

does have the constitutional authority to delegate such tariff-imposing responsibilities to the president.⁴⁴

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

United States Resists Efforts to Have the Arctic Council Make Climate-Related Statement
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The Arctic Council convened for the eleventh time in early May 2019 in Rovaniemi, Finland, for a two-day conference. On May 7, the Arctic Council released a Joint Ministerial Statement that affirmed the desire of the eight member states to work together to face upcoming challenges but made no substantive commitments and no mention of climate change. In remarks to the Council, Secretary of State Mike Pompeo expressed wariness about collective decision making and warned against potential effects of Chinese activity in the Arctic.

In its final statement, the Arctic Council focused on the member states' commitment to each other rather than on specific policies:

Reaffirming our commitment to maintain peace, stability and constructive cooperation in the Arctic,

Emphasizing the role of Arctic States in providing leadership in addressing new opportunities and challenges in the Arctic, working in close cooperation with the Permanent Participants,

Recognizing the diversity of the societies, cultures and economies in the Arctic, reaffirming our commitment to the well-being of the inhabitants of the Arctic, to sustainable development and to the protection of the Arctic environment,

. . . .

[We] [w]elcome the ongoing strategic work, and instruct the Senior Arctic Officials to continue strategic planning, in order to provide guidance and improve the efficiency and effectiveness of the Arctic Council, further instruct the SAOs to review the roles of the Ministerial meetings, the Senior Arctic Officials and the Permanent Participants, and to report to Ministers in 2021¹

Notably missing from the final statement were any substantive decisions and any mention of climate change.² The Arctic Council Chair, Finnish Minister for Foreign Affairs Timo

⁴⁴ *Am. Inst. for Int'l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335 (Ct. Int'l Trade 2019). For legal analysis of this issue, see Scott R. Anderson & Kathleen Claussen, *The Legal Authority Behind Trump's New Tariffs on Mexico*, LAWFARE (June 3, 2019), at <https://www.lawfareblog.com/legal-authority-behind-trumps-new-tariffs-mexico>.

¹ Arctic Council Press Release, Rovaniemi Joint Ministerial Statement (May 7, 2019), available at https://oarchive.arctic-council.org/bitstream/handle/11374/2342/Rovaniemi%20Joint%20Ministerial%20Statement_2019_Signed.pdf?sequence=1&isAllowed=y.

² *Id.*

Soini, provided additional information through a separate statement, indicating that climate change was a concern of a majority of members:

A majority of us noted with concern the [Intergovernmental Panel on Climate Change] Special Report on Global Warming of 1.5°C and its findings, and emphasized the importance of mitigation and adaptation actions to limit the impacts of climate change on Arctic communities as well as on Arctic cryosphere and ecosystems,

The meeting welcomed the Arctic Climate Change Update 2019 report, and a majority of us underlined that changes in Arctic ecosystems have serious consequences for people who rely on and benefit from them, and called on the Arctic Council to continue monitoring and assessing changes taking place in the Arctic, in collaboration with relevant international organizations³

Media reports indicated that the United States objected to any mention by the Council of either climate change or the Paris Agreement, to the frustration of other Council members.⁴ In his remarks to the Council, Pompeo signaled some skepticism about collective agreements but asserted American environmental leadership:

This forum that we're in today embodies many of the characteristics that we'd all like to see in multilateral forum all around the world; it's built on the bedrock principles of individual sovereignty, voluntary cooperation, and shared responsibility

. . .

In addition to sharing our vision, I also came here to listen. I've appreciated this opportunity today to hear from each of you, including on topics that we don't always agree on. Even on those topics, I think it is the case that we tend to agree much more than we disagree. For example, the Trump administration shares your deep commitment to environmental stewardship. In fact, it's one reason Chinese activity, which has caused environmental destruction in other regions, continues to concern us in the Arctic. . . .

