

Centre International de Formation Européenne
INSTITUT EUROPEEN DES HAUTES ETUDES
INTERNATIONALES
Diplôme des Hautes Etudes Européennes et Internationales
Filière Trilingue – Nice



ARCTIC GEOPOLITICS-TIME
FOR A NEW REGIME

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2009-2010

Acknowledgements

I would like to thank Dr. Dagmar Röttches-Dubois for assisting me in writing this thesis. An additional acknowledgement goes to Dr. Paul Arthur Berkman, head of the Arctic Ocean Geopolitics Programme at the Scott Polar Research Institute, University of Cambridge, who provided me with helpful commentary.

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List of Main Abbreviations

ACIA	Arctic Climate Impact Assessment
AEPS	Arctic Environmental Protection Strategy
AMAP	Arctic Monitoring and Assessment Programme
ASW	Anti-Submarine Warfare
ATS	Antarctic Treaty System
AWPPA	Arctic Waters Pollution Prevention Act
CADZ	Circum-Arctic Demilitarized Zone
CLCS	Commission on the Limits of the Continental Shelf
EEZ	Exclusive Economic Zone
EU	European Union
IAEA	International Atomic Energy Agency
IASC	International Arctic Science Committee
ICC	Inuit Circumpolar Conference
ICISS	International Commission of Intervention and State Sovereignty
IEA	International Energy Agency
IGY	International Geophysical Year 1957-1958
ITCU	International Territory for the Common Use
NRDC	Natural Resources Defense Council
NWFZ	Nuclear Weapon Free Zone
NWT	Northwest Territories
OCS	Outer Continental Shelf
OPEC	Organization of Petroleum Exporting Countries
RW	Radioactive Waste
SCAR	Scientific Committee on Antarctic Research
STCU	State Territory for the Common Use
UNSC	United Nations Security Council
UNGA	United Nations General Assembly

UNEP	United Nations Environment Program
USGS	United States Geological Survey
UNCLOS	United Nations Convention on the Law of the Sea

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For almost 500 years, from the fifteenth century to the early twentieth century, a mysterious Arctic lured European and American explorers seeking valuable minerals, a passage to the Orient, answers to the mysteries, and a challenge to the human spirit. The Arctic took the lives of hundreds who possessed neither the wisdom nor the skill to survive there. Today, shippers open two sea routes yearly, one in the Northeast Passage and one in the Northwest Passage. Iron, lead, and zinc mines in the Arctic produce valuable ore transported to the South through these once unknown Arctic passages. Nuclear-powered ice breakers and ice-breaking container ships move cargo year round to and from ports that, until recently, were inaccessible for over half the year. The wealth of black gold and its companion natural gas now flows southward through hundreds of miles of pipeline from deposits in northern Alaska and northwestern Siberia. For the military, the Arctic has emerged as one of the world's most important theaters for the development and operation of strategic

The Arctic contains immense traets of wilderness impelling those who treasure wild places to wage legal and political battles to prevent oil, gas, and mineral development as well as military activities from spoiling their vision of the Arctic. Taken together, these developments have transformed the Arctic into a region of increasing domestic and international conflicts."

¹ Osherenko, Gail/Young, Oran: The age of the Arctic. Hot Conflicts and Cold Realities, England: Cambridge University Press, 1989

1

INTRODUCTION

“According to conventional wisdom, the Arctic and the Antarctic are ‘poles apart’ because of their relative physical isolation, harsh natural attributes and apparent separation from both the wider international community and each other.”² Indeed, the Arctic is a distinct region and requires close attention as we have entered the Age of the Arctic.³

The Arctic has for long been a part of the Earth that is characterized by severe climate conditions as a result of the huge amount of ice formations. About 75 percent of the arctic regions are inhabitable due to extreme temperatures of the area.

On August the 2nd 2007, two Russian submarines planted a Russian flag on the sea floor, 4,261 meters beneath the North Pole – a historic claim to the region and its resources. This has increased the concern of the US, Canada, Norway and Denmark. Why this sudden interest in the Arctic region? Mainly because changes in there, particularly the ice melting, have opened new opportunities - new opportunities for oil and gas development for the countries boarded to the Arctic, and they have opened up the opportunity for sea transportation to move from the Pacific Ocean to the Atlantic at perhaps one third less distance, namely the Northwest Passage.

The Arctic is home to vast natural resources, among them oil, natural gas and minerals. The region could hold about 22 percent of the world’s undiscovered

² Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996, P. ix

³ Osherenko, Gail/Young, Oran: *The age of the Arctic. Hot conflicts and cold realities*, England: Cambridge University Press, 1989

conventional oil and natural gas resources. Previously, the ice blocked much of its exploration, but as the ice melts away, it's becoming more accessible, and, of course, as the price of oil remains high, more attractive and economically feasible.

The Arctic has long been prized by explorers and traders. But as the arctic ice melts, the question arises, of who has the right to claim the region's natural resources.

Once regarded as an inhospitable area, the Arctic Ocean is now a navigable Ocean ringed by eight nations – Canada, Denmark (via Greenland), Finland, Iceland, Norway, Russia, Sweden and the United States⁴ And these powerful members of the international community now pursue their interests in arenas previously regarded as peripheries, such as the Arctic.

The image of the Arctic as a polar desert⁵ is changing increasingly with the advance of climate change and economic globalization. In an increasingly interdependent world, international cooperation is not only an option, but shall be regarded as a necessity.

Laying claim to such richness is the goal of every country in the region, and the Arctic was already a theater of increasing military activity during the Cold War. *The Law of the Sea Convention* is an agreement, which defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for the environment and management of marine natural resources In addition; it also provides mechanisms for peaceful dispute settlement. As the legal regime for the Arctic, the United Nations Convention on the Law of the Sea (UNCLOS) states that, countries with Arctic coastlines can claim the territory

⁴ Finland and Sweden do not border the Arctic Ocean and are the only Arctic countries without jurisdictional claims in the Arctic Ocean.

⁵ Koivrova, Timo: Governance of protected areas in the Arctic, in: Utrecht Law Review, Volume 5, Issue 1, 2009: <http://www.utrechtlawreview.org/>

within 200 miles out to sea. It entered into force in 1994, but has still not been ratified yet by the United States, despite pressure to do so.⁶

It becomes increasingly evident, that the Arctic plays a vital role in shaping climate and influencing the global environment, thus being crucial for nowadays geopolitics as well as economy. Under these circumstances it is appropriate to raise the question whether the current status of the Arctic Ocean is quite suitable for coping with its sharp problems.

This thesis analyzes whether there is a need for a new Arctic regime, or whether it would be better to maintain the status quo. I chose this subject, because it is a current issue of geopolitics and a global problem that will increase its importance in the upcoming years. The Arctic problematic is of political, economical as well as environmental global significance.

The main subject of this paper is studying the role of the Arctic Region in the world geopolitics. In particular I want to analyse the existing international regime –the law of the sea- whether it is the appropriate legal framework for the resolution of Arctic Ocean issues or if there is the need for a new one.

The present paper is divided into 8 study blocks, which are structured as followed.

The thesis starts with a description of the Arctic Region - its inhabitants, environment, resources as well as its current problems.

The second chapter, defining the two Polar Regions, underlines the importance of the Arctic as ecological region in both regional and global terms. The Arctic is extremely vulnerable to current and projected climate change. The Circumpolar North is now experiencing some of the most rapid and severe climate change on Earth, being the quickest place in the world to warm up. Over the next years, climate change is expected to accelerate, contributing to major physical, ecological, economic, social changes, many of which have already begun.

⁶ The US reasons for not ratifying the UNCLOS will be explained subsequently

Changes in Arctic climate will also have an impact on the rest of the world through increased global warming and rising sea levels. Environmental problems are being discussed next. Like all remote places in the world, the Arctic is a very fragile ecosystem. Potential environmental repercussions to the Arctic include rising sea level, fauna and flora extinction, brief, the disappearance of a truly unique ecosystem. What are the risks to the Arctic environment, and how will the race for the Arctic's treasures impact this unique environment? Climactic changes are both revealing new resources and causing new problems at the same time.

The third chapter devotes itself to the Regime theory, being the theoretical part of the thesis. This chapter is important for the thesis, in order to understand the significance of the UNCLOS as the legal framework of the Arctic. In an increasingly interdependent world, cooperation in the framework of a regime becomes crucial.

Chapter four puts the above chapter into practice, as it analyzes the evolution and the current status of the Arctic Regime. The United Nations Convention for the Law of the Sea is the legal framework of the Arctic Region and the eight Arctic nations have established the Arctic Council - a high-level intergovernmental forum that provides a mechanism to address the common concerns and challenges faced by Arctic people and governments.⁷

Chapter five, "Arctic interests, Arctic conflicts", deals with territorial claims and the different interests of the nations involved. I have chosen to approach this subject in the manner of analyzing the players and their interest before defining the issue or attempting to find solutions to the conflicts.

Five countries—Canada, Denmark, Norway, Russia, and the United States—share a border with the frozen Arctic Ocean. Some of these nations have claimed parts of the region to be their territory. All northern lands "belong" to sovereign lands.

⁷ Both will be explained more in detail subsequently

This has led each of the eight Arctic rim nations to develop policies regarding its own part of the Arctic. Underlying the interests in the area are potentially vast oil, gas and other resources, as well as the opening up of more efficient passages for trade and economic activity. As the arctic ice melts, new trade routes could open. This raises the issue of the ownership of the Northwest Passage. Who owns the Northwest Passage? Canada claims to own it, but the United States claimed that it is international waters, so did the European Union. Russia has indicated a very aggressive stand on occupying their part of the Arctic. Russia has the best position, according to Scott Borgerson. It has the longest arctic coastline - deep, long, arctic rivers – and it also has the best position in terms of infrastructure and resources.⁸

As a result, these nations have been struggling for dominance in the Arctic – fact often referred to as the “race for the Arctic”. Chapter five describes the interests of the parties involved, both the bordered states and the natives. The Arctic is historically inhabited by relative few people, who have existed for centuries in this man versus nature environment, and their opinions must also be taken into account. In order to understand current conflicts arising in the Arctic, chapter five takes a critical look at the imperial past of the northern Polar Region and pinpoints the legacies of conflict as well as the international cooperation. Furthermore, this chapter addresses security interests in the Arctic focusing initially on the military and strategic calculations of the superpowers, the United States and the Soviet Union, during the Cold War.

The sixth chapter introduces Arctic’s opposite pole – Antarctica - underlining the contrast between the highly militarized, conflict-ridden Arctic and the non-militarized, peaceful Antarctic. Although being poles apart, they are similar in some matters such as climate, environment and inaccessibility. These similarities make one wonder whether the Antarctic Treaty System, that proved to be so

⁸ International Affairs Fellow, Council on Foreign Relations. In: Great Decisions: The Arctic, 2009
http://www.fpa.org/topics4707/topics_show.htm?doc_id=697446 [08.10.2009]

efficient for Antarctica, could be applied to the Circumpolar North. What lessons do we need to learn from the Antarctic Treaty System?

Above all, we need to deny assumptions that the Earth's most northerly region is a mirror image of its opposite pole and that policies successful in Antarctica will prove to be successful when applied to the Arctic. The Arctic differs radically from Antarctica, not only because it is surrounded by land rather than a continent surrounded by water, but more importantly because it is inhabited by people. The Arctic is not a global commons like its opposite pole, Antarctica. Instead, its geopolitics is informed by the interests, conflicting or communal, of states whose territory lies partly or entirely in the Circumpolar North. What is important to underline, is that there is a space in the central Arctic Ocean basin that is beyond the sovereignty, sovereign rights, and jurisdictions of any coastal state. This actually is a global commons in the Arctic, though it is surrounded by sovereign territories. All of these factors combine to characterize the geopolitics of the Arctic.

The seventh chapter is the pivotal chapter, as it treats the question of the necessity of a new Arctic regime. The current issues concerning the Far North demand further attention, before analyzing whether there is a need for a new legal framework for the Arctic region. Can a new approach overcome the difficulties of the current regime? The legal framework around the Arctic is important, if not crucial. The UNCLOS is the legal framework through which states present and modify their claims, enabling the participants to make new claims on the continental shelf, and additional claims in economic zones. Since the Arctic flag-planting of Russia under the North Pole in 2007, questions have been raised whether the regime is a sufficient one.

The last chapter sums up the geopolitics of the Arctic and concludes whether the Arctic is in need of a new regime.

The chosen literature consists mainly of studies written on the Arctic problematic. Being a current issue on the international relations agenda the

literature basis consists also of articles as well as studies published in the international press. A part of my research work has been conducted at the Scott Polar Research Institute, University of Cambridge, UK, where Dr. Paul Arthur Berkman, head of the Arctic Ocean Geopolitics Programme has been of great help. Sanjay Chaturvedi's book entitled *The Polar Regions* is a great research of both environmental as well as geopolitical differences between the Arctic and the Antarctic. I have chosen Oran Young's study on *Polar Politics: Creating International and Environmental Regimes* in order to reflect the importance of international regimes and their linkage to the Arctic.

2

THE ARCTIC POLE

2.1 Delimiting the Arctic

Before passing over to the matter in question, it is necessary to define what the Arctic is. The notion “Arctic” originates from the Greek word “arktikos”, meaning the country of the Great Bear, referring to the constellation Ursa Major, which the ancient Greeks could observe in the North. Later the notion received different meanings, until it became to mark the northern polar region.

A number of sources show that the Arctic is the northern polar region of the Earth including the edges of the Eurasia and North America Continents, the Arctic Ocean with all its islands, and also the adjacent parts of the Atlantic and Pacific Ocean, confined from the South by the Arctic Circle, located at 66°33' North latitude. In these limits the Arctic Circle encompasses about six percent of the Earth's surface and consists of 21 million sq. kilometers.⁹ Often used to define the region, the Arctic Circle is drawn at the latitude north of which the sun does not rise above the horizon at winter solstice and does not set below it at summer solstice.

Though this notion is very old and mankind has been studying the Arctic for centuries, there is no clear geographical or juridical definition of it until now. Generally it is admitted to consider that the Arctic is the northern polar region located around the North Pole and limited in the South by the Arctic Circle, i.e. parallel 66°33' North latitude.

⁹ Timtchenko, Leonid: *Quo Vadis, Arcticum?*, Ukraine: Kharkiv State University Press “Osnova”, 1996:23

The Arctic is an ocean basin almost completely surrounded by lands under sovereignty. There is only one deep connection with the rest of the World Ocean, through the Fram Strait between Greenland and Spitsbergen, which forms a subsystem of the world's ocean transport system with vital interconnections. For example, organic chemicals dumped into the seas off South Africa appear in the Arctic. About ten percent of the world's rivers discharge into it, although it represents only 1.5 percent of the world's ocean volume.¹⁰

The following states qualify as Arctic states: Canada, Russia, the United States, Denmark (via Greenland) and Norway - together know as the "Arctic Five". While possessing no direct borders on the Arctic Ocean, Sweden, Finland and Iceland are also usually considered Arctic states, although this depends on which definition of the Arctic one uses. The various Arctic-rim states have, however, different traditions in defining the Arctic, as Sanjay Chaturvedi explains: "The reasons for outside interest in the Arctic region – including the extraction of raw materials, provision of living space, expansion of transport systems, use as strategic space, colonization of indigenous homelands and the situations flowing from them – have made this boundary arbitrary and extremely porous." ¹¹ In this thesis the term Arctic States refers to the Arctic Five.

The first European who visited the Arctic and left written evidence was Greek explorer Pytheas, whose voyage did not have any legal consequences. More than a millennium after it, Norway discovered Iceland, Greenland, Baffin Island and possibly Nova Scotia. The conquest and *fictitious occupation* were the legal modes of acquisition of a territory in that period. In the 18th century the Russian Empire acquired vast territories of Siberia and the Far East, including the Bering Strait and Alaska. The Russian government established its jurisdiction and control over the North American territories settled by Russians and which had been

¹⁰ Chaturvedi, Sanjay: *The Polar Regions. A Political Geography*, 1996: 16

¹¹ *Ibid.*: 15

before it *terra nullius* (no man's land). All these acquisitions are according to the principle of *effective occupation*.¹²

The greatest contribution to the discovery and development of the Arctic territories was made by Russia and Norway, while England was active in finding the Northwest Passage in the 17th century. Islands of the Canadian Arctic Archipelago, Greenland, the Arctic islands of Eurasia, and the Arctic seaways were either international territory for the common use or *terra nullius*. However, starting with the second half of the 19th century, the tendency to spread sovereignty over Arctic territories grew bigger.

¹² Timtchenko, Leonid: Quo Vadis, Arcticum?, Ukraine: Kharkiv State University Press "Osnova", 1996: 46

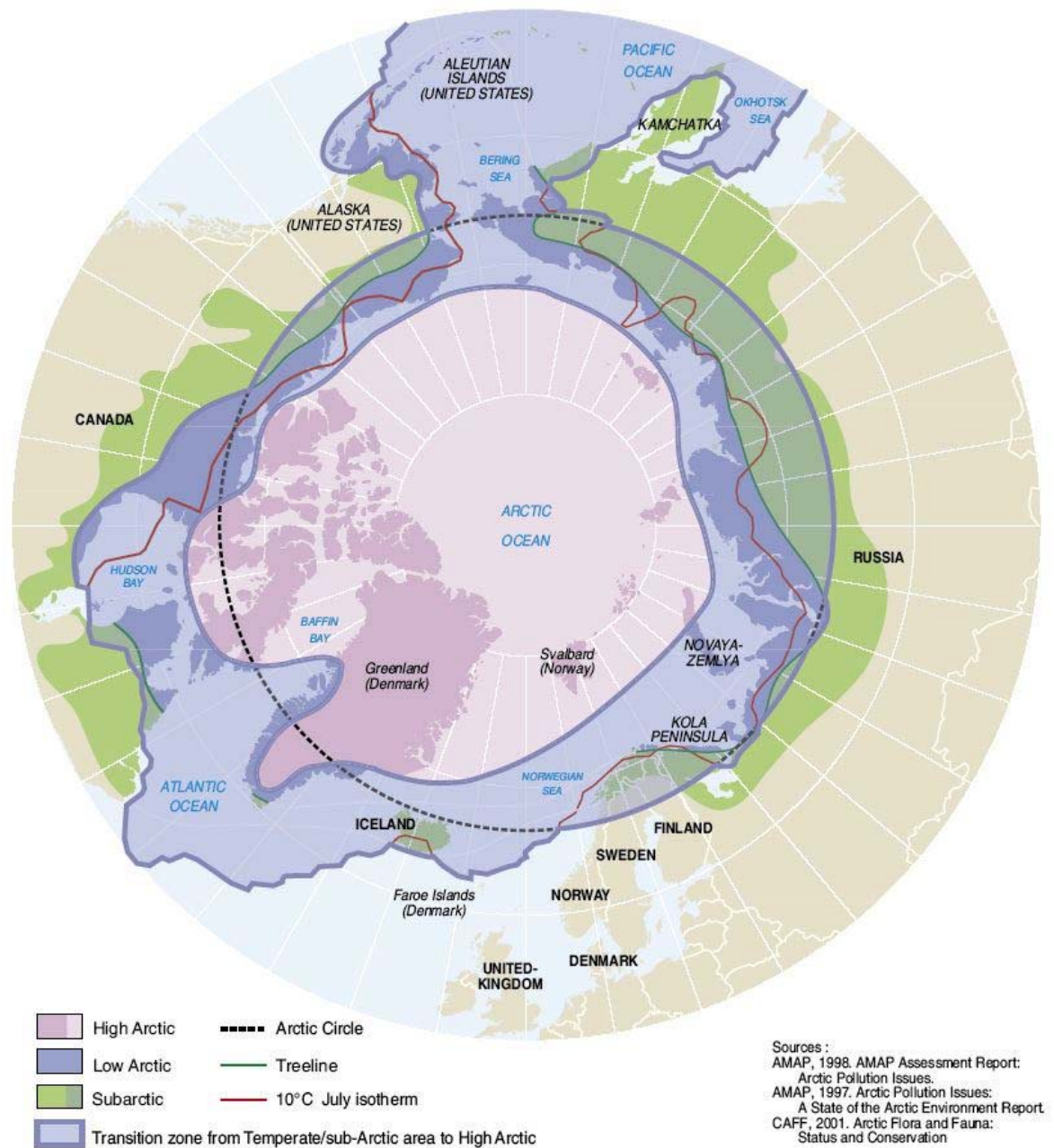


Figure 1. Boundaries of the Arctic, 2005, in: UNEP/GRID-Arendal Maps and Graphics Library.

