

**Mini-Symposium in Commemoration of the Inaugural Conference of the Parties (COP 1) to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (CAOFA), Korea Polar Institute, Incheon, S. Korea, November 22, 2022**

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“Significance and Implications of the Agreement”

I want to thank Dr. Sung-Ho Kang, KOPRI, Ambassador Hong and the Korean Government for hosting this symposium and inviting me to participate. This is an important moment for Arctic cooperation, and it is valuable to have this sort of discussion in advance of the first Conference of the Parties (COP) under the Central Arctic Ocean Fisheries Agreement (CAOFA, formally the Agreement to Prevent Unregulated High Seas Fisheries in the Arctic Ocean).

My former State Department colleague and current White House official Dave Balton has just provided important background about the negotiation of the Convention, its content and what it has achieved.

I have been asked to provide some thoughts on the significance and implications of the Agreement. My perspective is that of a former diplomat and someone who studies Arctic governance.

First of all, I want to congratulate all ten parties for reaching this important milestone. The parties, both Arctic States and non-Arctic States, are ready to take important steps to implement the Agreement. It has taken many years of effort to get to this point.

I plan to cover a number of topics related to the significance of the Agreement. Part of this relates to the significance of the Agreement in terms of fisheries policies and its particular terms. But the Agreement also has broader implications for Arctic cooperation and for ocean conservation.

As I will discuss, in my view the Agreement has significance not just for fisheries management but for Arctic cooperation as a whole. It is the first agreement of its type bringing these parties together. In essence, the Agreement creates a path forward to protect the Arctic environment and ecosystem. It has political, economic and environmental implications.

Let me start with what is most obvious, that the Agreement applies modern approaches of fishing management to the Central Arctic Ocean (CAO). It takes a precautionary approach to the question of when and how fish stocks may be exploited in the future. It takes an ecosystem- and science-based approach to fisheries management. It also puts in place barriers to unreported fishing in the region.

And it doesn't rush towards exploitation. The parties understood that with climate change and ice receding in the Arctic Ocean, there would be the potential for fishing in the CAO in coming

decades. Thus, the parties agreed to a moratorium on commercial fishing – committing for the duration of the Agreement not to allow their vessels to conduct commercial fishing operations in the large high seas portion of the Central Arctic Ocean. They understood that currently there isn't enough information with which to manage any commercial fisheries there sustainably.

The Agreement's significance is also primarily about science. As provided in Article 4 of the Agreement, the parties will establish a Joint Program of Scientific Research and Monitoring for the Central Arctic Ocean: "with the aim of improving their understanding of the ecosystems of the Agreement Area and, in particular, of determining whether fish stocks might exist in the Agreement Area now or in the future that could be harvested on a sustainable basis and the possible impacts of such fisheries on the ecosystems of the Agreement Area." Thus the Agreement centers on applying science to understanding current and future fish stocks.

At the same time, the Agreement will make a major contribution to Arctic science as a whole. The region is data poor, and now key nations active in the Arctic will embark on a long-term joint effort that will add to our understanding of the region's marine environment. Thus, there will be a major contribution to marine scientific research, relevant not only to the CAO but to the surrounding Exclusive Economic Zones.

It is perhaps worth pointing out that the Agreement, through its work on science and implementation of the precautionary approach, serves to promote protection of the Arctic environment as whole. If large-scale marine protection initiatives, possibly including marine protected areas, one day come to the Arctic, the CAOFA regime may be involved either directly or through the science derived from its activities.

The inclusion of provisions related to Indigenous knowledge is one of the most important aspects of the Agreement. There are few international agreements that include clauses of this sort, and this may be the first one that requires use of Indigenous knowledge. (Another agreement that has a provision on Indigenous knowledge is the Agreement on Enhancing Arctic Scientific Cooperation of 2017 negotiated under the auspices of the Arctic Council.) The Agreement provides for participation of representatives of Arctic communities including Indigenous peoples in committees set up to undertake scientific work and other activities. This recognizes the importance of fishing to coastal and Indigenous communities in the Arctic, their interests in preventing unregulated fishing in the high seas portion of the CAO, and the contributions they can make to developing relevant policies related to management of these resources.

The significance of the Agreement extends beyond its specific provisions.

This is the first international agreement about the Arctic negotiated among Arctic and non-Arctic States on an equal footing, and that has non-Arctic States as parties along with Arctic States. As you know, the Arctic Council has eight member states, including the five Arctic Ocean littoral states that are parties to CAOFA. The Council also has a number of recognized observers, including China, Japan and S. Korea. And the European Union acts as an "observer" to the Council as well.

The Arctic Council is the main diplomatic forum for the region. It is sometimes criticized for its exclusivity because it has only eight members who are its decision-makers.

