

ARCTIC GOVERNANCE IN AN AGE OF GEOPOLITICAL ANXIETY

The geopolitics of the Arctic has, historically, been characterized by an underlying tension between state aspirations and multilateral interests. Early plans for Arctic imperial conquest, scientific exploration, and economic exploitation were not motivated by modern notions of sovereignty. But they, nevertheless, became tied up with territorial desires, state-building ideas, and expansionist goals. Indeed, the control of territory provided the basis for Arctic claims, no matter how imprecise or distant they were from contemporary understanding of international law. While the current state-centric attitudes toward the Arctic have changed from seeing it primarily in terms of the remote and exotic to that of an increasingly open and conquerable space, the dialectic between individual and collective claims is still what characterizes Arctic discourses.

The legitimacy of the existing framework for sovereign aspirations and inter-governmental cooperation in the Arctic stems from the UN Law of the Sea Convention (UNCLOS)—and the most credible regional inter-governmental forum, the Arctic Council made up of the eight Arctic states, the indigenous Permanent Participants, and the Observer states and organizations. Yet, the existence of other political mechanisms, notably, the forum of the five Arctic littoral states that make territorial claims in the Arctic Ocean, underscores that the regional complex is a multifaceted structure based on various types of hierarchies and power disparities between stakeholders.

In this paper, I explore the interplay between geopolitics and governance in the Arctic. The emphasis is on how Arctic states, acting alone or in tandem, have legitimized hierarchical governing structures, defined the rules of access for non-Arctic states, classified the rights of indigenous peoples, and established a regulatory framework, with varying degrees of acceptance, for multilateral territorial regimes. The purpose is to map out the Arctic governance system, with the aim of identifying areas of Arctic collaboration and friction. I argue that the prospects of a change in the legal basis of Arctic governance are minimal because of a vested interest in the status quo. The resistance of powerful Arctic states, such as the United States and Russia, to the broadening of the Arctic Council's original objectives of environmental protection and sustainable development to include political functions reflects their refusal to subordinate sovereign interests to binding institutional cooperation. In the interest of a mutual willingness to maintain regional stability, the Arctic states have continued to promote inter-governmental collaboration, using a depoliticized language. It does not, however, mask spill-over effects, including a sanction regime, stemming from the Ukrainian crisis. Thus, instead of resorting to metaphors of "peaceful Arctic family relations" or a Cold-War style "friend/foe" dichotomy, the current condition is rather marked by geopolitical ambiguity, where multilateralism is used to advance state-centric agendas. Yet, there is an informal understanding among the Great Powers that the Arctic should not be treated as a geopolitical conflict zone.

Scholars such as Klaus Dodds and others have sought to define contemporary Arctic geopolitics as an uneasy interaction between liberal institutionalism, with its emphasis on interstate cooperation, and neo-realism, with its preoccupation with states and national security interests. On the one hand, the re-opening of the Arctic from the military confines of the Cold War was interpreted during the 1990s as an opportunity to establish a new political cooperative order. On the other, the Arctic was seen in terms of a resurgence of neo-realism in the 21st century as geopolitical actors allegedly scrambled to reterritorialize an opening Arctic space in pursuit of national goals and resource competition.¹ A case can be made for such a dualist reading. The immediate post-Cold War period witnessed a period of collaboration in the Arctic, culminating in the establishment of the Arctic Council, with its non-military agenda.

Subsequently, a spate of media accounts on the “Scramble for the Arctic” and the potential for Great Power rivalry—which were buttressed by realist scholarly interventions following the Russian North Pole flag-planting in 2007—momentarily disturbed this narrative. It was, however, quickly dwarfed by a revival of government and scholarly discourses on neo-liberal cooperation schemes—as captured, rhetorically, in the Norwegian catchphrase “High North, Low Tension.” Far more importantly, it was given geopolitical weight by the effects of the 2008 Ilulissat Declaration of the five Arctic littoral states (Russia, the United States, Canada, Denmark on behalf of Greenland, and Norway), with their commitment to

¹ Jason Dittmer, Jason, Klaus Dodds, et al. „Have you heard the one about the disappearing ice? Recasting Arctic Geopolitics, *Political Geography* 30 (2011), 202–2014.

peaceful settlement of international disputes and a firm commitment to the United Nations Law of the Sea Convention.² The tension between the West and Russia over the Ukrainian civil war, then threatened to tilt the balance, again, toward the conflictual. The imposition of Western economic sanctions on Russia and the boycott of specific Arctic meetings resulted in Russia's countermeasures, including a refusal to approve the European Commission observership in the Arctic Council.³

Yet, despite such friction, no breakdown in communication has occurred between Russia and its other Arctic partners. There has also been an effort to separate the region from other geopolitical conflicts. There is no willingness to change the multilateral Arctic structures in place or of refraining from abiding by mutually accepted norms in state-to-state relations. And while there is currently no military collaboration going on between NATO states and Russia—with the Russia-NATO Council remaining dysfunctional—the two sides still work together in the field of civil security, maritime safety and Search and Rescue in the Arctic.