Retrieved May 10, 2010 from http://maps.grida.no/go/graphic/definitions_of_the_arctic.

2.2 The Arctic Environment

The Arctic is the world's last continuous and unexploited region, being highly unique in terms of its landscape, having an increased proportion of continental shelves, a low level of sunlight, extremely low water temperatures, presence of permanent sea-ice cover and, its indigenous peoples and ecosystems, as well as its vulnerability to climate change.

Perhaps the one of the most striking features of the Arctic are the snow and ice that cover much of its land and sea surface, particularly in the High-Arctic. A wide expanse of tundra - treeless lands over frozen ground – lies between the ice-covered High Arctic and the forested Sub Arctic. Boundaries of the High Arctic and Sub Arctic can be viewed in Figure 1.

High Arctic lands and seas are home to a diversity of plants, animals and peoples that survive in some of the most extreme conditions. The Arctic environment is both vulnerable and resilient. An entire generation of different animals could be wiped out in case of a sudden summer storm or freeze, due to the variability of Arctic climate. Yet the increasingly growing rate of recent climate changes poses new challenges to the resilience of Arctic life. Beside climate change, also other consequences of human activities are affecting the Arctic, including air and water contamination, overfishing, increasing levels of ultraviolet radiation due to ozone depletion, pollution due to resource extraction and a growing human population in the region.

Most of the Arctic is covered by ice and snow for more than eight and even up to twelve months a year, but conditions are highly variable; a large portion of the Arctic is underlain by permafrost.¹³

¹³ Permafrost is defined as permanently frozen subsoil that occurs mostly in the Polar Regions. Retrieved 5 May 2010 from <http://www.answers.com/topic/permafrost>

The economy of the region is largely based on natural resources, like oil, gas and fish, reindeer, whales, seals and birds. In the last decades, tourism has become a growing sector of the region's economy.

2.3 The human settings

The Arctic is home to approximately four million inhabitants, out of which, a tenth are indigenous peoples, spread over numerous communities around the Arctic, as shown in Figure 1 and 2. Except for Greenland and Northern Canada, indigenous peoples form a minority. According to United Nations Environmental Program (UNEP) GRID-Arendal the native populations are the following:¹⁴

- The native people of Northern Europe are the **Saami**, estimated around 100,000; they are politically represented by three Saami parliaments in Sweden, Norway and Finland.
- In comparison with the other counterparts, Russia's indigenous people are more numerous and live in a vast territory covering about 58 percent of Russia. Although officially Russia only recognizes some 50,000 indigenous individuals, it is estimated that a total of 44 indigenous people – or around 250,000 individuals – currently live in Russia, such as the **Evenk**, **Nenets**, **Enets** and **Orok**.
- The **Inuit** comprise 85 percent of the populations of the Nunavut territory in Canada. Approximately half of the 42,000 people living in Canada's Northwest Territories (NWT) are indigenous and, over the last years, land claims and self-government negotiations have recognized indigenous rights. In 1999, the territory of Nunavut was carved out of the NWT, following a land claim by the Inuit.

¹⁴ UNEP/ GRID-Arendal. Retrieved May 10, 2010 from <http://www.grida.no/publications/vg/arctic/page/2665.aspx>

- The term “Alaska natives” includes the **Yupik, Inupiat, Aleut, Athabaskan, Tlingit, Haida** and **Tsimshian** peoples. Together they constitute around 15 percent of the population of the state of Alaska and they speak 20 different languages.

Living as herders, hunters and gatherers, Arctic indigenous peoples have developed lifestyles that are linked to their surroundings. These peoples have lived in the Arctic for thousands of years, and are now faced with massive environmental change.

However, recent discoveries of natural resources and a growing interest in Arctic tourism are bringing many non-indigenous peoples in the region. In the 20th century, immigration to the region increased to the point where the non-indigenous population currently outnumbers the indigenous population in many of the regions.

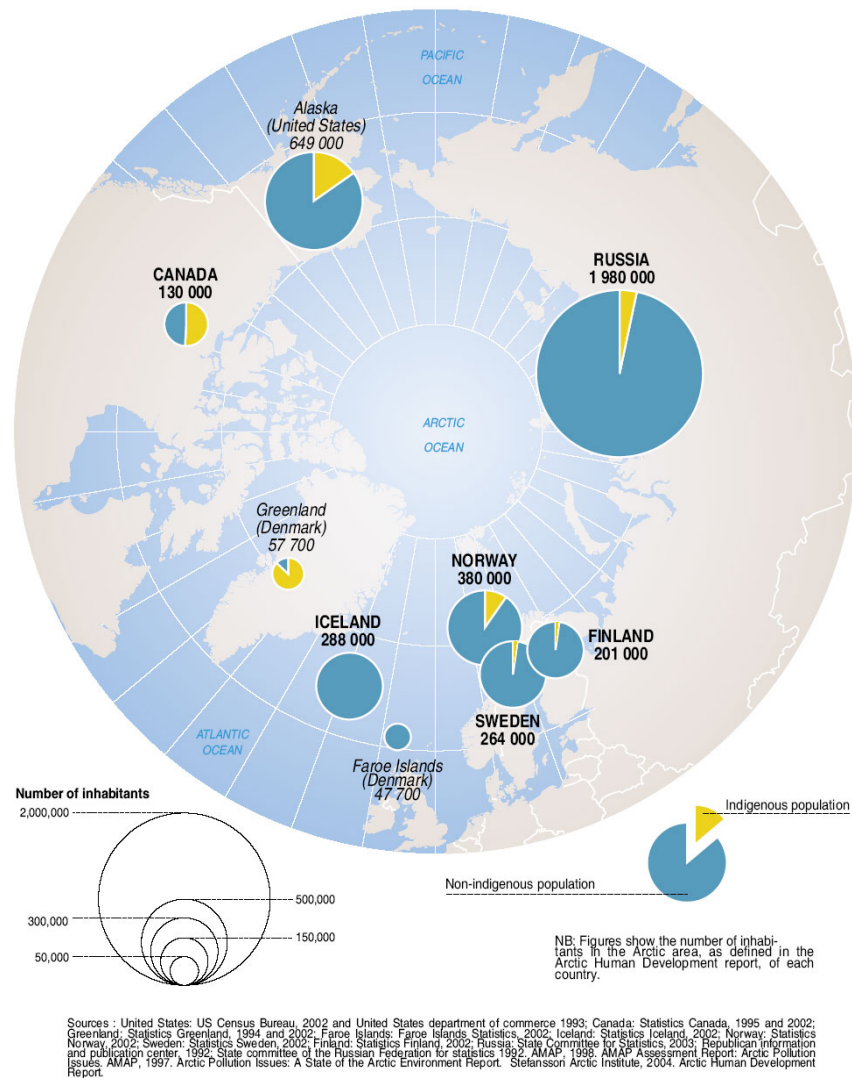


Figure 2. Population Distribution and Indigenous Peoples in the Arctic Region, 2005, in: UNEP/GRID-Arendal Maps and Graphics Library. Retrieved May 10, 2010 from <http://maps.grida.no/go/graphic/> Orange indicates the proportion of indigenous people within the populations of the arctic portions of the countries. The numbers are the total arctic populations of each country in the 1990s. Indigenous peoples make up around ten percent of the current population of the Arctic, though in the Canadian Arctic, they represent about half the population, and in Greenland, they are the majority.¹⁵

¹⁵ Retrieved May 9, 2010 from Arctic Climate Impact Assessment: www.amap.no/acia/



Figure 3. Demography of Indigenous Peoples of the Arctic Based on Linguistic Groups. 2005, in: *UNEP/GRID-Arendal Maps and Graphics Library*. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/demography-of-indigenous-peoples-of-the-arctic-based-on-linguistic-groups>.

2.4 Arctic Resources

“The Circumpolar North is already well integrated into the international political economy and far more deeply impacted by the forces of economic globalization and political fragmentation. [...] the Arctic areas appear to be increasingly embraced by the discourse and practices of the world market economy.”¹⁶

Oil and gas resources

Field explorations have revealed that the Far North contains vast resources of oil, natural gas¹⁷, coal and hydroelectric power.

On July 23rd 2008, the U.S. Geological Survey (USGS) released the first publicly available petroleum resource estimate of the entire area north of the Arctic Circle that is oil, gas and, natural gas liquids. According to this, the Circum-Arctic Resource Appraisal (CARA), the Arctic region has an estimated 90 billion barrels of undiscovered, technically recoverable oil, 50 trillion cubic meters of technically recoverable natural gas, and 44 billion barrels of technically recoverable natural gas liquids in 25 areas thought to have potential for petroleum.¹⁸

The term technically recoverable applies to all petroleum commodities – oil, gas, and natural gas liquids. According to Brenda Pierce from the USGS, technically recoverable refers to that portion of the resource endowment that is technically recoverable using today’s technology and industry practice.¹⁹

The USGS has estimated that the Arctic contains about 13 percent of the undiscovered oil and 30 percent of the undiscovered natural gas, and 20 percent

¹⁶ Chaturvedi, Sanjay: The Polar Regions. A Political Geography, 1996: 37

¹⁷ Natural gas liquids are composed of ethane, propane, and butane.

¹⁸ Nevertheless, due to the fact, that the Arctic region is a mostly unexplored area, the USGS states, that the data are only probabilistic estimates. Furthermore, no economic considerations are included, meaning that reference to costs of exploration and development are not taken into consideration in these initial estimates.

¹⁹ Pierce, Brenda, USGS <http://www.usgs.gov/corecast/details.asp?ep=55>

of the undiscovered natural gas liquids in the world; 84 percent of these estimated resources are expected to occur in offshore areas; the USGS assumes that these resources are recoverable even in sea ice and despite oceanic water depth.

Explorations have already been undertaken in some areas in Canada, Alaska, and Russia, resulting in the discovery of approximately 400 oil and gas fields, which account for almost 10 percent of the world's known conventional petroleum resources.²⁰

Major concurrences in the exploitation of hydrocarbons are known in both the American and the Russian territories. The recoverable reserves of oil in the North American Arctic run to 50 or more billion barrels and the recoverable reserves of natural gas amount to over 300 trillion cubic feet, though none of this gas is currently exploited commercially due to lack of a transportation system.²¹

The Russian Arctic contains more known mineral resources than any other Arctic region. Siberia contains 80 percent of the country's potential oil reserves and 90 percent of its gas and coal reserves are believed to be located there.

According to the CARA, more than 70 percent of the undiscovered oil resources are estimated to occur in the Arctic Alaska, Amerasia Basin, East Greenland Rift Basins, East Barents Basins, and West Greenland-East Canada. More than 70 percent of the undiscovered natural gas is estimated to be found in the West Siberian Basin, the East Barents Basins, and Arctic Alaska.

The extensive Arctic continental shelves are thought to constitute the geographically largest unexplored prospective area for petroleum in the world. The areas are listed in Table 1, in ranked order of estimated oil-equivalent volumes of undiscovered oil, gas, and natural gas liquids.

²⁰ USGS, "Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle", USGS Fact Sheet 2008-3049, Washington DC, 2008, <http://pubs.usgs.gov/fs/2008/3049/>

²¹ Chaturvedi, Sanjay: *The Polar Regions. A Political Geography*, 1996: 31

So-called nonconventional resources, such as coal bed methane, gas hydrate, oil shale, and tar sand, were excluded from the study.

Mineral resources

Nickel, cobalt and platinum-group metals are to be found in a rich concentration of deposits in the Noril'sk area of northern Siberia, making Russia's dependence on its northern territory more important than that of the other Arctic-rim state. The northern Republic of Yakutia produces over 99 percent of all Russian diamonds; a diamond deposit – said to be one of the worlds largest – has also been discovered in the Finnmark region of Norway and in Finnish Samiland.²²

The Red Dog lead-zinc-silver mine, north of the Arctic Circle, is one of the largest zinc-producing mines in the world, generating 60 percent of the US zinc output.

Marine resources

The seas of the Arctic Ocean are rich in a variety of marine species. The Arctic and the Subarctic hold about 14 percent of the world catch of salt-water fish. The Arctic and the Bearing Sea waters support some of the most productive fisheries in the world.

As shown above, the Arctic has tremendous resource potential, holding about 22 percent of the world's undiscovered conventional oil and natural gas resources. "This alone should be sufficient to act as the catalyst for prospectors, despite the harsh natural conditions that substantially add to the costs of productions and delivery over long distances to southern markets."²³ Thus, the beginning of the "Arctic Race", as some authors call it, is not to be denied.

The Arctic region "is destined to become a major source of raw materials of critical importance to advanced industrial societies both in the Arctic Rim States

²² Chaturvedi, Sanjay: The Polar Regions. A Political Geography, 1996: 33

²³ Ibid. : 30

and in other Northern Hemisphere States like Japan and Korea.”²⁴ While extraction would be difficult and expensive, the price of oil and minerals could make exploitation of these resources financially worthy.

USGS Province Name and Relative Location	Crude Oil (billion barrels)	Natural Gas (trillion cubic feet)	Natural Gas Liquids (billion barrels)	Total Resources, Oil Equivalent (billion barrels)²⁵
West Siberian Basin - Russia	3.66	651.50	20.33	132.57
Arctic Alaska – U.S.	29.96	221.40	5.90	72.77
East Barents Basin – Norway, Russia	7.41	317.56	1.42	61.76
East Greenland Rift Basins - Greenland	8.90	86.18	8.12	31.39
Yenisey-Khatanga Basin - Russia	5.58	99.96	2.68	24.92
Amerasia Basin – Canada, U.S.	9.72	56.89	0.54	19.75
West Greenland-East Canada- Canada, Greenland	7.27	51.82	1.15	17.06
Laptev Sea Shelf - Russia	3.12	32.56	0.87	9.41
Norwegian Margin - Norway	1.44	32.28	0.50	7.32
Barents Platform - Norway	2.06	26.22	0.28	6.70
Eurasia Basin – Norway, Russia	1.34	19.48	0.52	5.11
North Kara Basins and Platforms - Russia	1.81	14.97	0.39	4.69

²⁴ Osherenko/Young, in: Chaturvedi, Sanjay: The Polar Regions. A Political Geography, 1996: 30

²⁵ The USGS uses a natural gas to oil conversion factor in which 6 thousand cubic feet of natural gas equals 1 barrel of crude oil.

Timan-Pechora Basin - Russia	1.67	9.06	0.20	3.38
North Greenland Sheared Margin - Greenland	1.35	10.21	0.27	3.32
Lomonosov-Makarov – Canada, Greenland, Russia	1.11	7.16	0.19	2.49
Sverdrup Basin - Canada	0.85	8.60	0.19	2.48
Lena-Anabar Basin - Russia	1.91	2.11	0.06	2.32
North Chukchi-Wrangel Foreland Basin – Russia, U.S.	0.09	6.07	0.11	1.20
Vilkitskii Basin - Russia	0.10	5.74	0.10	1.16
Northwest Laptev Sea Shelf - Russia	0.17	4.49	0.12	1.04
Lena-Vilyui Basin - Russia	0.38	1.34	0.04	0.64
Zyryanka Basin - Russia	0.05	1.51	0.04	0.34
East Siberian Sea Basin - Russia	0.02	0.62	0.01	0.13
Hope Basin – Russia, U.S.	0.002	0.65	0.01	0.12
Northwest Canadian Interior Basins - Canada	0.02	0.31	0.02	0.09
Total	89.98	1,668.66	44.06	412.16

Table 1. Arctic Mean Estimated Undiscovered Technically Recoverable, Conventional Oil and Natural Gas Resources. In: Budzik, Philip: Arctic Oil and Natural Gas Potential, U.S. Geological Survey, "Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle," USGS Fact Sheet 2008-3049 Washington, 2008, Table 1, page 4. <http://pubs.usgs.gov/fs/2008/3049/>.

Note: The column totals do not equal the sum of the rows due to rounding.

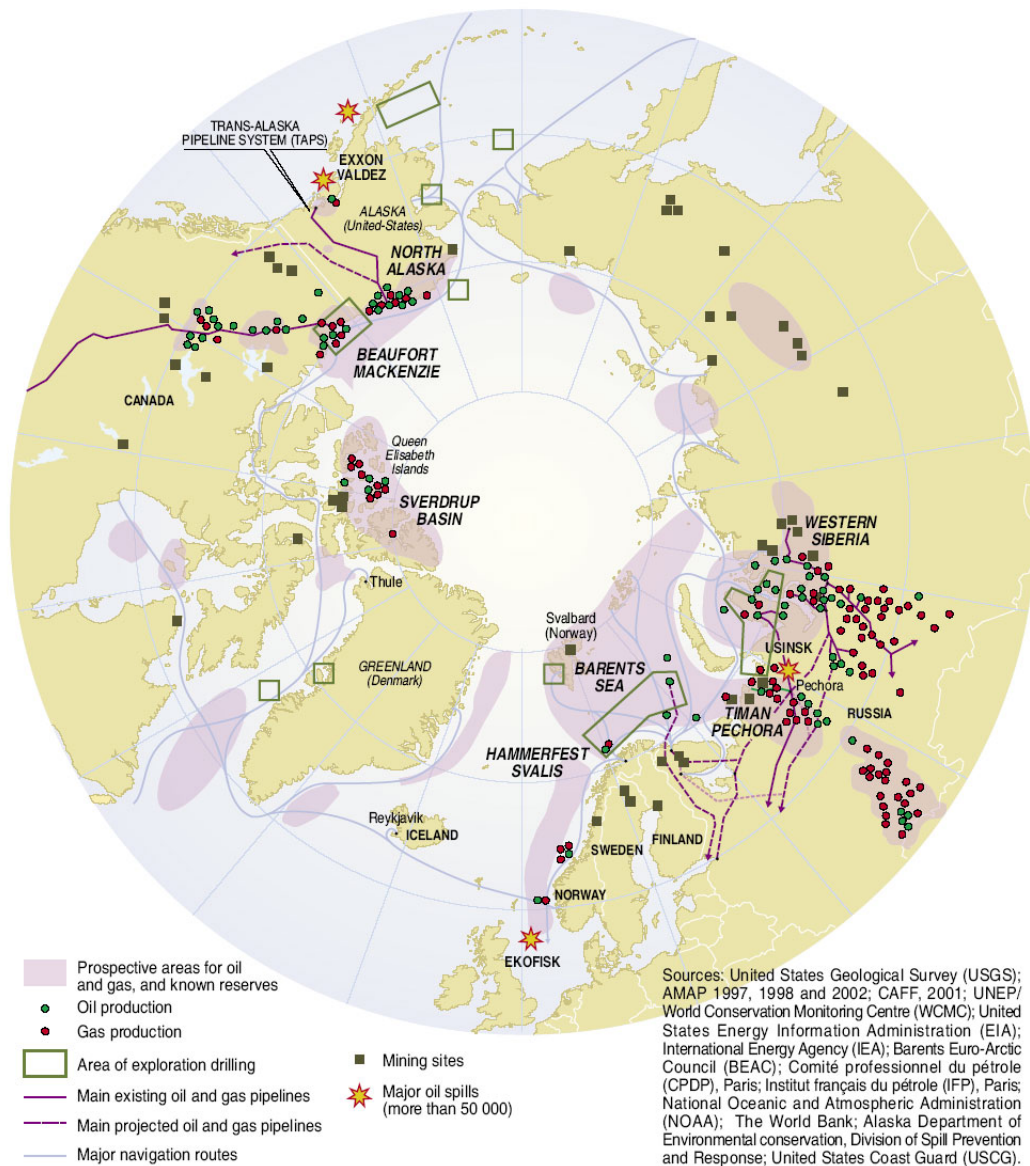


Figure 4. Resources in the Arctic, 1997, in: USGS. Retrieved April 21st 2010 from <http://pubs.usgs.gov/fs/2008/3049/>

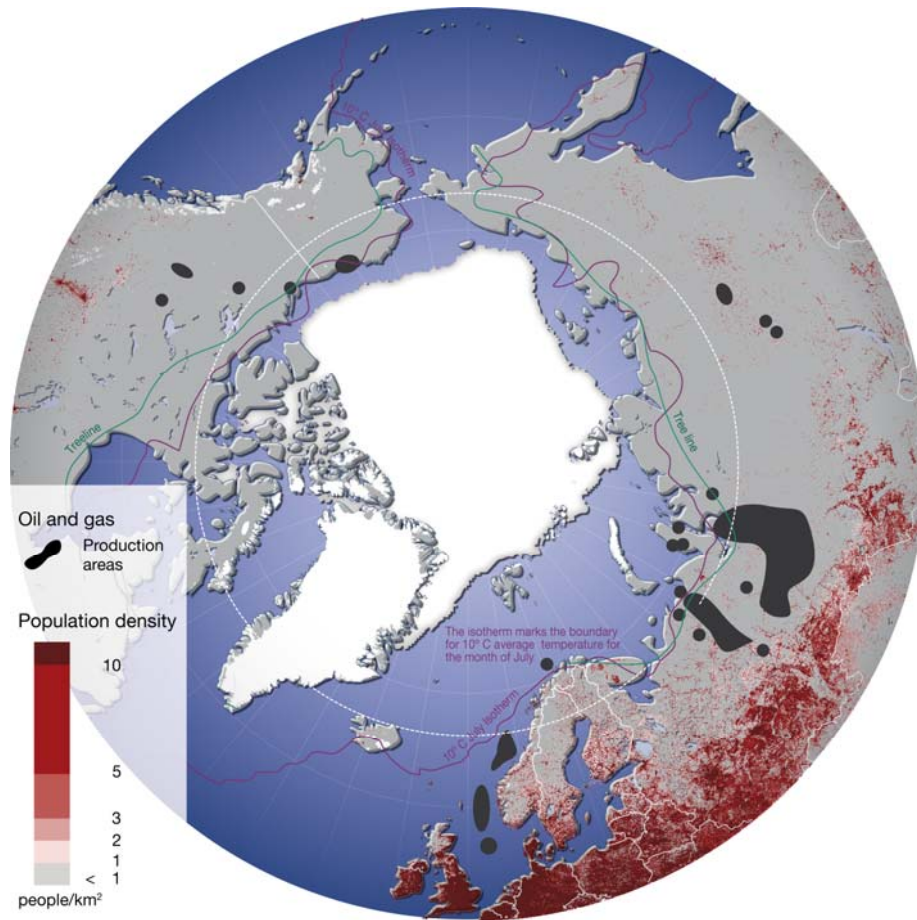


Figure 5. Population and Main Oil and Gas Production Areas in the Arctic. 2008, in: *UNEP/GRID-Arendal Maps and Graphics Library*. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/population-and-main-oil-and-gas-production-areas-in-the-arctic>.

