

An Examination of the Zone of Peace in the Arctic to Regulate Economic Development

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Seen as a remote region inhabited by explorers, scientists and indigenous peoples, the Arctic is a unique region characterized by harsh weather conditions, including extremely cold winters, high winds and cool, short summers. However, climate change is dramatically impacting the conditions and terrain in the Arctic, including well-documented declines in sea ice. In fact, the Arctic continues to be one of the worst affected areas of climate change (Kao et. al., 2012). Sea ice is melting at unprecedented speeds, and the sensitive ecosystem in the Arctic is at risk. It is predicted that the Arctic sea will be transformed from an ice-covered region to an area free of ice during summer months. Ultimately, this leads to economic opportunities for the eight Arctic states: Canada, Denmark (Greenland), Finland, Iceland, Norway, Russia Sweden, and the U.S. Together with international organizations that represent the Arctic indigenous peoples, these states form the Arctic Council. The origin of this Council dates back to 1989, when Finland invited the Arctic States to a conference to discuss the Arctic environment in Rovaniemi. However, the idea of a cooperative system can further be traced back to the former USSR General Secretary Mikhail Gorbachev in a famous speech where he called for peaceful cooperation in dealing with and developing the Arctic, necessitating a genuine "zone of peace and fruitful cooperation" (Gorbachev, 1987). Since this time, climate change has exposed the potential economic opportunities for the region. This has prompted debate whether a new, firmer institution is needed for the Arctic with more authority to implement legally binding agreements and enforce compliance. However, a new realist institution relying on legal enforcement and compliance is not the best option for Arctic economic development. Arctic states can continue to use liberal approaches to economic development in the region, as soft-power and cooperation is the foundation of the Arctic Council, has lead to the high rate of boundary settlements and few cases of marine boundary disputes, and remaining disputes can be stabilized by the hard law

United Nations Law of the Sea Convention (UNCLOS); ultimately proving that the current system is the most effective and stable method for the future to benefit scientific knowledge and environmental protection. First, this paper will introduce the Arctic Council, and establish how the forum was built on liberal principles. The success of boundary settlements will also be analyzed as a argument in favour of soft law over hard law policies. Lastly, it will look at the UNCLOS as a method for resolving continental shelf claims and regulation through sea routes.

The Arctic Council is an intergovernmental forum for political discussion. It is comprised of working groups which focus on the protection and conservation of the Arctic, including its biodiversity, climate and living conditions. The Arctic Council is not an International Organization, and has only two legally binding agreements, both of which were recently adopted. However, the majority of the work done by the Arctic Council is in the form of soft law, as defined by Kao et. al. (2012) as "imposing no compulsory legal obligations on the Arctic states" (833). By not relying on legally binding agreements, the work of the Arctic Council relies on political goodwill of the states. This exemplifies the liberalist view that relations can be based on mutual trust and exchange. This type of ideology is exemplified by the Arctic Council mandate, the Declaration of the Establishment of the Arctic Council. This document was the product of a conference in Ottawa, following the initial meetings in Rovaniemi, Finland, in 1989 and a second conference in Rovaniemi in 1991. Although four working groups were established at the second Rovaniemi conference, the Arctic Council was established with the signing of the Declaration of the Establishment of the Arctic Council, also known as the Ottawa Declaration.

Intentions of the Arctic Council are stated within this document. The first objective of "promoting cooperation, coordination and interaction among the Arctic States, with the involvement of indigenous communities and other Arctic inhabitants on common Arctic issues" (Arctic Council, 1996, 2) shows how fundamental cooperation and mutual trust in interaction is for the Arctic Council. Highlighted in the mandate is also the objective that the Arctic Council should not deal with issues relating to military security. By excluding military security from the authority of the Arctic Council, it allows the Council to remain a liberal institution. Including Arctic indigenous people as permanent participants reinforces the collaborative nature of the Arctic Council. By involving those who do not have as great power or authority, and who may otherwise not have a voice in economic decisions, the Arctic Council exhibits their commitment to cooperation among members. Oppositely, a realist organization likely would not see the gain from including indigenous populations, thus excluding them from discussions. Other conventions such as the U.N. Convention of the Law of the Sea (UNCLOS), which governs conduct and division of ocean space, do apply to the region.; however, the main framework for political and economic development is the Arctic Council, which is fundamentally a soft-law and liberal based forum. Lastly, as mentioned above, two recent legally binding agreements were signed by the Arctic Council. These two agreements include the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic and the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. This contradicts the idea that the council does not have the power to adopt such agreements. Such legally binding agreements could be interpreted as a realist position, as states do not trust other states to follow through without legal implications. Implementing legally binding agreements can indicate a shift to hard law frameworks. However, neither framework discusses economic development; instead, they are