To be sure, until the election of Donald Trump, Russia and the United States were heading in opposite directions in terms of Arctic strategic priorities: The Obama Administration was bent on conservation, culminating in the joint U.S.-Canadian decision to bar drilling in most off-shore Arctic areas; Russia, on the other hand, had been prioritizing exploitation, whether with respect to oil and gas or to the commercial use of the northern sea route. Under Trump, U.S. policy has already been reversed in favor of exploration, but the economic feasibility of

² See, for example, "The Ilulissat Declaration" issued by Arctic states at the Arctic Ocean Conference in Ilulissat, Greenland, 27–29 May 2008, http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf.

³ Interviews with Arctic Council officials, 18 October 2016.

drilling will depend on factors, such as oil prices and competition from other more accessible areas. As energy supply rivals, there is no convergence of U.S.-Russian economic interests in the Arctic. But the sharp anti-environmental turn in U.S. policy has disappointed several other Arctic states, which have counted as U.S. traditional allies.

Indeed, since the UN Law of the Sea Convention has no enforcement mechanisms, its functioning hinges on such intergovernmental collaboration. In the Arctic, the five littoral states have sought to assume a privileged governing role through an informal Arctic Five venue. From the start, it was subjected to criticisms by the three other Arctic states, Iceland, Finland, and Sweden, and by the representatives of the indigenous peoples for being an exclusivist club. It was argued that the forum would weaken the Arctic Council and represented an attempt to control the Arctic region despite its commitment to UNCLOS. The unilateral 2015 “Declaration concerning the prevention of unregulated high seas fishing in the central Arctic Ocean” left no doubt about the stakeholding aspirations of the Arctic Five.⁴ But to enhance the legitimacy of the proposition to put in place a regulatory framework to prevent future industrial fishing operations in the Arctic Ocean Commons, the Arctic Five invited, for the first time, five other stakeholders—that is, the European Union, Iceland, China, South Korea, and Japan—to hammer out an agreement on a conservation regime in the Arctic Ocean, which was signed in 2017.

⁴ Interviews with Arctic officials, 21 January 2017.

Dire predictions of the Arctic Council's irrelevance, especially after the 2008 Ilulissat meeting, quickly gave way to a discourse on its elevated position and integrative role. Yet, despite agreements on Search and Rescue and on oil-spill prevention, the Council has not changed from a decision-shaping body into a decision-making one. States, such as the United States and Russia, are not really interested in expanding Arctic governance. They have agreed to allow the Arctic Council to prepare a 10–15 year plan for its future work and needs instead of the two-year agenda developed by those states chairing the Arctic Council.⁵ Yet, the Council's Secretariat has no real influence or a voice.⁶

It is known that powerful states—such as China, Japan, and South Korea—are not happy with their exclusion from any input into Arctic Council meetings. They feel that their involvement should go beyond their contributions to the activities of the Arctic Council Working Groups. For this reason, it does not have to come as a surprise that these states despite their divergent foreign policies have recently formed an inter-governmental forum to promote their interests on Arctic issues, in general, and within the Arctic Council, in particular. These Asian states have invested heavily in the Arctic based on its future potential; apart from building ice-breakers, they are pursuing economic investment opportunities in Arctic gas, oil, and infrastructure projects, some with the aim of diversifying their energy resources and exploiting shorter transport routes.⁷

⁵ Interview with an Arctic official, 25 January 2017.

⁶ Interviews with Arctic officials, 20 January 2017.

⁷ Emmanuel Guy and Frédéric Lassare, "Commercial shipping in the Arctic: new perspectives, challenges and regulations," *Polar Record* 52 (264), 302..