2.5 Climate Change in the Arctic

Earth's climate is changing, with the global temperature now rising by an unprecedented rate in the experience of modern society. But while some historical climate changes have resulted from natural causes, most of the warming observed over the last 50 years is attributable to human activities, according to the Intergovernmental Panel on Climate Change in 2001.²⁶

Rising atmospheric carbon dioxide levels are associated with rising global temperatures, as shown in Figure 6.

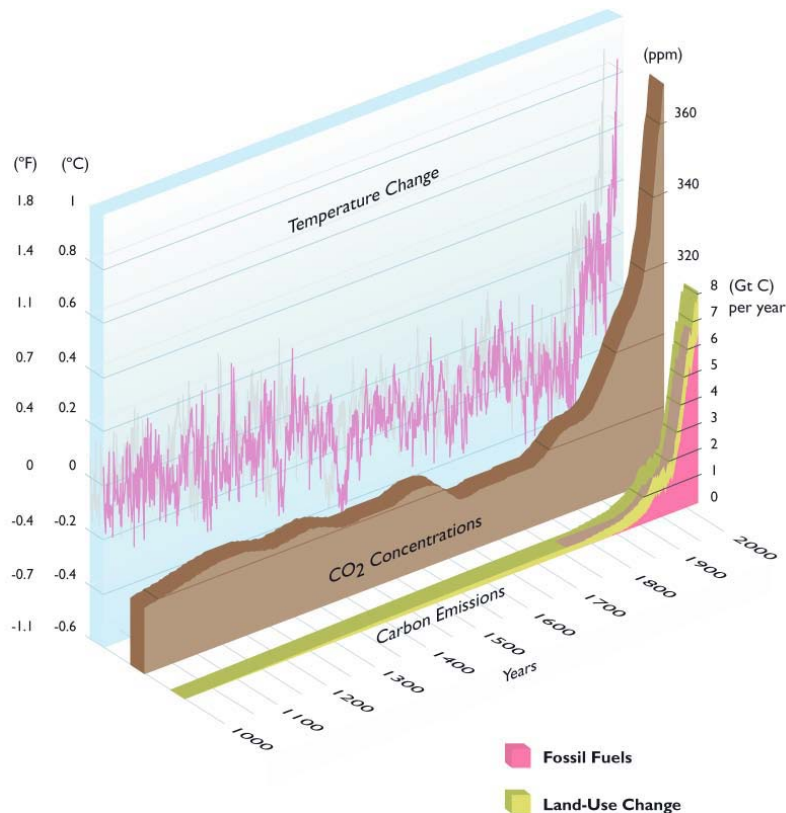


Figure 6. 1000 Years of Changes in Carbon Emissions and the subsequent increase in atmospheric carbon dioxide concentrations and air temperatures. In: Arctic Climate Impact Assessment (ACIA): <http://amap.no/acia/>

²⁶ Arctic Climate Impact Assessment (ACIA): <http://amap.no/acia/>

Human activities, primarily the burning of fossil fuels²⁷ have increased the concentration of carbon dioxide, methane and other greenhouse gases in the atmosphere. Since the start of the industrial revolution, the atmospheric carbon dioxide concentration has increased by about 35 percent and the global average temperature has risen by about 0.6°C.²⁸

Continuing emitting carbon dioxide and other greenhouse gases to the atmosphere is projected to lead to significant climate changes, including an increase in average global temperature of 1.4 to 5.8°C over the course of this century, according to the Intergovernmental Panel on Climate Change. Shifts in atmospheric and oceanic circulation patterns, an accelerating rate of sea-level rise, and wider variations in precipitation are only some consequences of climate change. These changes are expected to have long term consequences including significant impacts on coastal communities, animal and plant species, water resources, and human health.

Changes in climate conditions are happening at an increased rate all over the world and the Arctic plays a key role in this process, climate changes being experienced intensely in this region. The Arctic is one of the fastest warming regions on Earth. Arctic average temperature has risen at almost twice the rate as the rest of the world in the past few decades. Trends of the Arctic climate warming can be traced in Figure 7.

A recent study of the northern polar ice caps released by climate expert Peter Wadham concluded that the Arctic would be almost completely ice free during the summer months in only ten years. This was a shocking study in regard to global warming, bringing a phenomenon that was about to take place “possibly

²⁷ Fossil Fuels are considered coal, oil, and natural gas. Burning these fuels creates greenhouse gases that accumulate in the atmosphere and trap radiant energy. Greenhouse Effect takes place when most of the heat energy emitted from the surface is absorbed by greenhouse gases, which radiate heat back down to warm the lower atmosphere and the surface. Increasing the concentration of greenhouse gases increases the warming of the surface and slows the loss of heat energy to space.

²⁸ Data source: Arctic Climate Impact Assessment (ACIA): <http://amap.no/acia/>

in our lifetime” as close as a threat that could happen in ten years.²⁹ As ice sheets melt, less sun is reflected back into outer space, being instead absorbed into the ocean, thus accelerating the pace of oceanic warming – process known as the Albedo effect.³⁰

Temperature anomaly (°C)

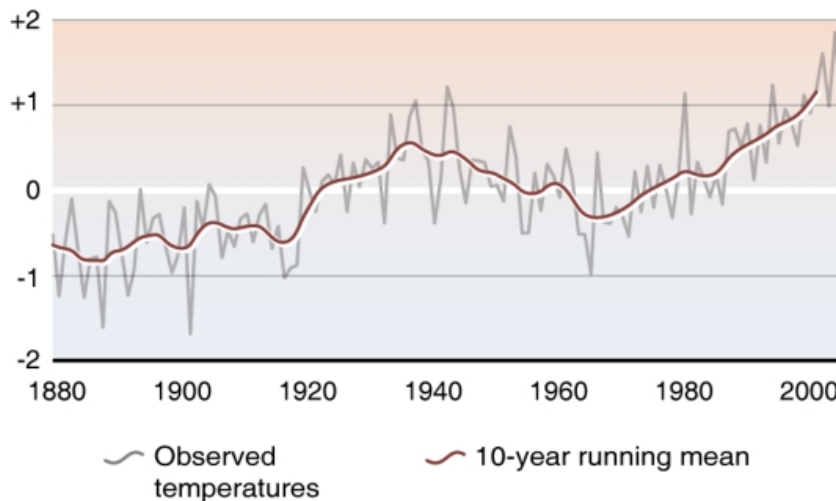


Figure 7. Trends in Arctic temperature, 1880-2006. (June 2007) In: UNEP/GRID-Arendal Maps and Graphics Library. Retrieved May 13, 2010 from <http://maps.grida.no/go/graphic/trends-in-arctic-temperature-1880-2006>.

Some of the most dramatic impacts of climate change in the Circumpolar North that have already taken place are manifested in the decrease in extent and thickness of Arctic sea ice, -as can be observed in Figure 8 and Figure 10 - permafrost warming and coastal erosion³¹; this will have many global effects, such as sea-level rise.

²⁹ Cooke, Shamus: Iceless Arctic. 19 October 2009, retrieved 5 May 2010 from <http://towardfreedom.com/home/content/view/1721/5/>

³⁰ Albedo is the percentage of incoming radiation reflected off a surface. An albedo of 1 means that 100% of incoming radiation is reflected (no radiation is absorbed); an albedo of 0 means that 0% of incoming radiation is reflected (all radiation is absorbed). Source: USGS

³¹ Data source: USGS. Report: Synthesis and Assessment Product 1.2: Past Climate Variability and Change in the Arctic and at High Latitudes. Arctic Heads up More than Other Places. 16.01.2009. <http://www.usgs.gov/newsroom/article.asp?ID=2109>

The U.S. Climate Change Science Program issued a report which provides the following conclusions about the climate change in the Arctic:

- The size and speed of summer sea-ice loss over the last decades is highly unusual compared to the previous thousands of years, especially considering that changes in Earth's orbit over the years have made sea-ice melting less likely;
- A sustained climate warming is likely to be sufficient to cause nearly the complete disappearance of the Greenland ice sheet, this triggering a rise in sea level by several meters; and
- Lessons from the past show that when thresholds in the climate system are crossed, climate change can take place very fast and in a large degree. Human induced climate change could trigger such events in the future.³²

These Arctic changes will have an impact on the planet as a whole but climate change is also projected to result in major impacts inside the region. The Arctic is of special importance to the world and it is changing rapidly. As shown in chapter 2.4, the region is an important supplier of oil and gas to the global economy. Climate change would have impacts on the exploration, production, and transportation activities of this industry, thus having both positive and negative market and financial effects. Marine access to some Arctic resources, including offshore oil, gas and minerals, is likely to be enhanced by the reduction of sea ice, bringing new opportunities as well as environmental concerns.

³² Ibid.

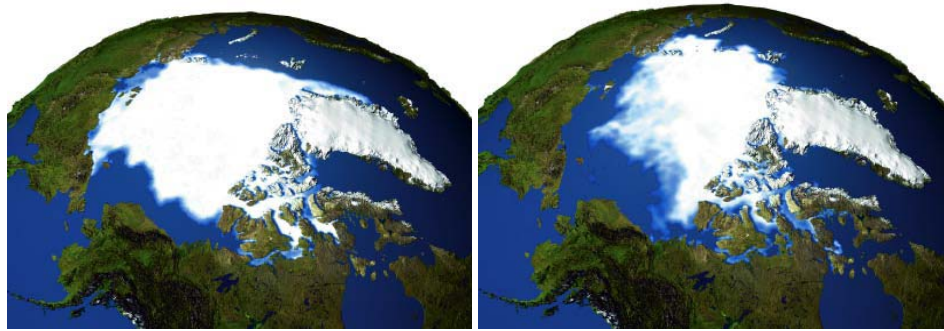
*Observed Sea Ice September 1979**Observed Sea Ice September 2003*

Figure 8. Satellite Observations in Arctic Sea Ice, 1979 and 2003. (2005) In: *UNEP/GRID-Arendal Maps and Graphics Library*. Retrieved May 13, 2010 from <http://maps.grida.no/go/graphic/satellite-observations-in-arctic-sea-ice-1979-and-2003>.

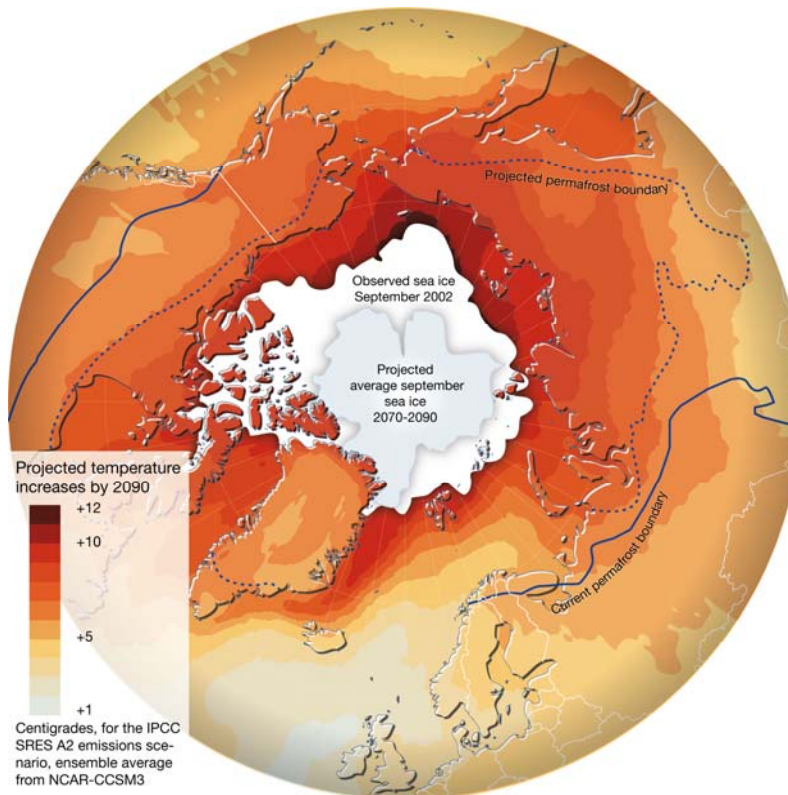


Figure 9. Projected Temperature Increases in the Arctic due to Climate Change, 2090 (NCAR-CCM3, SRES A2 experiment). (2008). In: *UNEP/GRID-Arendal Maps and Graphics Library*. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/projected-temperature-increases-in-the-arctic-due-to-climate-change-2090-ncar-ccm3-sres-a2-experimen>.

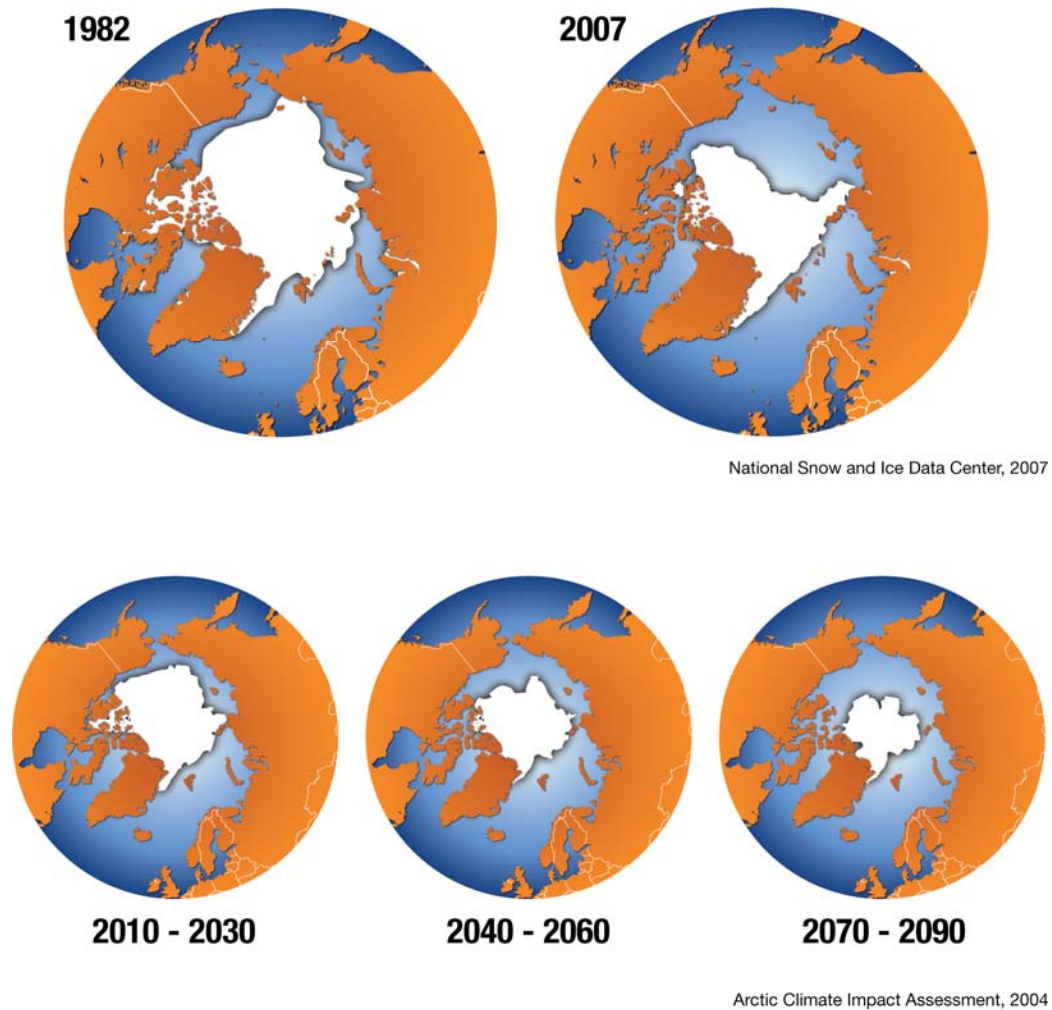


Figure 10. The decrease of Arctic sea ice, minimum extent in 1982 and 2007, and climate projections. (December 2007). In: UNEP/GRID-Arendal Maps and Graphics Library. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/the-decrease-of-arctic-sea-ice-minimum-extent-in-1982-and-2007-and-climate-projections>.

2.6 The North-West Passage and the Northern Sea Route

Arctic navigation has always been difficult and it was only as a result of advances in technology that new opportunities arose for surface navigation during the Cold War. Navigation over the Arctic Ocean could open up new shipping routes that could provide better access to existing and developing markets all over the world. Because of the ice-covered waters this opportunity remained unrealized for almost all of the Twentieth Century. However, two shipping routes became navigable at the end of the Twentieth Century. Both routes can be viewed in Figure 11.

