad-hoc observer and permanent observer is that, the granted effect of an ad-hoc observer is limited to a particular meeting.²⁵ This means that ad-hoc observers need agreement from all council members for participation in ministerial meetings.

So far, China, Japan and South Korea still have not been recognized as permanent observer of the Arctic Council, which makes it necessary for these three countries to start ground-breaking cooperation and negotiation on this issue to take joint measures to earn this title as soon as possible.

3.3 In the name of "near-Arctic Countries" or "near-Arctic Region"

On 18th September, 2008, Russia issued "Basics of the State Policy of the Russian Federation in the Arctic for the Period till 2020 and for a Further Perspective", which determined the national interests, main objectives, strategic priorities, the basic tasks and implementation mechanisms of Russian Federation's arctic policy. Foremost among them is "to develop the Russia-owned Arctic region into the strategic resource base for ensuring the national social- economic development". On 13th May 2009, Russia again issued "Russian National Security Strategy till 2020", emphasizing that the focus of future international politics is energy competition, and the Arctic is the focus of this competition. In addition, the to-be-issued documents like "Russian Navy strategy 2009", "Development Strategy of the Railway Transportation in the Russian Federation till 2030" and "The Program of Study and Development of the Russian Continental Shelf till 2030" also express their concern about "Arctic" and intention of establishing the Arctic fleet.

The existence of Alaska entitles the U.S.' huge influence on the Arctic affairs. On 9th January, 2009, the U.S. government issued "National Security and Homeland Security Presidential Directive" to replace the Arctic policy in 1994. The new paper declared that the U.S. is an "Arctic Country" and has extensive and important national interests in the Arctic region. Among which the freedom of navigation has been placed on the "top priority"

23. Arctic Council snubs EU as observer over seal dispute. <http://www.eubusiness.com/news-eu/1241016421.74/> (Last accessed on 14 Sep. 2009)

24. Arctic Council Rules of Procedure, *supra* note 11, Art.37, Art.38.

25. *Idid.* Art.37, Item 2.

level. The U.S. insists on that both northwest and the northeast passage belong to “strait used for international navigation” and the U.S. vessels have the right to transit passage.

The enormous natural resource and sea route values also attract EU and NATO’s attention. Especially, Denmark, Finland and Sweden are both Arctic and EU member states, while four of all five Arctic Circle countries (Iceland, Norway, the U.S. and Canada) belong to NATO. So once there is conflict in Arctic, neither of EU and NATO will just sit by. In November, 2008, EU issued “The European Union and the Arctic Region” policy document, declared that the EU countries have fishing, oil and gas and other interests in the Arctic region. The EU’s Arctic goal is to maintain the harmonious relationship between the Arctic and human, promote sustainable use of resources, and be committed to improving the multilateral governance of the Arctic region. On 29th, January, 2009, NATO leaders and parliament members from NATO member states gathered in Reykjavik, capital of Iceland, saying that NATO may be involved in the Arctic debates due to the interests of its members, and troops should be deployed in Arctic region to eliminate the tension. The EU and NATO’s attitudes lead the Nordic countries to collectively participate in Arctic affairs.

While all other countries and regions in the world have been indicating their interests in the Arctic region, the question is if East Asian countries should also speak with one voice on this issue?

First and foremost, in terms of geographical location, East Asia is located in the northern hemisphere, and is very close to the Arctic region whether from its land or sea. Secondly, the geopolitical factor plays a significant role in the national interest, national security as well as the decision of national strategies, and is deemed to be an underlying factor affecting or even determining a country’s political behavior. The Eurasia is the world’s largest continent and currently the political and economic center, which means that when dealing with important Arctic affairs, all eight circum-Arctic countries could by no means ignore the influence of China, Japan and South Korea in the Arctic region.