These challenges to Arctic governance only underscore the Arctic Council's limitations as a non-decision-making body, with no say over environmental measures to fight climate change, the exploitation of resources, the opening of up sea routes, regional military security, territorial disputes or the protection of the rights of indigenous peoples. In the past, there have been calls for the strengthening of the Arctic Council's soft-law governance structure by turning it into an international organization with a treaty mandate. In addition, many favor the convocation of an Arctic summit—with the participation of the heads of Arctic Council states and heads of the permanent participants as well as the Observers and for an annual, rather than a bi-annual, Arctic Council ministerial meeting.⁸ Both ideas would give the Arctic Council more international weight and generate a greater normative pull when it comes to regulating behavior of Arctic and non-Arctic states and organizations.⁹ The counter-argument to structural changes is that it may be an advantage that the Arctic governance system does not take the form of a comprehensive, legally-binding agreement because of its ability to adapt to new contingencies or changing circumstances. Some scholars, such as Oran R. Young, oppose the idea of turning the Arctic Council into an intergovernmental organization, arguing that it might sideline some of the council's most innovative features, such as the distinctive role accorded to the Permanent Participants.¹⁰

⁸ See, for example, Standing Committee of the Parliamentarians of the Arctic Region (SCPAR). Conference Statement, „Arctic Governance in an Evolving Arctic Region” (final draft). September 5–7, 2012. <http://www.arcticparl.org/files/conference-statement%2C-final-draft1-2.pdf>.

⁹ Interview with an Arctic official, 25 January 2017.

¹⁰ Oran R. Young, “Governing the Antipodes: International Cooperation in Antarctica and the Arctic,” *Polar Record*, 52, 2 (2016), 236.

This is not a particularly strong argument; it does not answer the question of why the role of the indigenous peoples cannot be retained or expanded under a more formal mechanism, even if it were negotiated by states. Moreover, if individual states want to grant indigenous peoples more power of representation, they can do so through the enactment of domestic laws. The Inuit Circumpolar Council and other indigenous organizations are among those that have made the case for shared sovereignty on the basis of the rights of indigenous peoples for self-determination, which are rooted in international law. It is true that the concept of self-determination has after the era of de-colonization in the 1950s and 1960s been increasingly shunned by the so-called “international community” out of fear of secession movements.¹¹ But it does not devalue the concept in international law.

In a post-colonial age, with increased global interest and activities in the Arctic, it is impossible to exclude the indigenous peoples from Arctic decision-making. A case in point is Greenland, which enjoys autonomy in domestic affairs. Financial dependence on Denmark has prevented Greenland from making use of its right to break away from the Danish Kingdom. But the issue of independence is on the political agenda, even if no time-table exists for achieving that goal. In the absence of its own military forces, an independent Greenland could opt for maintaining close ties with Denmark.¹² But an alternative secession scenario could open up foreign policy identity experiments by the Greenlanders, who are very

¹¹ See Uriel Abulof, “We the people? The strange demise of self-determination,” *European Journal of International Relations*, 22, 3 (2016), 536–565.

¹² See Maria Ackrén and Uffe Jakobsen, “Greenland as a Self-Governing Sub-National Territory in International Relations: Past, Current and Future Perspectives,” *Polar Record*, 51, 4 (2016), 404–412; see also Frank Sejersen, *Rethinking Greenland and the Arctic in the era of climate change. New northern horizons* (London & New York: Routledge, 2015).

interested in securing foreign investments for natural resource exploitation, for example, by cultivating historical ties with the United States or even China. Such a development, in turn, could affect geopolitical constellations in the Arctic region on the whole, since Greenland would become a key Arctic actor in its own right.

Another constraining factor is the taboo on discussing military security within the Arctic Council, which dates back to its establishment in the mid-1990s. Increased militarization is certainly taking place in the Arctic, with most of the Arctic states, expanding their military presence there and staging military exercises. Increased military interest in the North Atlantic has been accompanied by a Cold War focus, with concepts like “deterrence,” “the GIUK gap,” and “maritime supremacy” being re-visited and recycled. There has been a call within the NATO to restore its military posture in the North Atlantic. But the discursive slant about a maritime contest in the Northern Atlantic and the portrayal of its remilitarization as a matter of urgency can be misleading. A sharp political-geographic distinction is still being made between the North Atlantic, which is seen as a potential conflict area, and the Arctic, which presumably is to remain a peaceful region. Such an artificial divide does not obscure the fact that military activities are taking place in the Arctic as well as the North Atlantic. It reveals, nonetheless, a political commitment by both the West and Russia to a stable Arctic, even if the development of what Karl Deutsch dubbed a “security community” is highly

unlikely in the Arctic because of the absence of shared political identities and values.¹³