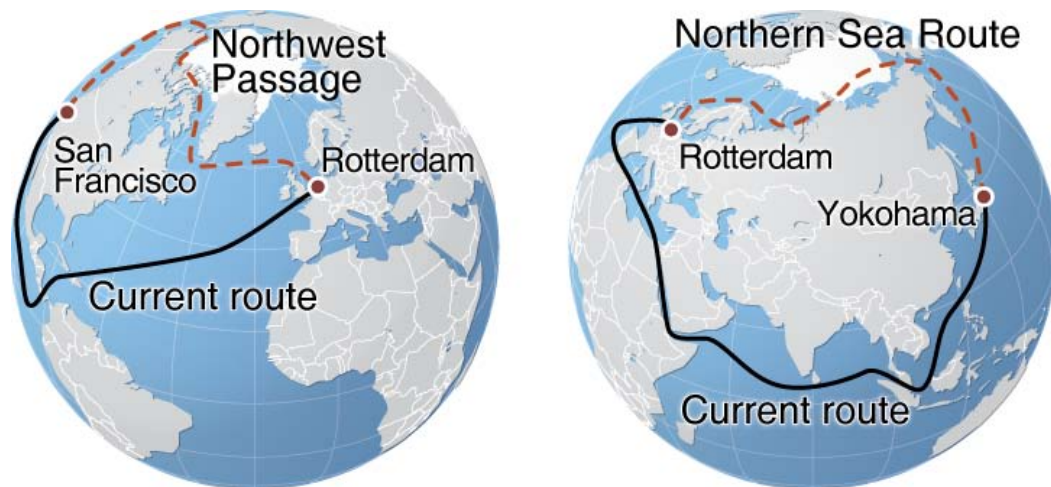


Figure 11. Northern Sea Route and the Northwest Passage Compared with Currently Used Shipping Routes. (June 2007). In: UNEP/GRID-Arendal Maps and Graphics Library. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/northern-sea-route-and-the-northwest-passage-compared-with-currently-used-shipping-routes>

The Northern Sea Route runs along Russia's northern coast. As this shipping route falls mainly within Russia's internal waters there has been little dispute

over Russia's control of navigation within these waters consistently with the law of the sea.³³

The Northwest Passage allows shipping to pass from North Atlantic Ocean up to the Davis Strait between Canada and Greenland, through the Canadian Arctic Archipelago to the Beaufort Sea and then to the Bering Strait and into the North Pacific. The shipping route consists of a series of connected straits and channels, but not all of them are navigable due to hard ice conditions.

In contrast to the Northern Sea Route, the status of the Northwest Passage has long been disputed between Canada and the United States. Canada regards the waters of the Northwest Passage as its internal waters. According to the declaration of baselines around the edges of the Canadian Arctic Archipelago from 1986, the passage does not qualify as an international strait for navigation. Canada's claim appears to be justified in regulating or prohibiting the passage of vessels, due to the fact that coastal states have complete sovereignty over their internal waters.

Sanjay Chaturvedi points out that the US has consistently challenged the Canadian claims not by staking a rival claim to the Arctic Archipelago but by claiming that the waters of the Northwest Passage are part of an "international strait with freedom of navigation."³⁴

Being a maritime power, the maintaining of the international strait open for maritime commerce and naval use, became a US policy of great interest.

Canada's position regarding the Northwest Passage navigation has up to date been tolerated, although heavily protested by the US. The dispute has not been presented before an international court. Nevertheless, Canada's claims for

³³ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime? , in: ANU College of Law Research Paper no. 08-37, retrieved 6th February 2010 from <http://ssrn.com/abstract=1314546>

³⁴ See: Chaturvedi, Sanjay: The Polar Regions. A Political Geography, England: John Wiley & Sons Ltd, 1996: 33

jurisdiction over naval passing through the Northwest Passage finds support in the UNCLOS.³⁵

The status of the Northwest Passage has been the subject of dispute between the two Arctic nations ever since the 1967 voyage of the supertanker *Manhattan*. As a response, Canada adopted the Arctic Waters Pollution Prevention Act which placed significant constraints on the passage of ships through its Arctic waters. On the one hand, Canada's efforts throughout the 1970s and 1980s to gain more jurisdictions over the waters of the Arctic Archipelago and on the other hand, the persistent rejection by the United States of the Canadian sovereignty over the Northwest Passage has made this dispute: "one of the most significant bilateral issues in the Canadian-United States relationship."³⁶

As the Arctic ice continues to melt, these shipping routes could become more and more navigable, fact that could reopen the unresolved issue of the Northwest Passage. Donald R. Rothwell underlines that "the status of the Northwest Passage remains a legal issue which has the potential to erupt directly as a result of climate change and new opportunities for safe and efficient navigation through the waterway."³⁷

³⁵ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime? , in: ANU College of Law Research Paper no. 08-37, retrieved 6th February 2010 from <http://ssrn.com/abstract=1314546>

³⁶ See: Chaturvedi, Sanjay: The Polar Regions: A Political Geography, England: John Wiley & Sons Ltd, 1996: 199

³⁷ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime? , in: ANU College of Law Research Paper no. 08-37, retrieved 6th February 2010 from <http://ssrn.com/abstract=1314546>

3

REGIME THEORY

“The concept of international regimes originated [...] as a way to understand international cooperation, defined as coordinated mutual adjustment of states’ policies yielding benefits to participants. Systematically organized cooperation is extensive in world politics; yet very few rules are enforced. Specific agreements are embedded in a multi-layered system in which agreements are “nested” within a more comprehensive set of agreed-upon rules. Understanding the formation and impact of these systems of rules is therefore essential for an appreciation of the conditions under which international cooperation could occur.”³⁸

3.1 Definition of the Notions “Regime” and “Juridical Nature”

For the juridical classification of territories the criterion “juridical nature” is used, which means the basic legal features differing qualitatively one spatial category from another. There may be various regimes (legal regimes) in the framework of a spatial category.

The terms “regime” (legal regime) and “status” (legal status) are mentioned in the United Nations Convention on the Law of the Sea (UNCLOS).³⁹ Both terms are used for the essential characteristic of the legal position of a certain territory.

³⁸ Keohane, Robert: *Regime Theory and International Relations*, Oxford University Press, 1993. Retrieved from: http://books.google.fr/books?id=ZQwS3DBP8jIC&printsec=frontcover&dq=regime+theory&source=bl&ots=zoE8gcY3cv&sig=WqIKpkOJUJXL- WWMdh6OJqCZEEi8&hl=fr&ei=VbSwS9S9CNGt4QaVttHXDw&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCA Q6AEwAQ#v=onepage&q=&f=false [17.04.10]

³⁹ The UNCLOS will be explained in detail subsequently

Nevertheless, some authors make a distinction between the two terms. The two terms in this study are used in the meaning that applies to the term “regime” in the UNCLOS.

According to the criterion “juridical nature” all territories can be classified into three groups:

1. State territory
2. International territory for the common use (ITCU)
3. Continental shelf.

There is only one sovereign (state) land territory for the common use, namely the Archipelago of Svalbard.

The tendency to spread sovereignty over polar territories emerged in the beginning of the 20th century as a reaction to the permanent growth of international scientific and economic activities in that region. “The trend combined with the harshness of climatic conditions prompted some scientists to elaborate new concepts of acquiring territory in order to avoid the rules of effective occupation.”⁴⁰

3.2 International Governance

Over the past decade, much thought has gone into the study of international regimes and a definition of the concept has been highly debated. Imported from international law, the term “regime” describes a complexity of principles, norms, rules and decision-making, i.e. institutionalized arrangements for problem solving, which are in the interests of state or non-state actors.

The Regime Theory developed in the 1970s and 1980s deriving from the neoinstitutionalism and must be limited from neorealism and liberalism.

⁴⁰ Ibid.: 74

Regime research first began in the 1970s in the USA and concentrated most of all on international political economy, pleading for a better understanding of cooperation in world economic relations. The best known representative of the Regime Theory was Robert O. Keohane. The basic premises of the neoliberal institutionalism is “the ability of states to communicate and cooperate depends on human-constructed institution” according to Keohane. Starting point of Regime building is the interest of actors for finding common solutions for common problems, political, environmental, economical, social or technical ones.⁴¹

In contrast to neorealism, the Regime Theory stresses that international cooperation is also possible without hegemonic power structures when cooperation lies in interest of all states involved. Furthermore, it argues that international regimes affect the behavior of states and cooperation is possible in the anarchic system of states. It predicts that states are the most important actors in international policy and act within anarchical structures and follow only their interests rationally.

The regime theory concentrates upon specific institutions – international regimes like the international finance regimes, the different environment, disarmament, human rights regimes. The international regimes do not own an actor’s quality, in contrast to international organizations, i.e. they cannot be regarded as independent actors.⁴² Crucial characteristic of international Regimes is that they unite the conduct of Regime-actors and orientate them towards common rationality criteria. International Regimes are cooperative international institutions, which relate only to certain problem topics of international politics.

⁴¹ Handwörterbuch Internationale Politik, S, 281 f.f.

⁴² Zangl, Bernhard: Regimetheorie, in: Schieder, Siegfried/Spindler, Manuela: Theorien der Internationalen Beziehungen, 2003, Page 119

International institutions include formal intergovernmental or transnational organizations, international regimes, and conventions. Conventions are informal institutions, with implicit rules and understandings that shape the expectations of actors.

In his work, *“After hegemony”*, (1984), Keohane stresses the fact, that lasting international cooperation in the common interest of states involved is possible. Moreover, he underlines that based on this premises international cooperation must be seen as precarious even then, when states, on the basis of more close interdependence, have a common interest for international cooperation. Keohane underlines that international cooperation is only possible when it is sustained by international Regimes.

Keohane demonstrates how hard it is to achieve international cooperation despite common interests by approaching the interest constellation of the prisoner’s dilemma, in which the payoff structure makes defection a dominant strategy for both players.

The difference between this model and reality is that states are not like prisoners, states must continually cooperate whereas prisoners will never see one another again. There are future consequences for present actions. Mutual cooperation is thus rational: the sum of relatively small cooperative payoffs over time can be greater than the gain from a single attempt to exploit your opponent followed by an endless series of mutual defections.

Keohane argues that international cooperation in the constellation interest like the prisoner’s dilemma is possible, if the states find themselves again in the certain constellation interests. In the Prisoner’s Dilemma, the actors’ behavior is determined by the following assumptions: states are unitary, rational and gain maximizing actors in anarchical structures; it is in the interest of states to cooperate in the present, because in the future other states might defect on them.

The effect of international regimes is not to change the interests of the involved states and thus their interest constellation, in order to facilitate international cooperation. The effect is to help states fulfill their interests through international cooperation. Thus, international regimes act like a cooperation catalyst, leaving the states' interests untouched. Keohane's theory of regime effect explains why states build new international regimes or why they maintain existing regimes. The reason for building international regimes is to better achieve common interest through international cooperation.

Robert O. Keohane raised the question whether regimes matter and if so, how and under what conditions. According to him, within the neo-realist framework, "international regimes can affect both the capabilities and the interests of states. International regimes can affect capabilities by serving as a source of influence for states whose policies are consistent with regime rules, or which are advantaged by the regime's decision-making procedures. [...] Regimes may also alter the underlying power capabilities of states, whether by reinforcing the dominance of rich, powerful states, as dependency theory argues, or by dissipating the hegemon's resources." According to Keohane, regimes can have other effects on state action outside of a neo-realist framework, for example by altering bureaucratic practices and rules; by promoting learning about cause-effect relationship; by altering ideas about the legitimacy and value of practices; by changing the balance of political influence within domestic policies.⁴³

Regime theory is important, if not even crucial for the chosen topic – Arctic geopolitics. In an increasingly interdependent world, states must combine their efforts in order to achieve international cooperation, especially in such places as the Arctic region in order to find common responses to common issues. This is best achieved in the framework of a regime.

⁴³ Keohane, Robert.: *Regime Theory and International Relations*, Oxford University Press, 1993. Retrieved from: http://books.google.fr/books?id=ZQwS3DBP8jIC&printsec=frontcover&dq=regime+theory&source=bl&ots=zoE8gcY3cv&sig=WqIKpkOJUXL-WWMdh6OJqCZEEi8&hl=fr&ei=VbSwS9S9CNGt4QaVttHXDw&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCAQ6AEwAQ#v=onepage&q=&f=false [17.04.10]

4

DEVELOPMENT OF THE INTERNATIONAL LAW REGIME OF THE ARCTIC

“Both the polar regions, however, challenge the traditional geopolitical discourse of spatial domination and illustrate in more than one way that geography has to be much more than physical geography: a human geography sensitive to the rhythms of ecology in its treatment of space and resources on the one hand and aware of converging, or diverging, subjective human perspectives on the other hand. In an increasingly interdependent world, in both the economic and the ecological senses of the term, the idea of international cooperation is not just an ideal but an imperative.”⁴⁴

4.1 Doctrine and Practice of International Law about Acquisition of No-Man’s-Lands

The Arctic was considered for centuries as no-man’s-territory (*terra nullius*). The problems connected with the acquisition of such new territories have always constituted an important topic in international law and during time, different criteria were used for the legal acquisition of no-man’s-lands. That is why I regard it as necessary to review the practice of international law regarding the acquisition of sovereignty over such spaces.

*Fictitious occupation*⁴⁵ of *terra nullius* was considered for a long period of time as sufficient ground for the acquisition of a valid title to a certain land. According to this principle, “the discovery of a land not belonging to a Christian monarch and

⁴⁴ Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996: 37

⁴⁵ Timtchenko, Leonid: *Quo Vadis, Arcticum?*, Ukraine: Kharkiv State University Press “Osnova”, 1996: 2

leaving there the national flag, a cross or an ensign of the state-discoverer created the right to acquire sovereignty over it.”⁴⁶

According to the principle of *fictitious occupation*, the fact of discovery of *terra nullius* combined with leaving some signs of its belonging to the state-discoverer was sufficient to obtain the sovereignty over this land. Because of a series of conflicting claims over the discovery of *terra nullius*, a lot of international disputes concerning sovereignty over the occupied lands were caused. Thus, it became necessary to establish more reliable criteria for acquisition of sovereignty over *terra nullius*.

Therefore, the principle of *effective occupation* has begun to develop since the 17th century as a necessary ground for the acquisition of *terra nullius*. The essence of the principle of effective occupation was that the discovery gives only an inchoate title over *terra nullius*; the full title would be reached only if effective occupation follows the discovery. Thus, the effective occupation means the establishment of control and jurisdiction over *terra nullius*.

In the described period, *terra nullius* was considered both inhabited and uninhabited lands. For a long time the lands inhabited by “uncivilized peoples” were regarded as *terra nullius* and subject to effective occupation. In the middle of the 20th century the principle of self-determination of people was established in international law.

The rules of effective occupation should be applied in all latitudes regarding the acquisition of *terra nullius*, including the Arctic region. However, the forms of control and jurisdiction may vary depending on the geographical and climatic conditions.

In case of dereliction of the effectively occupied territory by the state, it becomes again *terra nullius* and thus, subject to new occupation.

⁴⁶ Timtchenko, Leonid: Quo Vadis, Arcticum?, Ukraine: Kharkiv State University Press “Osnova”, 1996: 15

According to the doctrine of international law, the principle of effective occupation should be regarded as the legal ground for acquisition of *terra nullius* since the middle of the 18th century until the present time.

Summing up, the criteria of effective occupation:

1. *Terra nullius* or lands not belonging to any state may be acquired by occupation, if international law permits to do it;
2. Occupation must be actual, i.e. it is necessary to establish control and jurisdiction, exercised permanently, over the occupied territory;
3. Notification to all concerned governments about the acquisition of *terra nullius* should be made as soon as possible.⁴⁷

4.2 Development of the Arctic International Law Regime in the Beginning of the 20th Century

The growing interest in the Arctic around the turn of the century gave impulse for the political division of the area. The greatest interest was demonstrated by Norway, Sweden, Denmark, Canada, Russia, United States and Great Britain.

Norway, Denmark and the USA considered the Arctic a no-man's-land, while Canada claimed the Arctic Archipelago as a part of Canada.

In 1907 Canadian senator Poirier put forward the sector theory to give a legal ground for the Canadian claim. According to this, all lands, discovered and undiscovered, situated between the northern Canadian coast and the 60th and 141st meridians of West longitude up to the North Pole belong to Canada. The USA rejected the idea of any division of the Arctic preferring to conduct an "open door" policy regarding this subject.

⁴⁷ Timtchenko, Leonid: Quo Vadis, Arcticum?, Ukraine: Kharkiv State University Press "Osnova", 1996: 17

Russia sponsored a series of expeditions in the beginning of the 20th century for scientific research and for staking Russian territorial claims. Russia was a pioneer in using sea-going icebreakers for the navigation and exploration in the Arctic.⁴⁸

4.3 Svalbard – Unique Phenomenon in International Law

The Spitsbergen Treaty of 1920 is an important landmark in the development of the international law regime of the Arctic.

Svalbard (Spitsbergen) and Bear Island became probably the most interesting Arctic areas for explorers and entrepreneurs at the beginning of the 20th century.

The Norwegians were very expansive and claimed several land lots rich in coal on Svalbard. The American financiers J. Longyear and F. Ayer bought some Norwegian lands and established the *Arctic Coal Company* in 1906. In 1905-1910 three English and two Swedish coal companies were established in Svalbard.

The increased interest in Svalbard was shown by Russia as well, who established *The Russian Spitsbergen Joint Stock Company* for the extraction of the Spitsbergen coal.

At the beginning of the 20th century the Archipelago of Svalbard (Spitsbergen) was considered an international territory for the common use. This status was defined in the 1872 Agreement on Spitsbergen between Sweden-Norway and Russia. After obtaining its independence in 1905, Norway confirmed the recognition of the 1872 Agreement for itself.

When in 1905 Norway became an independent state, Russia decided to get official information concerning the Norwegian attitude to the legal status of the archipelago fixed with the 1872 agreement. The Norwegian Minister of Foreign Affairs at that time, 6th June 1906, reported that “the Norwegian Government

⁴⁸ Ibid: 59

had not any back thoughts relating to Spitsbergen and undoubtedly recognized the Agreement of 1871 and 1872.”⁴⁹ Nevertheless, the Norwegian government considered it possible to send a note to the governments of Belgium, Great Britain, France, Germany, Denmark, the Netherlands, Russia and Sweden, that proposed joint solution of the Svalbard issue in 1907. The main aim of that event should have been establishing the order and rational exploitation of natural resources of the archipelago without changing its legal status.

Three international conferences took place between 1910-1914 in Christiania (Oslo). The result of these conferences was a draft of the Spitsbergen Convention.

The main provisions of this Convention were as follows:

- a) The artificial terra nullius status for the archipelago;
- b) Demilitarization and neutralization of Spitsbergen under the collective guarantees;
- c) Establishing the Spitsbergen Commission, consisting of the representatives of Norway, Russia and Sweden, as the highest administration of the archipelago.

Nevertheless, World War I did not permit to adopt the Spitsbergen Convention. After the war, during the Paris Peace Conference in 1920, the Treaty relating to Spitsbergen was signed by nine states. The Soviet Russia, being a party to the 1872 Agreement on Spitsbergen, was not invited at the conference contrary to the norms of international law.

The 1920 Treaty established the new legal regime for the Archipelago of Svalbard:

- a) The full and absolute sovereignty of Norway over the archipelago;
- b) Free access to Svalbard and its territorial waters for any peaceful purpose on the basis of complete equality for all the signatories;

⁴⁹ Timtchenko, Leonid: Quo Vadis, Arcticum?, Ukraine: Kharkiv State University Press “Osnova”, 1996: 62

- c) Peaceful development of the archipelago which procured with the regime of complete demilitarization and neutralization.

The sovereignty over Svalbard was given to Norway by an international agreement on the definite conditions which meant some restrictions of her competence on the archipelago but not her sovereignty. Those conditions were determined by the *custom of the common use* of Svalbard for scientific and economic purposes by nationals of different states. Thus, according to the 1920 Treaty, Svalbard (Spitsbergen) is *the Norwegian sovereign (state) territory for the common use*.

In fact, the legal status of Svalbard established by the 1920 Treaty is a phenomenon in the body of international law.⁵⁰ As Leonid Timtchenko expresses it: “[...] sovereignty is such a legal and political category which does not recognize partiality: either sovereignty exists or it does not, the third is excluded.”⁵¹

In 1925 the Treaty relating to Spitsbergen came into force and the archipelago received a new name, *Svalbard*.