Again, from the Arctic climate, ecological environment as well as the Arctic Ocean together with their profound influence on East Asian region, for example: atmospheric changes, ocean currents and temperature, sea route, Arctic flight routes, Missile Defense, the Arctic Ocean continental shelf oil and gas resources and so on. All these are related to human and global issues.²⁶ At present, the global warming caused by human activities is on its way of accelerating the melting of Arctic ice cap, thus pushing the Arctic to a precarious situation. The Arctic is now under significant and rapid changes in atmosphere, oceans, land, ecology and society, and this is believed to have great impact on the climate and socio-economic development of the Northern Hemisphere and even the globe. To sum up, the natural change of the Arctic, as well as the change caused by global warming,

26. Long, C.-N. (2008) New Era of the Arctic Ocean. CITIC PACIFIC RESEARCH ADVANCE 14:23.

have been profoundly influencing the surrounding sea areas, climates including ecological environment of East Asia.

For the reasons above, China, Japan and South Korea have every reason to emphasize the nature of “Near-Arctic Region”. This not only indicates the actual links with the Arctic affairs, but also justifies the action on it. The “Near the Arctic Region” will determine East Asia’s right position in the Arctic affairs, and then entitle the effective participation in the activities of the Arctic Council. Therefore, China, Japan and South Korea could consider participating in the discussion of Arctic affairs in the name of “Near-Arctic Countries” or “Near-Arctic Region” to provide an objective basis for gaining possibility of discourse on the Arctic affairs.

3.4 The way to participate in the activities of the Arctic Council

For China, Japan and South Korea, the key concern is to be recognized as permanent observer as soon as possible. This requires more research on the Arctic Council and adequate understanding of its purpose of establishment, operating patterns as well as its organizational principles, meanwhile, it also requires broadening of contacts with the Arctic Council member states as well as an all-round participation in the group project of the Council to make endeavor in becoming the permanent observer in the next Ministerial Meeting.

China, Japan and South Korea should adopt several ways of participating in the activities of the Arctic Council to meet the Arctic Council’s requirements on capability and experience of becoming a permanent observer:²⁷

3.4.1 Continue to participate in the ministerial meeting and SAOs as ad-hoc observer

These three countries shall show a continuous concern about the Arctic environment and climate changes and express a full understanding of the Arctic Council to demonstrate the capability and an active attitude towards cooperation with the Arctic Council. What’s more, particular attention should be paid so that China, Japan and South Korea could also apply for ad-hoc observer for the vice-ministerial meeting which was newly set by the Arctic Council in 2009. If China, Japan and South Korea could make constructive advices or outstanding contributions to the newly established vice-ministerial mechanism, it may be to some extent a strong plus to be accepted as permanent observer.

27. Annex 2 to Arctic Council Rules of Procedure, *supra* note 11, at Art.3, Art.4.

3.4.2 Participate as ad-hoc observers in the Arctic Council's work group meetings

Cooperate with respective project teams in terms of environmental protection, pollution control, climate change, energy, maritime transport, biodiversity conservation, human health and its development, etc. to obtain the latest information, technology and expertise, and to promote support and understanding of the Arctic Council. All these are helpful in applying for permanent observer status.

3.4.3 Strengthen the bilateral cooperation with the Arctic Council and its member states on climate change, marine environmental protection and other fields

The decision-making mechanism of the Arctic Council is unanimous approval of its resolutions; hence, any application for permanent observers should be approved by all eight Arctic countries. Therefore, the strengthening of communication and understanding of the Arctic environmental protection among China, Japan, South Korea and other member states is conducive to enhancement of the mutual trust and expression of East Asia's concern about the Arctic and consequently, to the final approval of permanent observer granting.

As for East Asia's application for permanent observers, Russia, Norway, Denmark and other major Arctic Council countries are in favor of it. Russian Foreign Minister said that the increasing concern from international community about Arctic issues requires seeking common interests with China and other countries to find a balance between promoting international cooperation and maintain the Council's regional profile. Denmark is currently the chairman on duty of the Arctic Council, and the map of the Arctic Council members issued by its Ministry of Foreign Affairs website has marked China as "light blue" (as the figure shows below), which represents the status of "Observer".²⁸ This has indicated the Council's open attitude towards the approval of observer status, and is meanwhile a good basis for China, Japan and South Korea to further strive towards the permanent observer status.