focused on allocating search and rescue regions and setting standards on oil pollution and responses to oil spills, respectively. Both also highlight cooperation among states.¹ As concluded by Kao et. al., (2012), although this does indicate a shift in the Arctic Council, it is more likely that the Council will look at hard law agreements on a case by case basis. To assume that the Arctic Council will be replaced by a legally binding organization is premature. In fact, this is also not necessary, as the soft law and cooperative basis have great success in the Arctic.

There are no contests of sovereignty in the Arctic² and only one small territorial dispute. (de la Fayette, 2008). Both Canada and Denmark claim a 1.3 kms² uninhabited Hans Island. The island is situated between Ellesmere Island and Greenland. Although a small island, observers have "suggested that Canada's ability to project control over Hans Island represents a significant indicator of Canada's ability to exercise sovereignty over its Arctic territory, and sends an important message to other nations" (Government of Canada, 2012). Both Canada and Denmark have raised their countries' flags on the island. Negotiations between the two countries have yet to resolve this dispute. However, a weather station installed jointly by Canadian and Danish scientists has been established on the island, reinforcing the idea of cooperation, but for the scientific community. With the melting of ice, other islands may be discovered which were previously unknown. This could lead to a similar dispute between Arctic states. However, most marine boundaries are also set, negating the possibility of a major land dispute in the future.

¹ The word cooperation is listed 10 times in the Search and Rescue Agreement and 15 times in the Oil Pollution Agreement.

² Greenland independence from Denmark may occur, but it is likely that both countries would still remain closely tied (See Breum, 2015)

Cases of resolved marine boundary settlements reinforce the cooperative approach. This is exemplified by the Treaty between Norway and Russia in the Barents Sea and Arctic Ocean. This negotiation was signed after 40 years of border disputes. The Barents Sea, a continental shelf area with a large supply of oil and gas reserves, contained a grey area where boundaries were not delineated between the two states. The first maritime boundary agreement between the two states was in 1957, but this agreement excluded the Barents Sea, leading both countries to claim exclusive rights to the region. The states began informal negotiations, but disagreed on median lines. Eventually an agreement was reached in 2010, which split the disputed area in approximately equal divisions. (Neumann, 2010). However, prior to a negotiation, Norway and Russia worked cooperatively to share fish stock (Stokke, 2011). They also established a joint fisheries commission to manage stability in the industry. Using a cooperative approach, even when boundaries were contested, enabled the two nations to eventually resolve the dispute through a bilateral agreement. The resolution was important economically for Norway and Russia due to the vast resources available in the area. It also demonstrates that a realist idea of a "Race to the North" or "21st-Century Gold Rush" is not likely. Instead, disputes can be solved through bilateral agreements and cooperation.

With marine boundaries harmonized between European countries, there are two remaining marine boundaries in the Arctic, both of which involve Canada. The first boundary dispute is between Canada and Denmark (Greenland) in the Lincoln Sea. In November 2012, the Canadian Foreign Minister John Baird, alongside the Danish Foreign Minister Villy Søvndal announced that the states had "reached a tentative agreement on where to establish the maritime boundary in the Lincoln Sea, the body of water north of Ellesmere Island and Greenland"

(Government of Canada, 2012). However, the tentative agreement has yet to be ratified into an international treaty. The agreement did not address Hans Island. This may be one of the factors underlying the decision not to ratify the treaty. Byers and Baker (2014) argue that the boundary dispute has ceased to exist, claiming Canada's position on the issue was never strong. Further, they claim the Lincoln Sea boundary is of little practical significance (54). Ultimately, the agreement may not have been formalized yet due to its lack of importance to the respective governments, not due to a lack of cooperation or mutual trust between the two countries. Although this agreement has yet to be formalized in a treaty, it is a good candidate for cooperative negotiations, and should not be considered a failure in relations between the states.