4.4 The Legal Status of the Arctic Sea Expanses – The UNCLOS

It was general knowledge that the oceans and seas of the world have been subject to a freedom of-the-seas doctrine. According to this concept, countries had rights over a three mile (equivalent to 4.8 kilometers) strip of the oceans surrounding their coastline, according to the ‘canon shot’ rule developed by the Dutch Jurist Cornelius Bykershock; all waters beyond these three nautical miles are regarded as international waters, being common property and could be used by anyone. This was before the ability to exploit offshore resources existed. The

⁵⁰ Timtchenko, Leonid: *Quo Vadis, Arcticum?*, Ukraine: Kharkiv State University Press “Osnova”, 1996: 65

⁵¹ *Ibid*: 62

beginning of the 20th century started to raise awareness regarding offshore resources, environmental problems like pollution and fish stocks, and thus countries began trying to extend their control over the seas.

Responding in part to pressure from domestic oil interests, in 1945, US President Harry S. Truman extended U.S jurisdiction to “submerged lands and offshore resources of the Outer Continental Shelf (OCS) in the interest of conservation and prudent development of the natural resources of the seabed.”⁵² This meant the unofficial end of the freedom of-the-seas doctrine, as other countries followed US’s lead and claimed more of the sea as their own.

The technological development has made it possible for states to exploit resources available in the ocean to an ever-increasing degree and so the seabed territorial claims became more important. Because of the multitude of claims, counterclaims and sovereignty disputes, the need of a treaty, which would regularize the practice of states with respect to territorial waters and the high seas and prevent conflict, became increasingly clear.

The United Nations held its first conference on the Law of the Sea (UNCLOS) in Geneva in 1956. This adopted four treaties concluded in 1958:

- Convention on the High Seas, 1962
- Convention on the Territorial Sea and Contiguous Zone, 1964
- Convention on the Continental Shelf, 1964
- Convention on the Fishing and Conservation of Living Resources of the High Seas, 1996

These agreements are still in force for those states which are parties to them and have not ratified the UN Convention on the Law of the Sea of 1982.

The second conference was held in 1960 but did not result in any international agreement.

⁵² Proclamation 2667: Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf <http://www.trumanlibrary.org/publicpapers/index.php?pid=159&st=&st1> [18.04.10]

The third UN conference from 1973 ended nine years later with the adoption in 1982 of a constitution for the seas – the United Nation Convention on the Law of the Sea, treaty that was described as “possibly the most significant legal instrument of this century”⁵³. The Convention came into force in 1994.

The UNCLOS was regarded as an unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean in order to avoid conflict.

Among the most important features of the treaty are: navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of marine environment, a marine research regime and a more unique feature, a binding procedure for settlement of disputes between states.⁵⁴ The Convention deals with practically every form of exploitation of the sea, with the exception of military matters.

The Convention creates three new international bodies: the International Tribunal for the Law of the Sea in Hamburg, the International Seabed Authority in Jamaica, and the Commission on the Limits of the Continental Shelf in New York.

The UNCLOS succeeded in clearly defining the territorial sovereignty of every state. For a visual representation see Figure 12. A coastal state has now sovereignty over the following:⁵⁵

- **Internal waters:** covers all waters and water ways on the landward side of the base line
- **Territorial waters:** covers twelve nautical miles from the baseline and the traditional right to innocent passage in the territorial sea.

⁵³ UNCLOS: http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm [10.04.10]

⁵⁴ Ibid.

⁵⁵ Ibid.

- **Contiguous Zone:** covers additional twelve nautical miles from the territorial waters limit
- **Exclusive Economic Zone (EEZ):** recognizes the right of coastal states to jurisdiction over the resources of some 38 million square nautical miles of ocean space. The coastal state has the right to exploit, develop, manage and conserve all resources to be found in the waters, on the ocean floor and in the subsoil of an area extending 200 miles⁵⁶ from its shore.
- **Continental Shelf:** comprises the seabed and its subsoil that extend beyond the limits of its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of up to 200 miles from the baselines. Countries with continental shelves that reach further out than 200 nautical miles can petition a Commission to gain the right to exploit their shelf beyond the limit of their EEZ.

The UNCLOS represents the current legal framework of the Arctic region.

Article 234 of UNCLOS relating to ice-covered area allows Arctic states to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction, and control of marine pollution from vessels operating in ice-covered waters. The authority vested in Article 234 confers special powers and responsibilities on circumpolar states:

“Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for

⁵⁶ Equivalent to 371 kilometers

most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence."

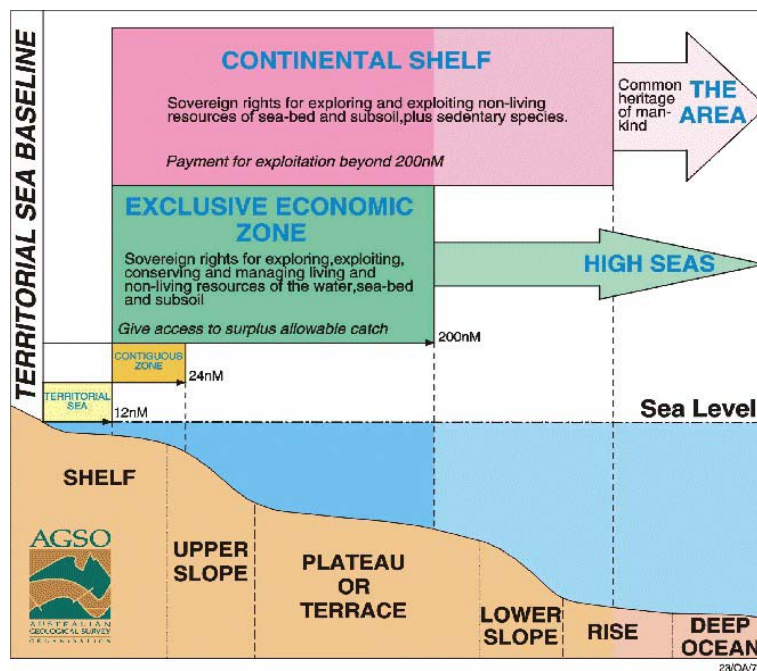


Figure 12. The Extent of the Continental Shelf According to UNCLOS. (8 December 1998)
 Retrieved 20 May 2010 from AGSO: <http://www.aph.gov.au/library/Pubs/rp/1998-99/99rp06.htm>

Although the US recognizes the UNCLOS as customary international law, it has not ratified it. Perhaps the biggest reason explaining why the US government has not accepted UNCLOS is the fact that Republicans, for the most part, are strongly opposed to the Convention, being against an international government, and have controlled Congress for a long time. Although this keeps the US from being held accountable by the judicial system of the Convention, it also excludes them from submitting any territorial claims to the CLCS.

4.5 The Arctic Council

The Arctic Council was established by the Ottawa Declaration of 1996 as a high level intergovernmental forum with the purpose of providing a means for promoting cooperation and coordination among the Arctic States, with the involvement of the Arctic Indigenous communities on common Arctic issues.

Main activities of the Arctic Council focus on issues regarding the protection of the Arctic environment and sustainable development as a means of improving the economic, social and cultural well-being in the North.

The intergovernmental forum of the Arctic Council involves eight Arctic nations as members - Canada, Denmark (Greenland, Faroe Islands), Finland, Iceland, Norway, Russia, Sweden, and the United States, six indigenous people organizations with permanent representation, as well as additional nations as observers.

The following organizations are Permanent Participants of the Arctic Council. Their relative location can be viewed in Figure13.

- Aleut International Association (AIA)
- Arctic Athabaskan Council (AAC)
- Gwich'in Council International (GCI)
- Inuit Circumpolar Council (ICC)
- Saami Council
- Russian Arctic Indigenous Peoples of the North (RAIPON)

The increased international focus on Arctic issues has also inspired many other non-Arctic states and organizations to seek closer ties with the Council. “Non-Arctic nations are seeking an enhanced role in the Arctic Council and asserting Arctic policy strategies of their own, as exemplified by the October 2008 Resolution of the European Parliament and the November 2008 Communication from the European Commission”

The member states viewed the establishment of this new intergovernmental forum as “an important milestone in their commitment to enhance cooperation in the circumpolar North. The Council will provide a mechanism for addressing the common concerns and the challenges faced by their governments and the people of the Arctic”⁵⁷

“Although the Council has no regulatory authority, it has achieved considerable success in generating policy-relevant knowledge about the Arctic and bringing Arctic issues to the attention of global forums.”⁵⁸ The Council’s primary products have been scientific assessments, including the 1997 State of the Arctic Environment Report, 2004 Arctic Climate Impact Assessment, 2004 Arctic Human Development Report, and 2008 Arctic Oil and Gas Assessment.

⁵⁷ Joint Communiqué of the Governments of the Arctic Countries (can be read in appendix)

⁵⁸ Berkman, Paul Arthur: International Spaces Promote Peace, in: *Opinion*, Vol. 462/26 November 2009, page 413



Figure 13. States, Organizations and Strategic Issues in the Arctic: People Across Borders. (2005). In: UNEP/GRID-Arendal Maps and Graphics Library. Retrieved May 9, 2010 from <http://maps.grida.no/go/graphic/states-organizations-and-strategical-issues-in-the-arctic-people-across-borders>.

5

ARCTIC INTERESTS, ARCTIC CONFLICTS

5.1 The Arctic – Theater Scene during the Cold War

Although the militarization of the Arctic was initiated during the Second World War, the role that the region came to play in national defense and security of the Arctic rim states was largely defined by the Cold War.⁵⁹

During the Cold War the Arctic experienced unprecedented militarization and nuclearization, being subject to the hegemonic conflict between the two superpowers, the US and the Soviet Union. It is important to recon that the two powers were neighbors in the Arctic, just 92 kilometers apart in the Bering Strait.

The political significance of the Arctic changed drastically with the containment era⁶⁰ of the Cold War. What was formerly considered not more than an icy waste, the Arctic Ocean now assumed great strategic significance in the context of controlling the ocean and air space.

Modern technical achievements such as long-range polar flights, advances in missile-technology and new radar systems were crucial for transforming the Arctic into a major strategic arena during the Cold War. Submarines were sent on missions to map the seabed in anticipation of the Arctic's becoming a major theater of military operations.⁶¹

⁵⁹ Mychajlyszyn, Natalie: The Arctic: Canadian Security and Defence. (24 October 2008). Retrieved 16 May 2010 from: <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0813-e.htm#theapex>

⁶⁰ The containment doctrine was introduced 1947 by US President Henry Truman, meaning a strategy of containment against the Soviet Union and the expansion of communism; it shaped US foreign policy during the following years.

⁶¹ Broad, William: Queenfish: A Cold War Tale. (18 March 2008). Retrieved 15 May 2010 from <http://www.nytimes.com/2008/03/18/science/18arctic.html>

The importance of the Arctic Ocean as an actual deployment area for strategic ballistic-missile-firing submarines (SSBNs) increased after the passage under the Arctic icecap in 1957 of the nuclear-powered *USS Nautilus*.⁶² The Far North soon became a theater of military operations in which the Soviet Union tried to hide their missile-carrying submarines under the ice pack, while US attack submarines tried to track them.

The Arctic Landscape: A Militarized Geography⁶³

In the event of war, the advance of the Soviet fleets into the Atlantic was to be checked by Norway in the Barents Sea and the Norwegian Sea, and by Denmark at the Baltic approaches. The Atlantic area between Greenland in the west and the Scandinavian Peninsula in the east proved also to be of great strategic significance due to its potential to provide a vital passage between the two antagonists; moreover, the sea routes from Europe to Siberia and the supply lines between the US and Europe could be controlled from this area. The Barents Sea was seen by both sides as the most strategic in the entire Arctic region. Its importance to the Soviet Union arose from its “dependence on straits and narrow sea areas while proceeding from home territory into the high seas and vice versa.”⁶⁴

The passage between Svalbard⁶⁵ and northern Norway was of crucial importance. The geographical advantage of this passage lies in its considerable width and in being almost ice-free throughout the year. More important, its geopolitical advantage was given by the fact that its northern limit, Svalbard, remained partly demilitarized, while its southern side, Norway, had chosen not to allow military bases and nuclear installations on its territory. The Norwegian

⁶² The *USS Nautilus* was the world's first nuclear-powered submarine, operated by the United States.

⁶³ See: Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996: 83

⁶⁴ Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996: 89

⁶⁵ Svalbard remained an exception throughout the Cold War. The Soviet Union was constantly observing the activities of other nations in Svalbard so as to ensure that it was never used as a base for controlling the sea passage between northern Norway and West Svalbard or for conducting hostilities against the northwestern part of the Soviet Union

Sea in conjunction with the Barents Sea was therefore regarded by the Soviet Union as a highly strategic passage to and from the Kola Peninsula and the coast of northern Siberia.

On the other side, the Faeroe Islands and Shetland Islands were important as warning areas between Iceland and Scotland. The Norwegian fjords⁶⁶ and harbors proved strategic in controlling the exits from the base areas in the Kola Peninsula, while equipment from NATO forces could be stored on Norwegian territory.⁶⁷

USSR considered its northwestern territories as the key to its defense. The Kola Peninsula and White Sea region were ideal base areas for the Soviet strategic submarine (SSBN) forces, the Arctic waters offering optimal operational concealment and launch stations. The majority of Soviet SSBNs – 60 percent of the total force – were stationed there.⁶⁸

Because of its location south of the Arctic Circle, at the entrance to the Atlantic from the Arctic Ocean, Iceland became a “natural” advance base for NATO’s naval defense of the North Atlantic. The narrow waters between Greenland, Iceland and Great Britain further augmented Iceland’s strategic position with the emergence of a scenario in which Soviet submarines could approach the oceans via the North Atlantic and the subsequent development of submarine-launched ballistic missiles in the 1960s.⁶⁹ Greenland also played an important role in the Cold War strategy that was considered to be significant enough to cause the US to enter into a treaty with Greenland as early as 1941.

The small states of the Arctic rim –all on the side of the US – were left with few choices, accepting US perceptions of the Soviet threat to their national security.⁷⁰

⁶⁶ “A long narrow strip of sea between high cliffs”, in: Oxford Advanced learner’s Dictionary. Oxford University Press, 5th Edition 1995, Page 437

⁶⁷ Chaturvedi, Sanjay: The Polar Regions: A Political Geography, England: John Wiley & Sons Ltd, 1996: 89

⁶⁸ Ibid.: 90

⁶⁹ Ibid.

⁷⁰ Chaturvedi, Sanjay: The Polar Regions: A Political Geography, England: John Wiley & Sons Ltd, 1996: 93

Strategies

In the 1950s the Arctic was perceived by both superpowers as a natural route for nuclear attacks using strategic bombers. This led to the strategic perspective that the two antagonists required control of forward bases on the territory of other friendly states, so that the adversary's territory came within weapon range. The Arctic gained a new offensive and defensive significance by 1956 with the development of intercontinental bombers and early-warning systems.⁷¹

The 1980s were characterized by a more aggressive containment policy. In sharp contrast to the preceding period of *détente*⁷², negotiation between the two imperial systems failed and an impasse in American-Soviet relations was inevitable. As J.P. Sharp points out, "in American geopolitics the division between east and west was so ingrained in the structure of world-scale political narratives that it no longer needed explanation. To a majority of the population it had become a matter of 'common sense' that the US and USSR were polar opposites."⁷³

Under these circumstances the Arctic region was due to enter an even stronger phase of militarization.

The Arctic was gradually transformed "from a *military vacuum* prior to World War II, to a *military flank* in the 1950-70 period, and a *military front* in the 1980s."⁷⁴

Environmental Security

From an environmental standpoint, the Arctic was totally neglected by the Arctic states during the Cold War. But by the mid-1970s, it was clear that dramatic environmental changes were taking place in some parts of the Arctic. Radioactive fall-out from nuclear explosions in Siberia and Alaska was causing atmospheric

⁷¹ Ibid.: 91

⁷² The word *Détente* is used to describe the easing of the Cold War tensions between the US and the Soviet Union from 1967-1979.

⁷³ See: Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996: 92

⁷⁴ Chaturvedi, Sanjay: *The Polar Regions: A Political Geography*, England: John Wiley & Sons Ltd, 1996: 93

contamination; this would have serious consequences for the Arctic fragile ecosystems. Threats in the form of marine and air pollution were caused by a full range of military activities, such as flight training that disrupted animal migration patterns, the construction of military stations and radar sites. Moreover, these sites have been abandoned and have been allowed to deteriorate, leaving chemical waste behind and having a huge environmental impact.

The most dramatic consequence of the Cold War was the disposal of radioactive waste (RW) in the Arctic seas. Yet in the arms race of the Cold War, this problem was not given large importance and the simplest solution seemed to be the disposal of RW directly in the Arctic seas. This practice was followed by most countries with developed nuclear industries. It was thought that the RW would be isolated in deep water, far away from humans.

“The Arctic seas came to be treated, especially by the Soviet Union, as ideal dumping sites in national back yards where the nuclear waste could be disposed of, out of sight and at minimum political cost.”⁷⁵

The Cold War narrowed down the Arctic states’ motivation to cooperate in non-military terms such as environmental protection or science. The Arctic states perceived their interests as having little in common and the tensions between them were further augmented by the search for natural resources and the lack of defined boundaries. This example from the past shows how hegemonic conflict affects the choices for international cooperation.

⁷⁵ Ibid.: 101

5.2 A New Cold War?

10th August 2007 Canada announced that it will build two new military bases in the Arctic region. This happened only a week after Russia planted its flag on the seabed beneath the North Pole. Was this a “warning shot in a new Cold War” over the resources of the far North?⁷⁶

On second August 2007, two mini-submarines carried six people to the seabed, 4,261 meters deep, through a hole cut in the North Pole’s icy surface. After reaching their destination, the crew left a rustproof titanium Russian flag on the seabed. The Russian crew is the first to reach the ocean floor under the North Pole, and aims to strengthen Russia's claim to an ocean part “the size of Western Europe”.⁷⁷ The expedition planed to gather proof that the Lomonosov Ridge, an underwater shelf that runs through the Arctic, is an extension of Russian territory. Russia's Arctic and Antarctic Research Institute added: "apart from the purely scientific goal of a comprehensive study of the climate and seabed at the North Pole, this expedition may help Russia to enlarge its territory by more than one million square kilometers."⁷⁸ Artur Chilingarov, leader of the expedition and Deputy Speaker of the Russian Parliament, stated that their mission “is to remind the whole world that Russia is a great polar and research power."

However, this symbolic mission to enlarge the country’s territory triggered immediate response from Canada, which described it as nothing more than a show. “This isn’t the 15th century. You can’t go around the world and just plant flags and say, ‘We’re claiming this territory’.” Peter MacKay, Canada's Foreign Minister, stated.

A week after Russia laid claim to the North Pole, Stephen Harper, the Canadian Prime Minister, said that Canada would open a new army training centre for cold-weather fighting at Resolute Bay on the northern tip of Baffin Island. Mr.

⁷⁶ Reid, Tim: Arctic Military Bases Signal New Cold War. (August 11, 2007). Retrieved 10 May, 2010 from: http://www.timesonline.co.uk/tol/news/world/us_and_americas/article2238243.ece

⁷⁷ Halpin, Tony/Byers, David: Russia Plants Flag in Bid of Arctic Riches. (August 2, 2007) Retrieved 9 May 2010 from: <http://www.timesonline.co.uk/tol/news/world/europe/article2186118.ece>

⁷⁸ Ibid.

Harper added that his announcement of the new military operations would “tell the world that Canada has a real, growing, long-term presence in the Arctic” and that “protecting national sovereignty, the integrity of our borders, is the first and foremost responsibility of a national government.”⁷⁹ Mr. Harper also announced that six to eight new navy patrol ships would be built to guard the Northwest Passage. “Canada’s Government understands that the first principle of Arctic sovereignty is: use it or lose it.” Mr. Harper stressed.

Russia's Foreign Minister Sergei Lavrov said today that the Arctic expedition would supply additional scientific evidence for their claims, but that the issue would be resolved according to international law. Mr. Lavrov went on: "The expedition aims to prove that our shelf extends to the North Pole rather than at staking out Russia's claims."