3.4.4 Actively cooperate with Italy and the EU in applying for the permanent observer

China and South Korea's application for permanent observer status had not been approved by the Arctic Council in 2009, with the former rejection of Italy and EU's application. As can be seen, the Council regards all applicants as a whole, and may resolve this issue as a whole in the future, and there seems to be no competition between applicants. Therefore, it is necessary to strengthen ties and communication with Italy and the EU, and jointly take measures to urge the Arctic Council to address this issue properly.

28. DENMARK IN THE ARCTIC. <http://www.ambottawa.um.dk/enmenu/aboutdenmark/denmarkinthearctic>. (Last accessed on 28 Nov. 2009)

3.4.5 Actively take advantage of the Arctic Council to promote cooperation with “Antarctic Treaty” Consultative Parties

On 6th April, 2009, the joint meeting of the Antarctic Treaty / Arctic Council adopted “Joint Ministerial Declaration on the International Polar Year and Polar Science”. The declaration agreed on the importance of achievements of the International Polar Year to the scientific research, the Arctic natives including indigenous people, and to all human beings, and meanwhile encouraged the development of collaborative research and scientific observation in the polar regions, and expressed the commitment to considering the important issues related to scientific cooperation and latest scientific discovery on the biennial Arctic Council ministerial meeting and annual Antarctic Treaty consultative meeting, and moreover, be further committed in the scientific explanation of the joint development measures regarding the threats in the polar regions. China, Japan and South Korea are all consultative parties of the “Antarctic Treaty”, and should actively respond to the points in the “Declaration”, and also pay attention to the next International Polar Year. All this will provide more opportunities to participate in the activities of the Arctic Council.

4. Conclusion

The Arctic and surrounding sub-Arctic regions is a key area for the study of global change because the anthropogenic impact is projected to be the largest in this area due to the complicated feedback processes of the nature. The Arctic is undergoing strong changes in the recent years during the global warming. They have a significant impact on surrounding countries in East Asia and are also directly related to the sustainable development of national economy of China, Japan and South Korea. In addition, the economic and social development of East Asian region has also raised the demand on the natural resources and sea route use in the Arctic region. As an only comprehensive treaty concluded in this field, UNCLOS applies to the Arctic Ocean in general. China, Japan and South Korea shall be responsible and capable of participating in the peaceful using sea route and common natural resources in the Arctic regions under the legal framework of UNCLOS.

Meanwhile, geopolitical concerns in the Arctic regions have been reduced after end of Cold War. New interests and debates are arising as the Arctic is becoming more accessible. That will be understood as an opportunity for entry of new actors to the Arctic regions. East Asian countries shall seize this opportunity to show their strong concerns about the Arctic environment and climate changes. The Arctic Council, as the only inter-governmental organization in the Arctic, plays undoubtedly a significant role in pushing forward the international legislation regarding the Arctic development. So far, China, Japan and South Korea still have not been recognized as permanent observer of the Arctic Council.

Therefore, East Asian countries shall express a full understanding of the Arctic Council to demonstrate the capability and an active attitude towards cooperation with the Arctic Council. We should cooperate and actively participate in the activities of the Arctic Council to strive for the observer status and promote cooperation with countries surrounding the Arctic in the fields of Arctic's nature resource exploration, sea routes use as well as eco-environmental protection to uphold the East Asian countries' interests in the Arctic region.