CAOFA takes a different approach, as it had to given the realities of international fishing regimes, where all countries whose ships are fishing in a particular area (or in this case, those with the potential to do so) need to be part of the regime in order for it to be effective. In this case, it is both practically and symbolically important to have the non-Arctic States involved, as it signifies their important role in an aspect of regional governance.

Because the European Union has competence over fishing undertaken by its member states, this also means that its 27 member states are also bound by and potentially involved in implementation of CAOFA. The parties can also invite other countries to join the Agreement, and their doing so can be imagined for the future, including with respect to any follow-on regional fisheries management organization that might be created.

But again, the significance extends beyond fishing. States that do not have territory in the Arctic, including those involved in this agreement, have shown considerable interest in the region. Those interests have many bases. Some non-Arctic States have a long history of contact with the Arctic through exploration. Some have pursued economic benefits, including related to shipping, tourism, and energy extraction. Some focus on scientific research in the Arctic, which is vital for understanding the global phenomenon of climate change. Some may want to influence regional environmental policies. And others may have foreign relations or national security objectives.

Having ten parties in an Arctic agreement therefore implies an opening up of the Arctic to the legitimate pursuits of non-Arctic States. Although that opening is already well underway, this is the first time it comes about formally in the Arctic involving non-Arctic States in an international law context, beyond large multilateral treaties like the UN Convention on the Law of the Sea, the UN Framework Convention on Climate Change, etc.

In addition, this type of arrangement may bring Arctic and non-Arctic states closer in terms of cooperation that may extend beyond fisheries. In particular, it might spur additional multilateral efforts to support Arctic science.

So far, I've focused on CAOFA in the context of Arctic relations without regard to the current geopolitical situation. But relations, including among parties to the Agreement, have changed since February of this year.

On March 3, representatives of the Arctic Council states other than Russia announced a complete pause in the work of the Council in light of Russia's actions in Ukraine. On June 8, the members other than Russia announced a limited resumption of work on projects that do not involve the participation of Russia. Russia is currently chair of the Council, and we wait to see how Norway will proceed with its chairmanship, which is scheduled to begin in May of next year.

Where there was once an idea that the Arctic was a special space where cooperation was possible despite geopolitical tensions in other places, this sort of exceptionalism does not apply under current circumstances, at least when it comes to the Arctic Council.

The Council is a forum, not treaty-based and not an international organization. Treaty-based organizations, however, appear to be better able to withstand the pressures created by the Ukraine conflict.

The United Nations and its Security Council continue their work, as does the International Maritime Organization. At the other pole, although aspects of the meetings have been somewhat strained, the Antarctic Treaty Consultative Meeting and the Commission for the Conservation of Antarctic Marine Living Resources, were able to hold their meetings and carry out their functions.

And so we find that CAOFA, through its COP, appears ready to undertake its responsibilities.

Hence, CAOFA at the moment is the most prominent example of active Arctic regional cooperation. It is the cutting edge of Arctic cooperation. And it will receive particular attention because of the pause in the work of the Arctic Council, which may go on for some time.

These geopolitical aspects aside, as I've mentioned, CAOFA establishes a new institution for Arctic cooperation that is now operational.

CAOFA will also fit into the broader international efforts to promote ocean conservation. One potential important future linkage relates to the current negotiations at the UN concerning a high seas treaty as an implementing agreement under UNCLOS, namely the negotiations related to biodiversity beyond national jurisdiction or BBNJ. Under that agreement, there is a proposal for allowing a treaty COP to create high seas marine protected areas (MPAs), working with regional organizations that have relevant jurisdiction, including in relation to fishing. Although CAOFA is not yet a regional fisheries management organization it may now or in the future have relevant capacity to make a contribution to the operation of a BBNJ treaty, ranging from providing scientific information related to the Arctic ecosystem, or, again in the future under a new mandate, establishing or helping to establish MPAs.

The BBNJ negotiations are the largest and most important negotiations related to the oceans currently ongoing. If they result in a widely accepted and ratified treaty, it may have important consequences for high seas areas like the CAO, where the CAOFA of course has a key role.

We see that CAOFA creates some important opportunities:

- To foster improved relations between Arctic States and Non-Arctic States.
- To increase the involvement of non-Arctic states in important policies affecting the Arctic.
- To increase cooperation with Indigenous communities, and promote co-production of knowledge.
- To improve scientific knowledge of the Arctic region, and
- To establish a new regional regime that contributes to Arctic governance.

Of course, with respect to its core mandate related to fisheries management, CAOFA provide a framework for a possible future agreement that will determine how Arctic high seas fisheries may be conducted if the science indicates this can be done sustainably. It will also help guide the Arctic littoral states in future fisheries within their EEZs using science developed under CAOFA.



In coming months and years, we will see how CAOFA may contribute to the future of relations of countries with Arctic interests.

I wish the parties good luck with the COP and the launch of this initiative.

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