Figure 14. A submarine Plants the Russian Flag on the Seabed Beneath the North Pole on 2nd August 2007

As mentioned in Chapter 4.5, the UNCLOS resolved the matter of continental shelf exploitation, by establishing that seabed and subsoil exploitation could only be carried out as far as the EEZ extends. The UNCLOS also states that countries

⁷⁹ Reid, Tim: Arctic Military Bases Signal New Cold War. (August 11, 2007). Retrieved 10 May, 2010 from: http://www.timesonline.co.uk/tol/news/world/us_and_americas/article2238243.ece

with continental shelves that stretch longer than 200 miles can raise a petition to the Commission on the Limits of the Continental Shelf (CLCS) to gain the right to exploit their continental shelf beyond the limit of their EEZ. This fact causes much of the dispute around Arctic claims. The United Nations rejected the Russian claim already in 2002, because of lack of proof. Canada and Denmark have also argued that the Lomonosov Ridge is connected to their territories and are trying to prove their claims. Norway is also conducting a survey to strengthen its case.

5.3 National Interests in the Arctic Region

RUSSIA

The Russian Federation signed the UNCLOS in 1997. According to the Convention, Russia was entitled to claim their 200 nautical miles EEZ, which provided it with more Arctic marine area than any other state. Moreover, Russia could also submit a claim to extend its EEZ boundary. Soon after signing the Convention, Russia began reviewing the Arctic seabed and became the first country to submit a claim to extend their EEZ, requesting an additional 1.2 million square of marine control.⁸⁰ Yet the other states with potential claims in the Arctic have the possibility of overlapping with the Russian claims. The biggest dispute is with Norway, the two states having overlapping EEZs in the Barents Sea, an area that is called the “Grey Zone”.

Russia’s 2001 claim was not approved due to lack of sufficient proof and the state has until 2011 to resubmit its claim. Until the current date, it is not certain what the Commission on the Limits of the Continental Shelf (CLCS) will decide,

⁸⁰ Carlson, Jon D. / Hubach, Christopher/Long, Joseph/Minteer, Kellen/Young, Shane: The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims (March 30, 2009). Retrieved on 17 May, 2010 from SSRN: <http://ssrn.com/abstract=1472552>

but the general opinion is that it is unlikely that Russia will receive control over sections of the Norwegian EEZ.⁸¹

Canada's and Greenland's theoretical claims also overlap with Russia's 2001 claims. Both countries are conducting research on the Lomonosov Ridge, which could extend their claims to overlap with Russia's limit. The other Arctic states have submitted negative responses regarding Russia's claim to the Commission. The different claims, overlapping claims and EEZs of the Arctic nations can be viewed in Figure 15.

CANADA

Canada's first territorial claim in the Arctic concerns the Beaufort Sea and overlaps with the claims of the part of the US. In order to prove its claim, the Canadian government has begun programs mapping its continental shelf. Although the research has not come to an end yet, it appears that there is "an early indication the ruling might go in Canada's favor."⁸²

Canada's second claim in the Arctic involves an extension of its continental shelf, proving Canada's connection to the Lomonosov Ridge through the Ellesmere Island, Canada's most northern land extension. This claim overlaps with Russia's and Denmark's claims. The approval by the Commission of both claims would mean a great victory for Canada's territorial claims in the Arctic, as the Lomonosov Ridge would extend the Canadian area up to the North Pole.

Canada has also come in conflict with Denmark regarding sovereignty rights over Hans Island – located between Canada's Ellesmere Island and Greenland, having no more than half of square mile in area. The dispute over the island persists since the 1970s, but was left unresolved. Nevertheless, the current developing events in the region have led both Canada and Denmark to renew their debate. As an example of the extent to which Arctic countries will go to defend their national interests, the Canadian military conducted *Exercise Frozen*

⁸¹ Ibid.

⁸² Ibid.

Beaver in which Arctic Rangers landed on Hans Island and substituted the Canadian flag for the Danish flag in the summer of 2005.⁸³

In order to strengthen its sovereignty in the Arctic, Canada has expanded the surveillance and the presence of the Canadian Forces in the region. Canadian Prime Minister Stephen Harper explained this strategy saying, “We’re expanding our military and coast guard presence into the High Arctic and improving our surveillance capacity, including strengthening the Arctic Rangers.” Harper stressed that military spending was necessary in order to strengthen the Canadian sovereignty and border security.⁸⁴

DENMARK

Denmark has until 2014 to submit its claims of continental shelves beyond 200 nautical miles, since it ratified the UNCLOS in 2004. Denmark has a right to make claims in five potential areas around Greenland and the Faroe Islands.⁸⁵

There are two areas of potential conflict for Denmark. The first is with Canada over Hans Island, and the second area lies north of Greenland, where Denmark and Russia may have overlapping claims regarding the Lomonosov Ridge. The area could also be disputed with Canada, as they also have potential claims to the Lomonosov Ridge. The dispute over the Lomonosov Ridge will probably not be settled before Canada and Denmark submit their claims to the Commission. After Denmark submits its claim to the Commission, the country will most likely pursue a policy of negotiations based on the recommendations of the CLCS.

NORWAY

Norway possesses sovereignty over mainland of Norway, Jan Mayen Island and Svalbard. In addition to these areas, Norway submitted a claim to other areas to

⁸³ Ibid.

⁸⁴ See: Carlson, Jon D. / Hubach, Christopher/Long, Joseph/Minteer, Kellen/Young, Shane: The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims (March 30, 2009). Retrieved on 17 May, 2010 from SSRN: <http://ssrn.com/abstract=1472552>

⁸⁵ Ibid.

the CLCS in 2006. The claimed EEZs and continental shelf in these areas represent an area that is six times larger than the Norwegian mainland.

The situation in Svalbard and Barents Sea is more problematic than the other areas Norway set claim for. In the Barents Sea, Norway's skepticism towards a bilateral relationship with Russia slows the process. This skepticism also makes it important for Norway to maintain the US as a key ally.⁸⁶ While Russia has vast amounts of oil fields, Norway's interest is further augmented by their desire to exploit the natural resources in the disputed area. In Svalbard, Norway holds a different policy that does not involve negotiations. The 1920 Svalbard Treaty granted Norway sovereignty over the island, but it also provided treaty parties equal rights to Svalbard resource exploitation. This aspect of the treaty created controversy over who controls the EEZ and continental shelf of Svalbard. Norway submitted a claim to the CLCS, but the other nations consider that Svalbard has its own continental shelf.⁸⁷ The prevailing international opinion is that Norway maintains full sovereignty over Svalbard and the maritime areas around it. Norway does not see any need to initiate negotiations regarding Svalbard and is maintaining a firm position.

No new disputes will likely arise until both Canada and Denmark submit their claims to the CLCS. Once these are received, the continental shelf claims in the Arctic will have been submitted by all Arctic signatory states of the UNCLOS. The next step in the process would be the recommendations of the CLCS, the final step being the fact whether the states accept the recommendations or not. "This is where negotiations could break down, and armed conflict could result."⁸⁸

UNITES STATES

The US has not yet ratified the UNCLOS. During his last days in office, President George W. Bush enacted the National Security Presidential Directive 66 which

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

stressed the urgency to join the Convention. The directive also acknowledges the fact that most known oil deposits are outside of US jurisdiction. In 2008, the US government spent \$5.6 million to prove that the US' continental shelf of Alaska extends beyond the 200-mile EEZ limit in anticipation of the ratification of the UNCLOS.⁸⁹ However, by not being a signatory state to the UNCLOS, the US does not have access to the territory claimed. While the Obama administration has not yet taken a defined stance on ratifying the Convention it is believed by many that ratification will follow soon. Nevertheless, many Conservatives are opposing signing the UNCLOS, stating that the Convention has too much power for an 'unaccountable international bureaucracy' and that it represents 'a dramatic step towards world government'.⁹⁰ The US could set a potential claim to enough territory to nearly double its current holdings in the Arctic. By waiting to ratify the Convention the US risks losing potential territory, specifically to Canada. With other countries staking claims in the Arctic, the question arises how long can the US afford to wait before ratifying the treaty? It is clear that in order to have a legitimate say in the dividing up of the newly available Arctic resources, it would be in the US's interest to ratify the Law of the Sea Convention as soon as possible.

EUROPEAN UNION

In the past, the Arctic has been most of peripheral importance to the EU, yet the current developments in the Arctic are increasingly subject for European political dialogue.

The Nordic Council of Ministers⁹¹ has increased its efforts to facilitate coordinated action to meet the challenges facing the Arctic region due to globalization and climate change. Cooperation within the EU is of great importance for the Arctic, since a range of policies and activities pursued by the

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ An organization established 1971 between Denmark, Iceland, Finland, Norway and Sweden with the purpose of consultation and cooperation in matters of common interest.

EU impact on the Arctic region, e.g. the EU's environmental, maritime and research policies. For a long time the EU did not interact with the Arctic and did not develop any institutional framework or specific instruments for dealing with Arctic related issues. The Arctic remained a distant and different reality.⁹² It was only with the 1995 enlargement to Finland and Sweden that the EU started dealing with issues regarding the Far North. Following Finland's Northern Dimension initiative, in 1999 the Arctic became a recognized concept in the EU – the "Arctic window" in the Northern Dimension.⁹³ Nevertheless, the Arctic still remained more a peripheral concept for the EU.⁹⁴ The situation changed in the last years; climate change has brought the Arctic to the world's attention. The EU, which has made climate change one of its priorities, is becoming increasingly aware of the importance of the Arctic. Worries about international security issues in the Arctic region, caused by territorial disputes, resources exploitation and new transport routes, have raised the issue of a possible EU Arctic policy to European Council level. The European Parliament has consistently advocated an enhanced EU role in the Arctic.⁹⁵ EU also concentrates on the issue of the protection of the Arctic environment. The necessary pre-condition for the EU to play an increased role in the Arctic region would be a better internal coordination among EU's sectoral policies and Member States.

INDIGENOUS PEOPLES

The indigenous peoples living in seven Arctic rim nations – Canada, US, Greenland, Norway, Sweden, Finland and Russia (Iceland has no indigenous population) are often described as belonging to a 'Forth World' and being "locked into nations they can never hope to rule."⁹⁶ They are economically dependent on the core and in the last years, the Arctic communities are

⁹² Nordic Council of Ministers: The European Union and the Arctic, Copenhagen, 2008:7

⁹³ Established 1997, the Northern Dimension policy is an EU program with the objective of cooperation between the EU, Norway, Iceland and Russia. Some of the most important Issues on the agenda of the Northern Dimension are the sustainable development, economic cooperation, external security, research and environment.

⁹⁴ Nordic Council of Ministers: The European Union and the Arctic, Copenhagen, 2008:12

⁹⁵ Ibid.

⁹⁶ Carlson, Jon D. / Hubach, Christopher/Long, Joseph/Minteer, Kellen/Young, Shane: The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims (March 30, 2009). Retrieved on 17 May, 2010 from SSRN: <http://ssrn.com/abstract=1472552>

experiencing an ever increasing military and industrial presence. The indigenous peoples are seeking to overcome internal colonialism and have thus formed organizations to pursue their aims. The most important issues they are struggling with involve their cultural survival, the protection and retention of the land they inhabit and self-government.

In the 1970s and 1980s the Arctic indigenous peoples have gained unexpected political and economic power, succeeding in legislative, judicial, and administrative arenas in Denmark, Canada and the US. Their aboriginal rights entitles them to ownership over land, water and even resources and despite the assimilation process that the governments promote, indigenous Arctic people have not been assimilated.

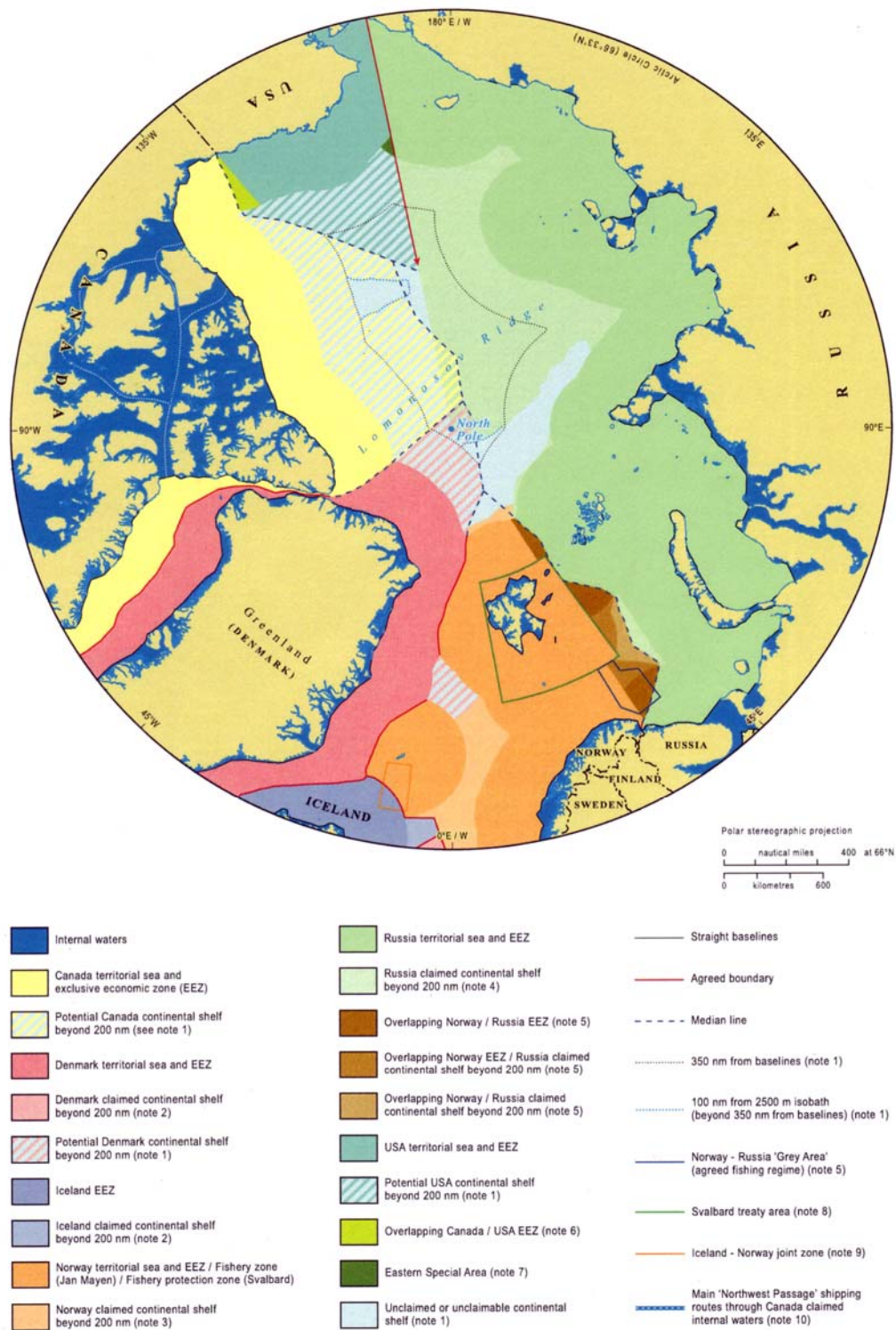


Figure 15. Maritime Jurisdiction and Boundaries in the Arctic Region (22 February 2010) In:

International Boundaries Research Unit, UK. Retrieved 15 May 2010 from:

<http://www.dur.ac.uk/ibru/resources/arctic/>

6

THE ANTARCTIC TREATY – MODEL FOR THE ARCTIC?

6.1 The Antarctic Treaty: Cooperation through Science

The year 2009 marked the 50th anniversary of the planet's first nuclear arms-control agreement, and the first institution to govern all human activities in a region beyond sovereign jurisdictions – the Antarctic Treaty.⁹⁷

Adopted in Washington 1959, the Antarctic Treaty recognized that “it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord.”⁹⁸

Covered by ice and surrounded by oceans, the continent of Antarctica holds no human settings. Under these circumstances, it would have been easy for the region to become an area for weapons testing or been divided up between nations interested in exploiting its resources.

The first nation to claim territory in the Antarctic was Great Britain in 1908, followed by New Zealand, France, Australia, Norway, Chile and Argentina. To avoid territorial conflicts and to preserve sovereignty rights, in 1948 the U.S. issued to the seven claimant nations a secret draft agreement proposing an international status for the Antarctic area; focus was set on the global relevance of science and exploration, as well as on the importance of maintaining international peace and security in Antarctica.

It was only in 1958 that President Eisenhower invited the Soviet Union and the other nations involved with Antarctic issues, the seven claimants and Belgium, Japan, and South Africa, to discuss about a means of ensuring that Antarctica

⁹⁷ Berkman, Paul Arthur: International Spaces Promote Peace, in: *Opinion*, Vol. 462/26 November 2009, page 412

⁹⁸ *Ibid.*

will be used only for peaceful purposes. Over the next months 60 secret meetings were conducted in the U.S with the end result of the Conference on Antarctica between 15th October and 1st December 1959, culminating with the signing of the Antarctic Treaty.

Polar scientist and explorer Laurence McKinley Gould testified that it was “a document unique in history that may take its place alongside the Magna Carta and other great symbols of man’s quest for enlightenment and order.”⁹⁹

Nearly 75 percent of Earth’s surface lies beyond national boundaries. International institutions governing such spaces are still developing, having originated only after the Second World War, when global interdependence became clear. Paul Arthur Berkman stresses the “shared responsibility for governing human activities in such international spaces and for managing the effects of global phenomena such as climate change. At this threshold in our civilization, the Antarctic Treaty offers a unique precedent. “

The treaty suspended all territorial claims, and subsequent international agreements covered environmental protection and governance and management of the continent.

The Antarctic Treaty model recognizes that solutions regional or global issues must be resolved through cooperation. The Antarctic Treaty is especially relevant to the Arctic, where stakeholders have thus far avoided shared discussions about peace and security.

⁹⁹ Ibid.

6.2 Antarctic Treaty – Model for the Arctic?

The Antarctic Treaty of 1959 establishes an international regime for Antarctica, stressing that the region should remain completely demilitarized and sets forth a method of coping with conflicting claims regarding sovereignty and jurisdiction in Antarctica, as stated in Article IV. Under these circumstances, there is a natural tendency to turn towards the Antarctic Treaty System as a possible regime model for the Arctic region.

This subject has long been discussed and the answer to this question is rather a negative one. Paul Arthur Berkman states that “the success of the Antarctic Treaty, founded on scientific cooperation and denuclearization, offers inspiration, although differences between the Polar Regions rule out a similar treaty in the Arctic.”¹⁰⁰

Indeed, a simple comparison between the two poles, demonstrates that the Antarctic Treaty cannot be considered a precedent for regime formation in the Arctic.

Antarctica was already demilitarized in 1959, as there were no military operations taking place in the region. In contrast the Arctic emerged as a region of vital strategic significance to both superpowers during the Cold War, as shown in Chapter 5. Similarly, no industrial or commercial activities were taking place in Antarctica at the time of signing the treaty, whereas the Arctic has already become a scene of global industrial activities. The Scientific Committee on Antarctic Research (SCAR) has played a substantial role in promoting an Antarctica dedicated to scientific research. So there is no comparison between the two regions in these terms either.

¹⁰⁰ Berkman, Paul Arthur: Governance and Environmental Change in the Arctic Ocean, in: Science and Government, Vol. 324, 17. April 2009, page 340

A key difference between the two Poles is that while Antarctica is surrounded by water, the Arctic Ocean is surrounded by five countries. The Arctic Five have clearly stated, that they “don’t want the rest of the world meddling in Arctic affairs through any vehicle analogous to the Antarctic Treaty.”¹⁰¹ Earth’s Northern Polar Region consists of a vast ocean surrounded by land, in contrast to the Southern Polar Region in which an ice-covered continent is surrounded by ocean.

The stakes in the Arctic are higher than in its opposite pole and this poses problems for regime formation in the Circumpolar North; the interested parties will negotiate harder regarding specific provisions incorporated in a regime for the region. The combination between national and common interests, as shown in Chapter 5, will shift the focus of policy choices of the governments towards their own national security. Moreover, Antarctica does not constitute a homeland for indigenous peoples. In contrast, the interests of the Arctic native people have to be taken into consideration in the development of any Arctic regime. Thus, the need for an institutional framework to ensure international cooperation in the Arctic region is also greater.