References

- Arctic Council (1991) Arctic Environmental Protection Strategy.
- Arctic Council (1996) Declaration on the Establishment of the Arctic Council.
- Arctic Council (1998) The Iqaluit Declaration, on the occasion of the First Ministerial Meeting of the Arctic Council.
- Arctic Council (1998) ANNEX 2 to Arctic Council Rules of Procedure.
- Arctic Council (1998) Arctic Council Rules of Procedure.
- Arctic Council (2000) The Barrow Declaration, on the occasion of the Second Ministerial Meeting of the Arctic Council.
- Arctic Council (2001) Arctic Council Indigenous Peoples' Secretariat Terms of Reference and Procedural Guidelines.
- Arctic Council (2002) The Inari Declaration, on the occasion of the Third Ministerial Meeting of the Arctic Council.
- Arctic Council (2004) The REYKJAVÍK Declaration, on the occasion of the Fourth Ministerial Meeting of the Arctic Council.
- Arctic Council (2005) Foreign Affairs Office of Canada: Strengthening Canada's Leadership and Influence in the Circumpolar World.
- Arctic Council (2006) The SALEKHARD Declaration, on the occasion of the Fifth Ministerial Meeting of the Arctic Council.
- Arctic Council (2007) Arctic Council Meeting of Senior Arctic Officials, FINAL MINUTES.
- Arctic Council (2009) The TROMSØ Declaration, on the occasion of the Sixth Ministerial Meeting of the Arctic Council.
- Arctic Council (2009) List of participants, SAO Meeting.
- Arctic Council (2009) Senior Arctic Official (SAO) Report to Ministers, Tromsø, Norway.
- Arctic Council (2009) Arctic Council Meeting of Senior Arctic Officials, FINAL MINUTES.
- Barents Euro-Arctic Council (2005) Working Group on Trade Barriers (WGTB) Action Plan.
- Bloom, E. (1999) Current Development: Establishment of the Arctic Council. 93 AM. J. INT'L L. 712, 712.
- Long, C.-N. (2008) New Era of the Arctic Ocean. *CITIC PACIFIC RESEARCH ADVANCE* 14.
- Vanderzwaag, D., R. Huebert and S. Ferrara (2002) The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering While the Arctic Marine Environment Totters, *Denver Journal of International Law and Policy Spring* 151.
- International Arctic Science Committee (2005) International Study of Arctic Change.
- Joint meeting of the Antarctic Treaty Parties and the Arctic Council (2009) Washington Declaration on the International Polar Year and Polar Science.
- Langlais, R. (2000) Arctic co-operation organisations: A status report for the Standing

- Committee of Parliamentarians of the Arctic Region. In Conference Report: *Fourth Conference of Parliamentarians of the Arctic Region*, Rovaniemi Town Hall, Rovaniemi, Finland, August 27-29, 2000, (ed.) M. Heikkilä, 85-116. Foreword by K. Kiljunen. Helsinki: Standing Committee of Parliamentarians of the Arctic Region/Edita, 2000.
- Verhaag, M. A. (2003) It Is Not Too Late: The Need For A Comprehensive International Treaty To Protect The Arctic Environment, *Georgetown International Environmental Law Review* 15.
- Jensen, Ø. (2007) The IMO Guidelines for Ships Operating in Arctic Ice-Covered Waters: From Voluntary to Mandatory Tool for Navigation Safety and Environmental Protection? *FNI Report* 2007(2).
- Guo, P.-Q. (2006) United Nations “no right” under the jurisdiction of Antarctica. *OCEAN WORLD* 12.
- Guo, P.-Q. and D. Tian (2008) Murmansk and Arctic speech: Arctic into the era of cooperation. *OCEAN WORLD* 5.
- Polar Research Institute of China (2005) *Polar Science & Technology* 1.
- Polar Research Institute of China (2008) *Polar Science & Technology* 2.
- Polar Research Institute of China (2009) *Polar Science & Technology* 6.
- Ansson, R. J. (1998) The North American Agreement on Environmental Protection and the Arctic Council Agreement: Will These Multinational Agreements Adequately Protect the Environment? 29 CAL. W. INT’L L.J. 101, 103.2.
- Rothwell and Donald R. (2008) The Arctic in International Law: Time for a New Regime? *ANU College of Law Research Paper* 08.
- Russia (2008) Basics of the State Policy of the Russian Federation in the Arctic for the Period till 2020 and for a Further Perspective.
- U.S. (2009) National Security / Homeland Security Presidential Directive on Arctic Region Policy.
- United Nations (1945) United Nations Charter.

<Website>

<http://arctic-council.org>
<http://www.eubusiness.com/>
<http://www.arcticportal.org/iasc/>
<http://www.ambottawa.um.dk>
<http://www.imo.org/>
<http://www.un.org/>
<http://www.unep.org/>
<http://www.wwf.org/>
<http://news.xinhuanet.com>