While the UN Commission on the Limits of the Continental Shelf can determine the size of the continental shelf, it has no power to resolve disputes among Arctic states. After issuing recommendations, it will most likely be up to the Arctic Five to negotiate with one another the setting of maritime boundaries and rival claims. They have an incentive to do so in a peaceful manner, but conflicts, for example, in the form of effects of crises in other regions cannot be ruled out. It is unlikely, however, that in the foreseeable future a discord over natural resources among Arctic states will be the main source of contention because they are mostly located within the EEZ of Arctic states. The most lucrative area with disputed boundaries in the Beaufort Sea is between the United States and Canada. The U.S.-Canada relationship is probably the best example of a “security community,” making the militarization of the conflict unthinkable. Fishery disputes created by migration of fish stocks as a result of climate change could turn into nasty confrontation, but rarely into full-scale military conflicts. The same applies to territorial disputes: while there are legal differences over sea routes, it is not foreseeable that they will lead to something more serious. The different ownership claims between Denmark and Canada, on the one hand, and Russia, on the other, over the Lomonosov ridge is mitigated by the fact that the area is not believed to possess rich natural resources. Finally, if the United States and the European Union

¹³ See Karl Deutsch et al., eds., *Political Community and the North Atlantic Area* (Princeton: Princeton University Press, 1957); see also Emmanuel Adler and Michael Barnett, “A framework for the study of security communities,” in Adler og Barnett (eds.), *Security Communities* (Cambridge: Cambridge University Press, 1998), pp. 29–65.

disagree on Canada's and Russia's legal interpretations of their respective control of the Northwestern and Northern Sea routes, they are not likely to challenge them formally.

This is not to say that the prospects of access to natural resources cannot lead to potential geopolitical trouble. A case in point is Spitsbergen. As Christopher R. Rossi has argued, Svalbard's extended geographical area not only raises fundamental questions about regional management; it is also a prime example of a "territorial temptation" in the Arctic.¹⁴ The 1920 Spitsbergen Treaty subjected Norway's assumption of sovereignty over the archipelago to a number of qualifications regarding the equitable rights of other treaty signatories. Further, the treaty does not cover the continental shelf, which was at that time an unknown concept in international law. The Norwegian view has been that limits on sovereign rights must be stated unambiguously in the Treaty to affect Norway's sovereignty. The 40 plus countries that have signed the Spitsbergen Treaty accept Norway's right to govern Spitsbergen and its territorial waters on the account of its sovereign rights. But several states, including Russia and Britain, refuse to accept Norwegian claims that the treaty does not apply to areas outside Spitsbergen's territorial waters or that Norway's own continental shelf extends to the archipelago. This could spell trouble for future governance and regional stability, if the signatories that reject the Norwegian legal position decide to contest it formally.¹⁵

¹⁴ See Rossi, "A Unique International Problem," 93.

¹⁵ On the legal aspects of the Spitsbergen question, see Christopher R. Rossi, "The A Unique International Problem": The Svalbard Treaty, Equal Enjoyment, and Terra Nullius: Lessons of Territorial Temptation from History," *Washington University Global Studies Law Review*, 15, 7 (16), 93-136; Robin Churchill and Geir Ulfstein,

To conclude: One should be wary of subscribing either to oversimplified conflictual binaries or to inflated cooperation discourses in a region where geopolitical ambiguities exist, where spill-over effects of other global events are mixed and where attempts at depoliticization have been countered by competitive political practices. At bottom, it is a question of traditional power politics: who governs a site, polices its border, and controls mobility in terms of admission and exclusion. At the same time, the complex governing arrangements in the Arctic do not exclude autonomous countries, indigenous peoples' organizations, and environmental NGOs that have legitimate regional or transregional interests that often differ from those of sovereign states. This multilayered Arctic governance system, with its overlapping contractual relationships, including formal and informal ones, is not immune from instability. This lesson should not be forgotten in a time of international tensions and Great Power proxy wars in areas outside the Arctic. It should also serve the purpose of working against militarized ideologies of the past to promote political goals in the present.

“The Disputed Maritime Zones around Svalbard in Myron H. Nordquist,” in Tomas H. Heidar and John Norton Moore (eds.) *Changes in the Arctic Environmental and the Law of the Sea* (Leiden: Martinus Nijhoff, 2010), 551-593; D.H. Anderson, “The Status Under International Law of the Maritime Areas Around Svalbard,” *Ocean Development & International Law* 40 (2009), 373-84; Geir Ulfstein, *The Svalbard Treaty: from terra nullius to Norwegian sovereignty* (Oslo: Scandinavian University Press, 1995); Carl August Fleischer, *Svalbardtraktaten. En utredning også nye styreformer på Svalbard vurderes* (Oslo: C.A Fleischer, 1997).