While some view the Antarctic Treaty as a model to prevent an Arctic race for oil, it is important to keep in mind the provisions of the treaty. As stated above, the Antarctic Treaty has been established largely as a way to avoid disagreement of sovereignty between the seven claimants. The treaty suspends all territorial claims, and subsequent international agreements covered environmental protection and governance of the continent. US secretary of state Hillary Clinton noted at the 2009 Antarctic Treaty Consultative Meeting “the genius of the Antarctic Treaty lies in its relevance today.”¹⁰² But it doesn't seem particularly

¹⁰¹ Karey, Gerald: Antarctica Not a Role Model As Five Arctic Nations Call The Shots and Vie for Resources, 2009.
http://www.platts.com/weblog/oilblog/2009/04/10/antarctica_not_a_role_model_as_five_arctic_nations_call_the_shots_and_vie_for_resources.html

¹⁰² Ibid.

relevant to the Arctic countries, including the US, as they assert their sovereign rights and make competing territorial and resource claims.

In an increasingly interconnected global world, the need for better governance of international spaces is crucial. The Antarctic Treaty System provides us with a very good example of how cooperative management of international spaces can be undertaken successfully and for peaceful purposes. Unfortunately, not all international spaces can be managed this way. Antarctica and the Arctic remain poles apart, not only with regard to their physical settings, but also due to governance.

The National Security Presidential Directive of the US states that “the geopolitical circumstances of the Arctic region differ sufficiently from those of the Antarctic region such that an "Arctic Treaty" of broad scope -- along the lines of the Antarctic Treaty -- is not appropriate or necessary.”¹⁰³

¹⁰³ National Security Presidential Directive 66/NSPD-66, Homeland Security Presidential Directive 25/HSPD-25, 9.01.2009
<http://www.fas.org/irp/offdocs/nspd/nspd-66.htm>

7

Is There the Need for a New Treaty for the Arctic?

As mentioned before, the current legal regime of the Arctic region is the UNCLOS. But in the last years, the question arose whether this one is suitable to cope with the sharp issues regarding the Arctic or should a new legal framework for the Arctic region be established. In spite of the relative isolation of the Arctic, the gradual accumulation of issues in the past decade suggests that there needs to be a fundamental rethink of the way in which the region is governed. The Arctic Council and the Arctic Five want a more effective implementation of the existing regime, while the EU advocates establishing a new regime: an international treaty for the protection of the Arctic.

Current Arctic Issues

As analyzed in Chapter 5.3 the rising tensions associated with outer continental shelf claims are a huge potential of conflict. One of the most sensitive issue involving claims for additional offshore territorial extensions involves Russia, Denmark and Canada over the Lomonosov Ridge. All three states are taking a hard stance in this issue, as the acceptance that the Lomonosov Ridge is an extension of their continental shelves would mean a great victory for any of the three states involved in this matter. But there is no consensus among the Arctic nations concerning the territorial claims.

Russia and Norway have already submitted extensions claims to the CLCS. Russia was the first to submit a claim in 2001; however, owing to the insufficient evidence presented, it must re-submit its application by 2011. Norway submitted in 2006, while Canada must submit by 2013, and Denmark by 2014. No new disputes will likely arise until both Canada and Denmark

submit their claims to the CLCS. Once the submittals are received, the continental shelf claims in the Arctic will have been submitted by all Arctic signatory states of the UNCLOS. The next step in the process will be the recommendations of the CLCS. The final step will be for the countries to accept the recommendations. This is where negotiations could break down and armed conflict could result.¹⁰⁴ How can the Commission be expected to deal with the multiple overlapping claims it is already facing? Its recommendations can have enormous significance as to the legitimacy of OCS claims. The Commission has made clear that it will not become engaged in political or legal disputes. Until now, the CLCS tried to strictly maintain its role as a scientific and technical body. Not to forget that the presence of oil and gas reserves in the seabed is complicating the drawing of Arctic continental shelf boundaries.¹⁰⁵

There are good reasons for all involved states to try to maximize their claims. However, the Russian Arctic claims are unique¹⁰⁶ because of its huge potential. There are around 88 billion metric tons of hydrocarbon resources within the Russian own areas and an additional 9 to 10 billion tones in the claims Russia has submitted to the UCLCS.¹⁰⁷ Already the world leader in the production of natural gas and oil exports, Russia holds the largest proven natural gas reserves in the world. If Russia's proven reserves are combined with their estimated potential hydrocarbon resources in the Arctic, Russia has the potential to dominate the oil and gas markets in the future, and become especially dominant in Europe, as they are a major supplier for Eastern Europe.¹⁰⁸

According to the International Energy Agency by 2030, the world primary energy demand will be 40 percent higher than in 2007. Fossil fuels will remain

¹⁰⁴ See: Carlson, Jon D. / Hubach, Christopher/Long, Joseph/Minteer, Kellen/Young, Shane: The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims (March 30, 2009). Retrieved on 17 May, 2010 from SSRN: <http://ssrn.com/abstract=1472552>

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ BP Statistical Review, 2008, in: Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

¹⁰⁸ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

the dominant sources of energy worldwide. Oil demand is expected to experience an increase of 24 percent in 2030, while global primary gas demands are expected to rise by 41 percent since 2007 until 2030.¹⁰⁹

This could give Russia a chance to increase its economic influence. The proceeds from massive fuel exploitation would boost their infrastructure, which could restore Russia to a level of influence similar to that that they held during the peak Cold War era.¹¹⁰

Taking these facts into consideration, it is imaginable, that Russia's national priorities would prevail over cooperation. Negotiations should be conducted after the principle of peaceful cooperation. Nevertheless, as P. A. Berkman stresses that a "combination of national and common interests will expand the policy choices for governments to enhance their own security."¹¹¹ According Jon Carlson and other authors, Russia has already "signaled their intent to back up their claims through military [...] and have been expanding the operational zone of their northern fleet in order to show their intent on 'protecting [their] national interests' in the Arctic."¹¹²

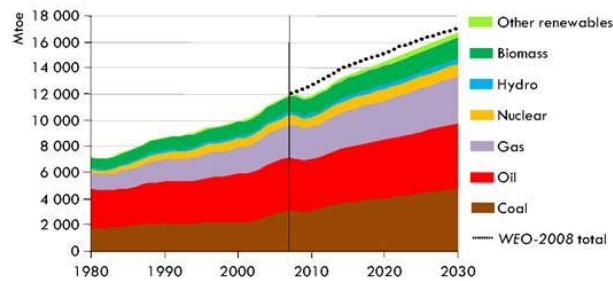
Energy security plays a key role in accelerating interests in the Arctic, as energy prices are growing. Importance of Norway for European energy security should not remain unmentioned, as Norway is a major source of energy for Europe and an alternative to the dependence on Russian gas.

¹⁰⁹ International Energy Agency, in: World Energy Outlook 2009 Fact Sheet. Retrieved 19 May 2010 from: <http://www.worldenergyoutlook.org/>

¹¹⁰ Ibid.

¹¹¹ Berkman, Paul Arthur/Young, Oran: Governance and Environmental Change in the Arctic, in: SCIENCE, Vol. 324, 17 April 2009: 340

¹¹² Carlson, Jon D. / Hubach, Christopher/Long, Joseph/Minteer, Kellen/Young, Shane: The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims (March 30, 2009). Retrieved on 17 May, 2010 from SSRN: <http://ssrn.com/abstract=1472552>



*Global demand grows by 40% between 2007 and 2030,
with coal use rising most in absolute terms*

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Figure 16. International Energy Agency: World Energy Demand by 2030. Retrieved 19 May 2010 from: http://www.iea.org/country/graphs/weo_2009/fig1-1.jpg

Another factor which poses a serious threat is the melting of the Arctic sea ice. Climate warming in the Circumpolar North is causing the Arctic Ocean to transition from a permanent ice-covered cap to a seasonally ice-free area. In the last years, the effect of the melt has been dramatic, impacting the fragile Arctic environment. Nevertheless, not only environmental changes are due to take place – risks of political, economical and cultural instability are inevitable. Previously inaccessible areas of the Arctic Ocean will potentially become accessible for resource exploitation. Could a war for resources start? The international stability and global security are at stake. Moreover, the status of the North West Passage still remains a legal issue that has a potential to erupt in the light of current climate change.

Before analyzing weather there is a need for a new legal regime for the Arctic, it is important to address the current legal framework of the region and its difficulties.

Maintaining the Status Quo?

The question whether there is a need for a new Arctic regime has been disputed for a long time now. The Arctic Ocean is already subject to a number of governmental systems, the UNCLOS being multilateral regime that applies in the Arctic. The Arctic states are following the rules laid out in UNCLOS Article 76 to establish the boundaries of their jurisdiction over the seabed beyond the limits of their EEZ, as well as the provisions of Article 234 on ice-covered areas.¹¹³ The Arctic states have established an intergovernmental forum - the Arctic Council. P.A. Berkman states that, although the Council has no regulatory authority, it has achieved considerable success until now, in generating policy-relevant knowledge about the Arctic and bringing Arctic issues to the global attention.¹¹⁴ Also other legal regimes rely to the Arctic, such as the Convention for the Prevention of Pollution from Ships from 1973-1978 and the 1995 UN Fish Stocks Agreement. P.A. Berkman also stresses that further developments are needed before economical damage and conflicts of interest occur. “Yet these sectoral regimes cannot avoid the dangers of institutional fragmentation”, continues P.A. Berkman. Neither could they provide integrated governance for the Arctic Ocean.¹¹⁵

Those in favor of maintaining the status quo of the Arctic stress that there is no need for a new organization, but rather encourage the commitment to building capacity inside UNCLOS. Member states should commit to building capacity inside UNCLOS and the CLCS, rather than creating another international institution. Shifting authority from an existing organization to a new one would disrupt policies and current processes, for example, the applications of territorial claims to the CLCS, which have different deadlines depending on the date of submission by each state. The extension must be claimed within ten years of signing the convention.

¹¹³ Article 76 and Article 234 of the UNCLOS can be read in the Appendix

¹¹⁴ Berkman, Paul Arthur/Young, Oran: Governance and Environmental Change in the Arctic, in: SCIENCE, Vol. 324, 17 April 2009: 340

¹¹⁵ Ibid.

Almost all members of the Arctic Council are opposed to setting up a new system or to broadening the Council's mandate. Building a new regime for the Arctic would imply ceding sovereignty over the region to an international organization, fact with which the involved states do not agree. Nevertheless, the Council's members realize that the Arctic is changing rapidly and that increased cooperation must be encouraged.

Although not signing it, the US accepts the provisions of UNCLOS as customary international law. In 2009, the US also underlined its commitment to the Council as a 'high-level forum'¹¹⁶; while not opposing to a restructure of the Council, the US reaffirmed its aversion to any expansion of the Council's limited mandate. During the negotiations that formed the Council, the US stressed that the Council's mandate should not include national security matters.

In the Ilulissat Declaration – the result of a conference held 27-29 May 2008 in Ilulissat, Greenland - the Arctic Five declared their commitment to the current legal framework of the Arctic – the law of the sea. At the same time the states have declared their commitment to an orderly settlement of disputes regarding overlapping claims.¹¹⁷ The Ilulissat Declaration emphasizes that UNCLOS is a commitment of the Arctic states and that there is no need for a new international legal regime. Most organs of the US government support Ilulissat even though the US has not signed the UNCLOS.

P.A. Berkman thinks that a useful approach in developing effective governance in the Arctic could be to treat the central Arctic region as an international space, while drawing a clear distinction between the overlying water column and the sea floor. According to P.A. Berkman, the overlying water column and sea surface of the central Arctic, being legally distinct from the seabed, could remain an undisputed international area, where the interests of Arctic and non-Arctic states would play a role in the development of effective governance. The

¹¹⁶ Ebinger, Charles/Zambetakis, Evie: *The Geopolitics of Arctic Melt*, in: *International Affairs* 85:6, Blackwell Publishing, 2009:1227

¹¹⁷ The Ilulissat Declaration can be read in the Appendix

region in matter involves the high seas, which is a sea zone generally considered as being beyond national jurisdiction of any state. P.A. Berkman further explains, that “focus on the high seas opens the door to treating the central Arctic as an international space subject to cooperative decision-making regarding a variety of issues through regulatory arrangements articulated under the auspices of LOSC and customary international law.”¹¹⁸

A New Regime for the Arctic?

In light of the above mentioned current threats, some scientists are underlining the fact that the Arctic is a special region which needs its own legal regime, in order to procure sustainable development through comprehensive cooperation.¹¹⁹

The Arctic is clearly facing challenges regarding its management and the states involved do not want to address these individually. Donald Rothwell states that until now, the collective response has primarily been through reliance upon ‘soft law’ mechanism with avoidance of hard law treaty frameworks.¹²⁰ Yet the Ilulissat Declaration approved of the law of the sea as being the legal framework for the resolution of Arctic Ocean issues, while at the same time rejecting the need for a ‘comprehensive international legal regime’ to govern the Arctic Ocean.¹²¹ This raises the question, if the law of the sea really is the appropriate legal framework for the resolution of Arctic Ocean issues. As noted above the UNCLOS does not make specific reference to the Arctic. Article 234 makes reference to ice-covered waters; nevertheless “it hardly creates a

¹¹⁸ Berkman, Paul Arthur/Young, Oran: Governance and Environmental Change in the Arctic, in: SCIENCE, Vol. 324, 17 April 2009: 340

¹¹⁹ Timtchenko, Leonid: Quo Vadis, Arcticum?, Ukraine: Kharkiv State University Press “Osnova”, 1996:52

¹²⁰ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

¹²¹ Ibid.

framework for a comprehensive regime in a region where the ice is retreating.
“¹²²

Critics of UNCLOS underline the lack of transparency of article 76 “as one of the convention’s major flows.”¹²³ According to Article 76, submissions by Arctic states are not made available to all other member states; this makes it difficult for signatory states to understand the justification for decisions of the CLCS, being also unable to challenge claims, since they often do not see the full logic behind each state’s argumentation. Moreover, opponents of UNCLOS argue that “the language in article 76 is ambiguous in many places, leaving critical definitions of many terms unclear.”¹²⁴

In addition, while the CLCS is supposed to be a technical mechanism,” it is in reality too often governed by political imperatives.¹²⁵

Donald Rothwell states, that “a rapidly changing Arctic Ocean environment [...] would not, on the current legal framework, be one which would be susceptible to comprehensive management and control by the Arctic States.”¹²⁶

The uncertainty created by the US position towards the UNCLOS is also an important factor. Unless resolved soon, it could create a long term problem with respect to the finalization of OCS claims and further issues. As a non-signatory state, the US cannot assert rights over resources off its Alaskan coast beyond the 200 nautical miles of its EEZ. The Senate, which has to approve UNCLOS before ratification can take place, believes that key provisions of UNCLOS could be a disadvantage for the US Navy, the most powerful navy in the world. They consider customary international law sufficient to deal with these Arctic

¹²² Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

¹²³ Ebinger, Charles/Zambetakis, Evie: The Geopolitics of Arctic Melt, in: International Affairs 85:6, Blackwell Publishing, 2009:1227

¹²⁴ Ibid.:1228

¹²⁵ Ibid.

¹²⁶ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

maritime issues. The US currently relies on customary law to govern its Arctic activities.¹²⁷

How can states be obliged to respect the UNCLOS? The question of effectiveness of international law arises, as the international law is based on the cooperation of states. There are no real sanctions if states do not respect the treaty. The Arctic Council has no real regulatory authority either. The Arctic States formed the Arctic Council, designed to provide a high-level forum for discussion of issues of common interest amongst the Arctic states. However, the main problem of the Arctic Council arises from the fact that it is a soft law regime, “and there has never been any intention to create legally binding obligations for the Arctic states”, according to Donald Rothwell. “When this constraint is combined with the fact that the US acts more like a ‘minor power’ in Arctic affairs, ‘refusing to take its Arctic responsibilities seriously’, the Arctic Council has never been able to realize some of its potential to fully manage Arctic affairs”, continues Rothwell.

The Ilulissat Conference raises concerns about the future of the Council, as only five of the eight Council members gathered to discuss Arctic issues. Even if the Ilulissat Declaration refers to the whole Arctic Council, given the political, legal and strategic significance of the issues addressed during the conference, one asks whether the Ilulissat Declaration participants see themselves as the only major players regarding Arctic issues.¹²⁸ Matters concerning the future of the Arctic should not be discussed in absence of some of the Arctic Council members, including the indigenous peoples.

According to researcher Leonid Timtchenko, the Arctic as a whole and the Arctic Ocean in particular compose a region in need of its own legal regime. Only through comprehensive cooperation in the framework of a legal regime can the

¹²⁷ Ebinger, Charles/Zambetakis, Evie: The Geopolitics of Arctic Melt, in: *International Affairs* 85:6, Blackwell Publishing, 2009:1227

¹²⁸ See: Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

vulnerable environment of the Arctic be protected and sustainable development achieved.¹²⁹

¹²⁹ Timtchenko, Leonid: *Quo Vadis, Arcticum?*, Ukraine: Kharkiv State University Press “Osnova”, 1996: 89

8

CONCLUDING REMARKS

According to Paul Arthur Berkman the Arctic region is entering into “an era of jurisdictional conflicts, increasingly severe clashes over the extraction of national resources, the emergence of a new ‘great game’ among the global powers.”¹³⁰

Global climate change has rendered the Arctic into the center of geopolitics, transforming it from not more than an icy wasteland into a region that found itself surrounded by commercial, environmental, national security issues, with major implications for the international legal and political system.

Many actors on the international scene started showing great interest in the Arctic. The region has a significant potential for economic growth and conflicting interests create a potential for discord between the actors involved.

In the current study I tried to analyze whether the current legal status of the Arctic Ocean is suitable to cope with its sharp problems, or if the Arctic region is in need of a new regime.

In order to answer this question, it was first necessary to analyze all factors of the Arctic Geopolitics - current issues facing the Far North, state interests as well as interests of the indigenous population, available resources, climate change, and the development of the Arctic legal regime. The Arctic is governed by international customary maritime law in the form of UNCLOS, yet the Articles in question do not refer particularly to the Arctic. Cooperation is fostered by the Arctic Council in addition to bilateral agreements. The present spirit of

¹³⁰ Berkman, Paul Arthur/Young, Oran: Governance and Environmental Change in the Arctic, in: SCIENCE, Vol. 324, 17 April 2009: 340

cooperation will probably continue. Nevertheless, the latest developments in the Arctic region encourage us to analyze whether the UNCLOS is able to cope with this issues.

One explanation for the late cooperation in the Arctic region was seen in the Cold War period. Tension between the two superpowers and the strategic relevance of the Arctic resulted in the perception of the Arctic nations that they had little common interests and felt only marginally motivated to cooperate in nonmilitary terms. “At that time the Arctic was suddenly perceived as a key geostrategic deployment area in any major conflict between the superpowers. While strategic proximity between Russia and the US may have lost its immediate relevance, new conflicts could arise not only in the Arctic but over the Arctic.”¹³¹

The Far North is nowadays facing many problems of various kinds: environmental, social and legal. Environmental change has awakened global interests in the Arctic. Environmental aspects such as melting of the sea ice, due to global warming, have significant consequences, such as new opportunities for resource exploitation and opening of new sea transportation routes. Although the melting of Arctic sea ice opens new economic opportunities, local communities, whose traditional way of life depends on the fragile surrounding environment, find themselves endangered. Moreover, these new economic opportunities also pose legal issues. What becomes obvious when viewing the territorial claims of the Arctic nations is that there is a huge potential for conflict. The situation becomes even more serious when taking into consideration the resources. Furthermore, the melting of Arctic sea ice opens new routes not only for carrier ships but also for warships. Taking these developments into consideration, the Arctic States have started strengthening their Arctic fleets. These issues bear huge potential for conflict and may even be

¹³¹ Neele, Matz-Lueck: Planting the Flag in Arctic Waters: Russia's Claim to the North Pole, in: *Göttingen Journal of International Law*, Vol.1, No.2, 2009:239, Retrieved 12 May 2010 from: <http://resolver.sub.uni-goettingen.de/purl?goescholar/3275>

a risk for international security. Disputes about jurisdictional claims between the Arctic States complicate the creation of a comprehensive governance regime in the Circumpolar North. When the above issues are considered it becomes clear that the Arctic is beginning to face some challenges regarding its management. States do not want to address these issues individually and a soft law regime may prove unable to cope with such important issues.

The debate on the future of Arctic governance centers on whether to create a new legal regime or use existing multinational frameworks.

In my view, the Arctic region is in need of a new legal framework. Given the current issues facing the Arctic, technological risks of operating in such an environment, and the operating costs involved, it is necessary that a clear and unambiguous legal and regulatory frameworks be put in place.¹³²

Furthermore, the Arctic States have declared in the Ilulissat Declaration their commitment to an orderly settlement of disputes and the rules and regulations of the law of the sea. They have clearly stated that the status quo of the Arctic region should be maintained. Nevertheless, Russia's actions seem to indicate that it is committed to the law of the seas as long as Russian claims in the Arctic are formally acknowledged. "The value of political declarations like the Ilulissat Declaration will be put to the test, if Russian claims to extended sovereign rights in the Arctic Ocean are assessed negatively."¹³³

Concerns over national security are holding the progress towards regime formation back. The states involved do not embrace the idea of shifting their sovereignty over to a new regime. Nevertheless, a regime that deals with such important matters concerning international security should not remain unclear. The Arctic needs a clear and comprehensive legal regime.

¹³² Ebinger, Charles/Zambetakis, Evie: The Geopolitics of Arctic Melt, in: *International Affairs* 85:6, Blackwell Publishing, 2009:1228

¹³³ Neele, Matz-Lueck: Planting the Flag in Arctic Waters: Russia's Claim to the North Pole, in: *Göttingen Journal of International Law*, Vol.1, No.2, 2009:239, Retrieved 12 May 2010 from: <http://resolver.sub.uni-goettingen.de/purl?goescholar/3275>

Arctic melt does and will continue to pose political, economic, military and environmental challenges to the governance of the region. And there is no doubt that, strengthening legal frameworks in the Arctic is necessary in order to promote sustainable development and manage environmental issues and the regions resources.

“The time has come for a reassessment of the reluctance of the Arctic States to consider hard law mechanism. The current Arctic regime is a patchwork of soft political responses in need of an overarching binding treaty framework. The time for an Arctic Treaty has come.”¹³⁴

¹³⁴ Rothwell, Donald: The Arctic in International Affairs: Time for a New Regime?, ANU College of Law Research Paper No. 08-37, Retrieved 4 May 2010 from: <http://ssrn.com/abstract=1314546>

9

APPENDIX

9.1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (Abstract)

Article 234

Ice-covered areas

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

Article 76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from

which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 77

Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

9.2 SIGNATORY STATES OF THE UNCLOS

The United Nations Convention on the Law of the Sea of 10 December 1982	
160.	Chad (14 August 2009)
159.	Dominican Republic (10 July 2009)
158.	Switzerland (1 May 2009)
157.	Liberia (25 September 2008)
156.	Congo (9 July 2008)
155.	Lesotho (31 May 2007)
154.	Morocco (31 May 2007)
153.	Republic of Moldova (6 February 2007)
152.	Montenegro (23 October 2006)
151.	Niue (11 October 2006)
150.	Belarus (30 August 2006)
149.	Estonia (26 August 2005)
148.	Burkina Faso (25 January 2005)
147.	Latvia (23 December 2004)
146.	Denmark (16 November 2004)
145.	Lithuania (12 November 2003)
144.	Canada (7 November 2003)
143.	Albania (23 June 2003)
142.	Kiribati (24 February 2003)
141.	Tuvalu (9 December 2002)
140.	Qatar (9 December 2002)
139.	Armenia (9 December 2002)
138.	Hungary (5 February 2002)
137.	Madagascar (22 August 2001)
136.	Bangladesh (27 July 2001)
135.	Serbia (12 March 2001)
134.	Luxembourg (5 October 2000)
133.	Maldives (7 September 2000)
132.	Nicaragua (3 May 2000)
131.	Vanuatu (10 August 1999)
130.	Ukraine (26 July 1999)
129.	Poland (13 November 1998)
128.	Belgium (13 November 1998)
127.	Nepal (2 November 1998)
126.	Suriname (9 July 1998)
125.	Lao People's Democratic Republic (5 June 1998)
124.	European Union (1 April 1998)
123.	Gabon (11 March 1998)
122.	South Africa (23 December 1997)
121.	Portugal (3 November 1997)
120.	Benin (16 October 1997)
119.	Chile (25 August 1997)
118.	United Kingdom of Great Britain and Northern Ireland (25 July 1997)
117.	Equatorial Guinea (21 July 1997)
116.	Solomon Islands (23 June 1997)
115.	Mozambique (13 March 1997)

114.	Russian Federation (12 March 1997)	
113.	Pakistan (26 February 1997)	
112.	Guatemala (11 February 1997)	
111.	Spain (15 January 1997)	
110.	Papua New Guinea (14 January 1997)	
109.	Romania (17 December 1996)	
108.	Brunei Darussalam (5 November 1996)	
107.	Malaysia (14 October 1996)	
106.	Palau (30 September 1996)	
105.	Mongolia (13 August 1996)	
104.	Haiti (31 July 1996)	
103.	New Zealand (19 July 1996)	
102.	Mauritania (17 July 1996)	
101.	Panama (1 July 1996)	
100.	Netherlands (28 June 1996)	
99.	Sweden (25 June 1996)	
98.	Norway (24 June 1996)	
97.	Ireland (21 June 1996)	
96.	Finland (21 June 1996)	
95.	Czech Republic (21 June 1996)	
94.	Japan (20 June 1996)	
93.	Algeria (11 June 1996)	
92.	China (7 June 1996)	
91.	Myanmar (21 May 1996)	
90.	Bulgaria (15 May 1996)	
89.	Slovakia (8 May 1996)	
88.	Saudi Arabia (24 April 1996)	
87.	France (11 April 1996)	
86.	Georgia (21 March 1996)	
85.	Monaco (20 March 1996)	
84.	Republic of Korea (29 January 1996)	
83.	Nauru (23 January 1996)	
82.	Argentina (1 December 1995)	
81.	Jordan (27 November 1995)	
80.	Samoa (14 August 1995)	
79.	Tonga (2 August 1995)	
78.	Greece (21 July 1995)	
77.	Austria (14 July 1995)	
76.	India (29 June 1995)	
75.	Slovenia (16 June 1995)	
74.	Bolivia (Plurinational State of) (28 April 1995)	
73.	Croatia (5 April 1995)	
72.	Cook Islands (15 February 1995)	
71.	Italy (13 January 1995)	
70.	Lebanon (5 January 1995)	
69.	Sierra Leone (12 December 1994)	
68.	Singapore (17 November 1994)	
67.	Mauritius (4 November 1994)	
66.	Germany (14 October 1994)	
65.	Australia (5 October 1994)	
64.	The former Yugoslav Republic of Macedonia (19 August 1994)	
63.	Viet Nam (25 July 1994)	
62.	Sri Lanka (19 July 1994)	

61.	Comoros (21 June 1994)	
60.	Bosnia and Herzegovina (12 January 1994)	
59.	Guyana (16 November 1993)	
58.	Barbados (12 October 1993)	
57.	Honduras (5 October 1993)	
56.	Saint Vincent and the Grenadines (1 October 1993)	
55.	Malta (20 May 1993)	
54.	Zimbabwe (24 February 1993)	
53.	Saint Kitts and Nevis (7 January 1993)	
52.	Uruguay (10 December 1992)	
51.	Costa Rica (21 September 1992)	
50.	Dominica (24 October 1991)	
49.	Djibouti (8 October 1991)	
48.	Seychelles (16 September 1991)	
47.	Marshall Islands (9 August 1991)	
46.	Micronesia (Federated States of) (29 April 1991)	
45.	Grenada (25 April 1991)	
44.	Angola (5 December 1990)	
43.	Uganda (9 November 1990)	
42.	Botswana (2 May 1990)	
41.	Oman (17 August 1989)	
40.	Somalia (24 July 1989)	
39.	Kenya (2 March 1989)	
38.	Democratic Republic of the Congo (17 February 1989)	
37.	Antigua and Barbuda (2 February 1989)	
36.	Brazil (22 December 1988)	
35.	Cyprus (12 December 1988)	
34.	Sao Tome and Principe (3 November 1987)	
33.	Cape Verde (10 August 1987)	
32.	Yemen (21 July 1987)	
31.	Paraguay (26 September 1986)	
30.	Guinea-Bissau (25 August 1986)	
29.	Nigeria (14 August 1986)	
28.	Kuwait (2 May 1986)	
27.	Trinidad and Tobago (25 April 1986)	
26.	Indonesia (3 February 1986)	
25.	Cameroon (19 November 1985)	
24.	United Republic of Tanzania (30 September 1985)	
23.	Guinea (6 September 1985)	
22.	Iraq (30 July 1985)	
21.	Mali (16 July 1985)	
20.	Iceland (21 June 1985)	
19.	Bahrain (30 May 1985)	
18.	Tunisia (24 April 1985)	
17.	Togo (16 April 1985)	
16.	Saint Lucia (27 March 1985)	
15.	Sudan (23 January 1985)	
14.	Senegal (25 October 1984)	
13.	Cuba (15 August 1984)	
12.	Gambia (22 May 1984)	
11.	Philippines (8 May 1984)	
10.	Côte d'Ivoire (26 March 1984)	
9.	Egypt (26 August 1983)	

8.	Belize (13 August 1983)	
7.	Bahamas (29 July 1983)	
6.	Ghana (7 June 1983)	
5.	Namibia (18 April 1983)	
4.	Jamaica (21 March 1983)	
3.	Mexico (18 March 1983)	
2.	Zambia (7 March 1983)	
1.	Fiji (10 December 1982)	

9.3 OTTAWA DECLARATION ON THE ESTABLISHMENT OF THE ARCTIC COUNCIL

Declaration on the Establishment of the Arctic Council

The representatives of the Governments of Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America (hereinafter referred as the Arctic States) meeting in Ottawa;

Affirming our commitment to the well-being of the inhabitants of the Arctic, including special recognition of the special relationship and unique contributions to the Arctic of indigenous people and their communities;

Affirming our commitment to sustainable development in the Arctic region, including economic and social development, improved health conditions and cultural well-being;

Affirming concurrently our commitment to the protection of the Arctic environment, including the health of Arctic ecosystems, maintenance of biodiversity in the Arctic region and conservation and sustainable use of natural resources;

Recognizing the contributions of the Arctic Environmental Protection Strategy to these commitments;

Recognizing the traditional knowledge of the indigenous people of the Arctic and their communities and taking note of its importance and that of Arctic science and research to the collective understanding of the circumpolar Arctic;

Desiring further to provide a means for promoting cooperative activities to address Arctic issues requiring circumpolar cooperation, and to ensure full consultation with and the involvement of indigenous people and their communities and other inhabitants of the Arctic in such activities;

Recognizing the valuable contribution and support of the Inuit Circumpolar Conference, Saami Council, and the Association of Indigenous Minorities of the Far North, Siberia and the Far East of the Russian Federation in the development of the Arctic Council;

Desiring to provide for regular intergovernmental consideration of and consultation on Arctic issues.

Hereby declare:

1. The Arctic Council is established as a high level forum to:

provide a 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.

oversee and coordinate the programs established 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).

adopt terms of reference for and oversee and coordinate a sustainable development program.

disseminate information, encourage education and promote interest in Arctic-related issues.

2. Members of the Arctic Council are: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America (the Arctic States)

The Inuit Circumpolar Conference, the Saami Council and the Association of Indigenous Minorities in the Far north, Siberia, the Far East of the Russian Federation are Permanent Participants in the Arctic Council. Permanent participation is equally open to other Arctic organizations of indigenous peoples** with majority Arctic indigenous constituency, representing:

a single indigenous people resident in more than one arctic State; or more than one Arctic indigenous people resident in a single Arctic State.

The determination that such an organization has met this criterion is to be made by decision of the Council. The number of Permanent Participants should at any time be less than the number of members.

The category of Permanent Participation is created to provide for active participation and full consultation with the Arctic indigenous representatives within the Arctic Council.

3. Observer status in the Arctic Council is open to:

- Non-arctic states;
- inter-governmental and inter-parliamentary organizations, global and regional; and
- non-governmental organizations

4. The Council should normally meet on a biennial basis, with meetings of senior officials taking place more frequently, to provide for liaison and coordination. Each arctic State should designate a focal point on matters related to the Arctic Council.

5. Responsibility for hosting meetings of the Arctic Council, including provision of secretariat functions, should rotate sequentially among the Arctic States.

6. The Arctic Council, as its first order of business, should adopt rules of procedure for its meetings and those of its working groups.

7. Decisions of the Arctic Council are to be by consensus of the Members

8. The Indigenous Peoples' secretariat established under AEPS is to continue under the framework of the Arctic Council.

9. The Arctic Council should regularly review the priorities and financing of its programs and associated structures.

Therefore, we the undersigned representatives of our respective Governments, recognizing the Arctic Council's political significance and intending to promote its results, have signed this declaration.

Signed by the representatives of the Arctic States in Ottawa on the 19th of September, 1996

*The Arctic Council should not deal with matters related to military security

**The use of the term "peoples" in this declaration shall not be construed as having any implications as regard the rights which may attach to the term under international law. that the Council determines can contribute to its work.

9.4 THE JOINT COMMUNIQUE OF THE GOVERNMENT OF THE ARCTIC COUNTRIES

Joint Communiqué of the Governments of the Arctic Countries

Ministers and senior Representatives of the Governments of Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden, and the United States of America met in Ottawa, Canada, on September 19, 1996, and signed the Declaration on the Establishment of the Arctic Council.

This inaugural meeting was attended by the leaders and senior representatives of three international Arctic indigenous organizations- the Inuit Circumpolar Conference, the Saami Council, and the Association of Indigenous Minorities of the far North, Siberia, and the Far East of the Russian federation, as Permanent Participants in the Council.

Also present at the signing ceremony were the Standing Committee of Parliamentarians of the Arctic Region; the Nordic Council Finnish Secretariat; the non-Arctic States of Great Britain, Germany, Japan, Poland and the Netherlands; the International Union for Circumpolar Health; the International Arctic Science Committee; the United Nations Environment Programme; the International Union for the Conservation of Nature; the Advisory Committee on Protection of the Sea; and the World Wildlife Fund.

Ministers viewed the establishment of this new intergovernmental forum as an important milestone in their commitment to enhance cooperation in the circumpolar North. The Council will provide a mechanism for addressing the common concerns and the challenges faced by their governments and the people of the Arctic. to this end, Ministers referred particularly to the protection of the Arctic Environment and sustainable development as a means of improving the economic, social and cultural well-being in the North.

Ministers noted that the indigenous people of the Arctic have played an important role in the negotiations to create the Arctic Council. To this end the Inuit Circumpolar Conference, the Saami Council, and the Association of Indigenous Minorities of the Far North, Siberia and the Far East of the Russian Federation, are named as Permanent Participants in the Arctic Council. Provision is also made for additional organizations representing the Arctic indigenous people to become Permanent Participants.

Ministers acknowledged the significant work accomplished under the Arctic Environmental Protection Strategy (AEPS), whose existing programs will be integrated within the Council. They agreed to complete the integration process by the time of the final AEPS Ministerial meeting being held in Norway in 1997.

The Ministers recognized the contribution of international science to the knowledge and understanding of the Arctic region and noted the role that scientific cooperation, through the International Arctic Science Committee and other organizations, is playing in developing a truly circumpolar cooperation.

Ministers welcomed the attendance of the Standing Committee of the Parliamentarians of the Arctic Region and looked forward to its future participation in the meetings of the Council. They also recognized the need for providing the opportunity to non-Arctic countries, governmental and non-governmental organizations with Arctic interests to participate actively, as observers, in the work of the Council, and to draw on their experience.

Ministers set the initial priority tasks for the start-up of the Council as follows:

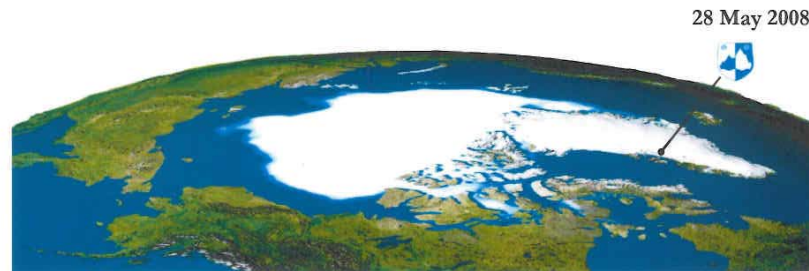
- developing, for adoption by the Council, rules of procedure;

- developing, for adoption by the Council, terms of reference for a sustainable development program as a basis for collaborative projects; and

- ensuring an effective transition of the AEPS into the Arctic Council, to be completed at the time of the 1997 AEPS Ministerial meeting in Norway.

Ministers expressed their appreciation to Canada for hosting the inauguration of the Arctic Council, and welcomed Canada's offer to host the first meeting of the Council in 1998.

9.5 THE ILULISSAT DECLARATION



THE ILULISSAT DECLARATION ARCTIC OCEAN CONFERENCE ILULISSAT, GREENLAND, 27 – 29 MAY 2008

At the invitation of the Danish Minister for Foreign Affairs and the Premier of Greenland, representatives of the five coastal States bordering on the Arctic Ocean – Canada, Denmark, Norway, the Russian Federation and the United States of America – met at the political level on 28 May 2008 in Ilulissat, Greenland, to hold discussions. They adopted the following declaration:

The Arctic Ocean stands at the threshold of significant changes. Climate change and the melting of ice have a potential impact on vulnerable ecosystems, the livelihoods of local inhabitants and indigenous communities, and the potential exploitation of natural resources.

By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials. Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.

This framework provides a solid foundation for responsible management by the five

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coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures.

The Arctic Ocean is a unique ecosystem, which the five coastal states have a stewardship role in protecting. Experience has shown how shipping disasters and subsequent pollution of the marine environment may cause irreversible disturbance of the ecological balance and major harm to the livelihoods of local inhabitants and indigenous communities. We will take steps in accordance with international law both nationally and in cooperation among the five states and other interested parties to ensure the protection and preservation of the fragile marine environment of the Arctic Ocean. In this regard we intend to work together including through the International Maritime Organization to strengthen existing measures and develop new measures to improve the safety of maritime navigation and prevent or reduce the risk of ship-based pollution in the Arctic Ocean.

The increased use of Arctic waters for tourism, shipping, research and resource development also increases the risk of accidents and therefore the need to further strengthen search and rescue capabilities and capacity around the Arctic Ocean to ensure an appropriate response from states to any accident. Cooperation, including on the sharing of information, is a prerequisite for addressing these challenges. We will work to promote safety of life at sea in the Arctic Ocean, including through bilateral and multilateral arrangements between or among relevant states.

The five coastal states currently cooperate closely in the Arctic Ocean with each other and with other interested parties. This cooperation includes the collection of scientific data concerning the continental shelf, the protection of the marine environment and other scientific research. We will work to strengthen this cooperation, which is based on mutual trust and transparency, inter alia, through timely exchange of data and analyses.

The Arctic Council and other international fora, including the Barents Euro-Arctic Council, have already taken important steps on specific issues, for example with regard to safety of navigation, search and rescue, environmental monitoring and disaster response and scientific cooperation, which are relevant also to the Arctic Ocean. The five coastal states of the Arctic Ocean will continue to contribute actively to the work of the Arctic Council and other relevant international fora.

Ilulissat, 28 May 2008

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United States Geological Survey: <http://www.usgs.gov/corecast/details.asp?ep=55>

d. Interviews and Informational Discussions

Dr. Paul Arthur Berkman, Head of the Arctic Ocean Geopolitics Programme at the Scott Polar Research Institute, University of Cambridge, UK on 28-29 January 2010, Cambridge, UK.

Will Eucker, Research Student at the Scott Polar Research Institute, University of Cambridge, UK on 28-29 January 2010, Cambridge, UK.