The second and more notable maritime dispute involves Canada and the United States in disagreement over the Beaufort Sea. Canada's position is to draw a straight line from the land border, whereas the U.S. position is a line veering East. This area is important economically because of substantial oil and gas deposits. Canadian and American negotiators can look to the Norwegian/Russian example as a model for successful negotiations. If a cooperative negotiation cannot be achieved, the issues may be settled with the Law of the Sea Convention. However, a cooperative agreement can still be negotiated. In other words, a realist institution does not need to be implemented in the Arctic for this dispute. Overall, there are minimal conflicts in borders and boundaries, and the majority of instances of disputes have been settled through negotiation and cooperation.

When peaceful negotiations are not possible, states can turn to the U.N. Law of the Sea Convention. The UNCLOS regulates conduct within and division of ocean space through

mandatory and binding law. It helps to regulate marine boundary settlements by establishing distances for territorial seas, continental shelves and exclusive economic zones. It is important to note that all Arctic Council states have signed this agreement except the United States. This convention can be an asset in a predominantly soft law forum such as the Arctic Council as it provides reassurance and acts as a stabilizer if cooperative negotiations fail.

An important function of the UNCLOS is to regulate continental shelf limits. Under the convention, states have an exclusive economic zone extending 200 nautical miles. This limit can be extended further if the state claims seabed and subsoil resources beyond 200 nautical miles. States must gather scientific information and present this to the Law of Sea Convention. This has led to Arctic States submitting extended continental shelf claims. In 2007, a Russian mini-submarine descended onto the Arctic seabed below the North Pole, planting a Russian flag on the seafloor. This provoked other Arctic Nations. Canada's foreign affairs Minister Peter MacKay stated "This isn't the 15th century. You can't go around the world and just plant flags and say 'We're claiming this territory'," (Brigham, 2010, 72). This action reinforced Russia's claim to the North Pole; however, such claims will be proven by the UNCLOS, not by the action of planting a flag. Flags on the sea floor have no value (de la Frayette, 2008). The expedition also allowed Russia to collect scientific material needed to support their claim. Further, it is clear by Vladimir Putin's addresses that he believes in cooperative measures in the Arctic, stating that he had "no doubt whatsoever that the existing problems of the Arctic, including those of the continental shelf, may be resolved in a spirit of partnership, through negotiations, on the basis of existing international legal norms." (BBC news, 2010). This view reinforces the Arctic countries' acceptance of a cooperative structure, as well as the confidence in decisions made by the

UNCLOS as international law. (This, possibly, with the exception of the U.S. who is yet to ratify).

The melting of sea ice has brought attention to navigation in the Arctic, specifically the North West Passage, regulated by the UNCLOS. While Canada contends the NWP is internal waters, the U.S. argues it is an international strait. This has become an important political point for Canada. The government expressed their view by drawing straight baselines around the Arctic islands. Ultimately, the decision regarding the Northwest passage should be based on scientific and baseline requirements in the Law of the Sea Convention. The Arctic Council could also be involved, establishing a third legally binding agreement. A soft law solution may be too weak in this situation. However, it is important for the effectiveness of the structure of the Arctic that states embody the "zone of peace" and do not attempt to traverse the passage until such a decision is made.