Collective goals, even when well-intentioned, are not always the answer. They're rendered meaningless, even counterproductive, as soon as one nation fails to comply. Regardless of whether our goal is in place, the United States strives to operate with honesty and transparency. Though we are not signing on to the collective goal for reduction of black carbon, America nonetheless recently reported the largest

³ Arctic Council Press Release, Statement by the Chair, at 1, available at https://arctic-council.org/images/PDF_attachments/Rovaniemi-Statement-from-the-chair_FINAL_840AM-7MAY.pdf.

⁴ See Anne Gearan, Carol Morello & John Hudson, *Trump Administration Pushed to Strip Mention of Climate Change from Arctic Policy Statement*, WASH. POST (May 2, 2019), at https://www.washingtonpost.com/politics/trump-administration-pushed-to-strip-mention-of-climate-change-from-arctic-policy-statement/2019/05/02/1dabcd5e-6c4a-11e9-8f44-e8d8bb1df986_story.html (quoting a source as stating that "There have been challenges in the negotiations with the United States"); Somini Sengupta, *United States Rattles Arctic Talks with a Sharp Warning to China and Russia*, N.Y. TIMES (May 6, 2019), at <https://www.nytimes.com/2019/05/06/climate/pompeo-arctic-china-russia.html> (quoting a source as remarking that "There's seven countries on one side, and the U.S. on the other").

reduction in black carbon emissions by any Arctic Council state. We are doing our part, and we encourage other states to do the same, and to do so with full transparency. That's true for every issue before this council⁵

The day before the official Arctic Council ministerial meeting, Pompeo delivered a separate address in which he argued that the Arctic Council could no longer afford to focus exclusively on cultural and scientific issues and indicated that it should also consider strategic ones.⁶ In the same speech, Pompeo raised security concerns relating to China and Russia, arguing that “China could use its civilian research presence in the Arctic to strengthen its military presence” and that Russia’s attempts to control the passage through the Northern Sea Route were “part of a pattern of aggressive Russian behavior . . . in the Arctic.”⁷ China’s Special Representative for Arctic Affairs responded that Pompeo’s accusations were groundless and would not affect China’s involvement in the Arctic.⁸ In his official remarks at the council meeting, Russian Foreign Minister Sergey Lavrov stated, “there are absolutely no pretexts for conflicts or attempts to address any issues arising here with a military response.”⁹

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Trump Administration Takes Domestic and International Measures to Restrict Asylum

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The Trump administration has continued its efforts to restrict immigration through a series of measures designed to limit the availability of asylum in the United States and to promote increased immigration enforcement in Mexico. In July of 2019, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) promulgated an interim final rule disqualifying asylum applicants who transited through third countries without seeking protection in those countries. This rule immediately became the subject of ongoing litigation, and, in September of 2019, the Supreme Court stayed an injunction that had been issued against its enforcement, with two justices dissenting. At the international level, over the summer

⁵ U.S. Dep’t of State Press Release, Remarks at the Arctic Council Ministerial Meeting (May 7, 2019), at <https://www.state.gov/remarks-at-the-arctic-council-ministerial-meeting-2> [<https://perma.cc/VRS8-N5ZU>].

⁶ Secretary of State Pompeo Remarks on U.S.-Arctic Policy, C-SPAN, at 3:20 (May 6, 2019), at <https://www.c-span.org/video/?460478-1/secretary-state-pompeo-warns-russia-china-arctic-policy-address-finland>.

⁷ *Id.* at 8:40, 10:56.

⁸ Ming Mei, *Chinese Representative Refutes Unwarranted U.S. Accusation on Arctic Cooperation*, XINHUA (May 7, 2019), at http://www.xinhuanet.com/english/2019-05/07/c_138040973.htm. China has observer status at the Arctic Council. See Arctic Council, Observers, at <https://arctic-council.org/index.php/en/about-us/arctic-council/observers>.

⁹ Arctic Council Press Release, Foreign Minister Sergey Lavrov’s Remarks at the 11th Arctic Council Ministerial Meeting, Rovaniemi, at 1 (May 7, 2019), at https://oaarchive.arctic-council.org/bitstream/handle/11374/2405/2019_Rovaniemi_Ministerial_Statement_by_the_Russian_Federation_English.pdf?sequence=5&isAllowed=y.