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Arctic Governance in a global world: is it time for an Arctic Charter?

- Thank you Vice-President Diana Wallis, for inviting me and giving me the opportunity to address this audience. You have shown an interest in and commitment to High North issues during many years, and you have been instrumental in putting them on the broader European agenda.
- And thank you for inviting me to present the Norwegian perspective. The High North in a broad sense is the strategic priority of my Government. And this is among the regions of the world where major changes are taking place due to climate change and due to the increasing interest it has attracted from a number of players - both states and private actors.
- Let me also say that I value the opportunity to speak on Arctic Governance here at the European Parliament. For Norway it is key that we can share perspectives with our closest partners and allies in Europe. It is also significant that this discussion takes place here – at the EP which is playing an increasingly central role in the European Union.
- We are all affected by developments in the High North. The Arctic is getting warmer and wetter. Snow, ice and permafrost are melting, and ocean levels are rising.
- The projections are complicated and difficult to make. What we *do* know is that climate change is happening twice as fast in the Arctic as elsewhere on the globe.
- Rapid melting of the ice cover will have significant implications for vulnerable ecosystems and the livelihood of local inhabitants in the Arctic.

It will have an impact on the distribution of fish stocks – with potentially significant effects on commercial fisheries.

And it will affect maritime transport in the Arctic – by extending the navigation period and opening up new shipping routes.

Now, to the core of the question that this seminar is addressing.

Do we need an Arctic legal order and Arctic policies?

- Yes, emphatically yes.

We will not be able to address future challenges without a rule-based response and without concerted, effective action that builds on the best available scientific data and a responsible and precautionary approach. This is the basis of the Norwegian

Government's policies. Knowledge-based management policies are also key to the livelihoods of indigenous peoples and local inhabitants.

- This is no abstract vision. What we need is concrete aims, and we need efficient tools to achieve these aims.

In the public debate some are warning that the High North may become like the Wild West. In the current issue of *Foreign Affairs*, Scott Borgerson takes some intriguing perspectives on this scenario. And he goes on to claim that the Arctic region is not currently governed by any comprehensive multilateral norms or regulations. He asserts that the reason is that the Arctic was never expected to become a navigable waterway or an area of large-scale commercial development.

This brings us to the key question: Do we lack an adequate legal order for the Arctic Ocean?

- And my answer is very clear: No. We have the overall framework - what I would call the rules of the game. In short: we are talking about the United Nations Convention on the Law of the Sea. This is the comprehensive multilateral regime that applies in the Arctic.
- We must remember that the Arctic is not the Antarctic. The Arctic is an ocean covered with ice. In the 1890s the Norwegian explorer Fridtjof Nansen attempted to reach the North Pole by letting his ship *Fram* freeze into the drifting Arctic ice cover. Now this ice is rapidly melting, opening new potential sea routes.
- Let me quote Hans Corell, the former Under-Secretary-General for Legal Affairs of the United Nations: "The questions that arise in the Arctic are definitively not about territory over which states have sovereignty." The point of departure when it comes to the exclusive economic zone and the continental shelf is that the rules that govern the high seas apply, in principle the principle of freedom of navigation.
- So this is a fundamental point of departure. We do not exclude future new regulation in particular fields. But only if real needs have been identified with precision. Our priority now should be implementation of the overall framework through concrete policies – by states applying and playing by the rules of the game.
- My approach is focused on effectiveness. Norway is against undermining the effectiveness of existing norms. I would like to sound a word of caution, as a representative of a government that is keen to strengthen the rule of law, rather than weakening it.
- We already have an ample basis for concrete action to promote safety, responsible management policies and environmental protection. Defining something as a legal vacuum could become a comfortable excuse for failing to act.
- And let us remember that the formulation, adoption and entry into force of international legal rules that can become applicable to all relevant states is a very time-consuming and often difficult process. The road that led to the Convention of the Law of the Seas is a good illustration.

- Therefore, rather than weakening earlier normative achievements, we wish to strengthen implementation and accountability.
- For policies to be effective and to be transformed into action we need rock-solid legal foundations. We believe we have those foundations in place. We now need to build on them through timely action at the national level and through increased international cooperation in a number of relevant forums.
- Appropriate action requires prior definition of distribution of powers, rights, duties and responsibilities to ensure clarity – otherwise the result is conflict, or paralysis. Only international law can provide such clarity – these foundations are the basic rules of the game. Cooperation and national policies depend on the clarity of those rules.
- To sum up our approach, here are three key questions we should ask when we are confronted with a particular issue in this field:
 - *First, do we already have basic rules that might be applicable also to the Arctic Ocean? If so, let's identify them.*
 - *Second, are the rules concerned widely known? Are they binding on all the relevant actors? And, crucially, are they actually being applied? The key issue of implementation arises.*
 - *And third, having answered these questions, and only then, we ask ourselves: are there real needs that have not been addressed through effective regulations? And if so, how should these be addressed? Here we have to distinguish between concrete cooperation, national measures, budgetary appropriations, etc. A call for new international law - i.e. new rules of the game – is not necessarily the answer to concrete problems.*
- In our view, the actual challenges related to the legal regime in the Arctic may have more to do with a lack of implementation of existing rules, rather than an actual lack of rules. The Arctic Ocean is challenging in this respect, particularly because of the sudden recent focus on the need for implementation of a number of rules that were previously not of much relevance because the ice limited economic activity in these areas.
- Now, all of this may sound comforting in theory, but far removed from reality. It is not. Let me give you a few examples.

Issue – Rules – Policy: examples of a programme of action

- a) It took decades to agree on and become bound by the Law of the Sea Convention. Does it contain rules on ice-covered waters? Yes. Have they been implemented nationally? Only to a very limited extent.
- b) Does the Convention allow for the adoption or recommendation of specified mandatory maritime routes in difficult waters by the IMO? Yes, it does.

c) Does the Convention allow coastal states to adopt non-discriminatory measures, including the establishment of protected areas, within economic zones for various purposes? Yes, it does.

d) Does this Convention, and other international agreements, contain rules designed to promote scientific research, environmental protection and other measures relevant to the Arctic Ocean? Yes, they do. Have these been fully implemented? Not really.

Then there is the question of boundaries, which are always a potential source of disagreement or even outright conflict. However, vast areas of the Arctic Ocean are subject to state authority within the constraints of international law.

A key issue here is the extent to which the coastal states in the Arctic can lay claim to the continental shelf beyond the 200-nautical-mile exclusive economic zone.

Here too we are guided by the Convention. The matter is to be determined by the Commission on the Limits of the Continental Shelf. Coastal states must give priority to the vast task of undertaking the necessary scientific research and documentation. It is important that rule-based clarity about the outer limits be ensured.

Russia has embarked on the task of providing detailed documentation. However, flag-planting on the seabed is of no significance what so ever.

Norway presented its detailed mapping in 2006, documenting the extent of Norway's continental shelf to just north of the 85th parallel.

Then there is the potential case of unresolved boundary issues between states:

Ice melting implies more urgency about the need for boundary agreements.

Has international law evolved a lot during these past years, providing guidance to states in this regard? Yes, indeed. Do we favour resolving these delimitation issues? Yes, we do.

With state authority follows state responsibility, and a basis for taking concrete measures, including on environmental protection. We welcome that.

What about the waters beyond the reach of the coastal states?

Here too the rules are clear. The areas in the Arctic that will not constitute exclusive economic zones or continental shelf will belong to an area in which the resources are referred to by the Convention as the "common heritage of mankind".

And finally, not all issues can be addressed through rules. We also need policies.

Clearly – as Hans Corell observed – the fact that the Convention on the Law of the Sea applies in the Arctic certainly does not mean that there is no need for further work at the international level. Indeed there is, in particular to ensure the protection of the environment in this extremely sensitive area.

This may call for new regulations. But above all, we are in need of policies. This is the real focus of my Government. We need wise, sound and sustainable policies for this highly vulnerable region. This is one reason why we have defined the High North as our strategic priority.

We are developing Norwegian policies for Norwegian waters - such as the comprehensive management plan for the Barents Sea which addresses the various needs linked to energy exploration, management of fishing resources, transport and environmental concerns.

At a next stage, developing policies is a prime task for modern multilateralism. A number of guidelines have been developed by important bodies such as the Arctic Council. It has formulated guidelines for Arctic oil and gas exploration, building on the precautionary approach, defining a number of important minimum obligations, and leaving it to the states concerned to go beyond if required. A number of other guidelines have been adopted or are being considered, together with a large number of cooperative projects.

One key challenge of ice melting is the increasing amount of drifting ice, combined with more navigation.

This requires increased preparedness and cooperation, including with regard to search and rescue. Challenges in the northern waters are in this respect notoriously difficult to meet, partly because of large distances. We rely heavily on increased cooperation, including between coastal states, but also with flag states.

So let me sum up:

- There should be no fundamental uncertainty about how the Arctic is to be governed. We already have a legal regime in place.
- A key challenge is to secure ratification by all states. It would be a real step forward if President Bush succeeded in securing ratification of the Convention by the Senate. This would enable the US to join with all the rights and obligations of the nation state.
- Calls for a new legal regime risk creating uncertainty, and may undermine the existing framework. Let us not go down that road.
- What we now need is to make sure that the coastal states and others continue to implement existing international agreements in an effective manner. And we should always be open to exploring new mechanisms for cooperation to address future developments.
- Last October the heads of legal affairs of the five Arctic coastal states – Russia, Norway, Denmark/Greenland, the United States and Canada – met and agreed on a common approach to these key issues.

At the end of this month I will go to Greenland to meet representatives of the five coastal states at political level. A main objective will be to reaffirm circumpolar agreement on the main norms and regulations that apply to the Arctic.

- I said at the outset that we are all affected by developments in the High North. I might add that the High North is affected by all of us. Reducing climate change is a global challenge. Managing the effects of climate change in the Arctic Ocean is a major regional challenge for coastal states and others. Fortunately we have a robust legal regime in place to guide us as the Arctic Ocean opens.