The current system of a "zone of peace" is the most effective and stable method for economic development in the Arctic. This is reinforced by the foundation of the Arctic Council, and high rates of territorial and marine dispute settlements. The UNCLOS is also available should the soft law forum fail to produce a result. It is important for the cooperative approach to continue in the Arctic not only for the benefit of the Arctic states but also to protect scientific research and the environment. The Antarctic Treaty is an effective system to ensure the protection of the environment to develop scientific research; however, the Arctic would not be able to implement such a comprehensive treaty due to political implications with the regions' indigenous peoples as well as states' claims to sovereignty in land and sea. Nonetheless, it is

important to use cooperative measures to encourage scientific research. Scientists can also contribute to cooperative measures. This can occur by aiding with research in Arctic environmental protection acts. As stated by Young (2011): "Northerners can learn from the Antarctic experience, notably the strong institutionalized links between the producers of scientific knowledge and guardians of the region's governance system" (181). It is likely that more scientific input is needed at the Arctic Council level, and a scientific organization as a permanent participation can be considered.

Bibliography:

- Arctic Council. (2011). Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic. Retrieved from <http://www.arctic-council.org/index.php/en/environment-and-people/agreements-statements/agreements>
- Arctic Council. (2013). Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. Retrieved from <http://www.arctic-council.org/index.php/en/environment-and-people/agreements-statements/agreements>
- Arctic Council. (1996). *Declaration of the Establishment of the Arctic Council*.
- BBC News. (23 September 2010). Putin plays down talk of battle for Arctic resources. *BBC News*. Retrieved from <http://www.bbc.com/news/world-europe-11397671>
- Breum, Martin. (2015). *The Greenland Dilemma: The Quest For Independence, The Underground Riches*. Copenhagen: Royal Danish Defence College.
- Brigham, Lawson W. (2010). Think Again: the Arctic. *Foreign Policy*, 181, 71-74.
- Byers, Michael and Baker, James (2014). *International Law and the Arctic*. New York: Cambridge University Press.
- Carnaghan, Matthew and Goody, Allison. (26 January 2006) Canadian Arctic Sovereignty. *Parliament of Canada*. Retrieved from <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0561-e.htm>
- de la Fayette, Louise. (2008). Oceans Governance in the Arctic. *International Journal of Marine and Coastal Law*, 23, 531-566.
- Gorbachev, Mikhail. (1 October 1987). Speech in Murmansk. *Korean Polar Research Institute*. Retrieved from http://www.arctic.or.kr/files/pdf/m2/m22/1/m22_1_eng.pdf
- Government of Canada. (28 November 2012). Canada and Kingdom of Denmark Reach Tentative Agreement on Lincoln Sea Boundary. *Foreign Affairs and International Trade Canada*. Retrieved from <http://www.international.gc.ca/media/aff/news-communications/2012/11/28a.aspx?lang=eng>
- Huebert, Rob (21 OCTOBER 2014). Why Canada, U.S. must resolve their Arctic border disputes. *The Globe and Mail*. Retrieved from <http://www.theglobeandmail.com/globe-debate/why-canada-us-must-resolve-their-arctic-border-disputes/article21189764/>
- Kao, Shih-Ming, Pearre, Nathaniel S, and Firestone, Jeremy. (2012). Adoption of the Arctic Search and Rescue Agreement: A shift of the Arctic Regime toward a hard law basis?. *Marine Policy*, 36 (3), 832-838.

Neumann, Thilo. (10 November 2010). Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean. *American Society of International Law*, 14 (34). Retrieved from <http://www.asil.org/insights/volume/14/issue/34/norway-and-russia-agree-maritime-boundary-barents-sea-and-arctic-ocean#1>

The Norwegian Ministry of Trade, Industry and Fisheries. (2011). *Fisheries Collaboration with Russia*. Retrieved from http://www.fisheries.no/resource_management/International_cooperation/Fisheries_collaboration_with_Russia/#.VcndjvIVikp

Stokke, Olav Schram. (2011). Environmental Security in the Arctic: The case for Multilevel Governance. *International Journal*, 66 (4), 835-848.

van Efferink, Leonhardt (interviewer) and Joël Plouffe (interviewee). (2015). *Exploring Geopolitics*. Retrieved from http://www.exploringgeopolitics.org/interview_plouffe_joel_arctic_disputed_maritime_boundaries_norway_russia_border_treaty/

Young, Oran R. (2011). A Peaceful Arctic. *Nature*, 478, 180-181

United Nations. (1982). *United Nations Convention on the Law of the Sea*. Retrieved from http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf