



Sustainable Security in the Arctic

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In 2008, [media outlets](#) declared that a new Cold War was unfolding in the Arctic. This story was centred on a small, titanium Russian flag, fixed to the seabed below the North Pole.

Planted in 2007 by a modest team of explorers and scientists, the flag triggered angry responses from Western politicians and media commentators, with the most vociferous coming from the then Canadian Foreign Minister, Peter MacKay, who declared: ‘This isn’t the 15th Century...You can’t go around the world and just plant flags and say “We’re claiming this territory”’.

Nearly a decade later, this story remains emblematic of the geopolitical intrigue that refuses to go away in the Arctic, which continues to be stoked by uncertainties over sovereignty, ownership and access in the region.

Carving up the Arctic, Carefully

The Arctic Ocean, like every ocean, is governed by the [UN Convention on the Law of the Sea’s](#) (UNCLOS) provisions. The US has not ratified this treaty, but considers its provisions relevant as customary international law of the sea.

Under UNCLOS, the Arctic Ocean littoral states are entitled to [Exclusive Economic Zones](#) (EEZ) stretching up to 200 nautical miles (nm) from their Arctic coastlines. [Article 234](#) allows littoral states to develop and administer special regulations dealing with human activities in ice-covered waters. Russia and Canada use this to regulate shipping activity in their Arctic waters through environmental protection measures.

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UNCLOS also entitles a coastal state to extend the outer limit of its sovereign rights over the continental shelf (the seabed and subsoil of submarine areas – including, any oil and gas resources contained) beyond 200nm, if it can prove the shelf is a natural prolongation of the coastal states' land mass. This has led Denmark and Russia to submit evidence (with Canada expected to follow this year) to the UN to support claims reaching all the way to the North Pole. Norway settled its continental shelf limits in 2009.

As their claims overlap, the [UN Commission on the Limits of the Continental Shelf \(CLCS\)](#) is responsible for reviewing the evidence and issuing a final recommendation on where the borders should be drawn according to Articles 76 and 77. However, the CLCS has no legal authority or personality meaning it will be up to Canada, Denmark and Russia to reach an international agreement which will settle their claims. Any remaining space will be considered part of 'the Area' (see below), and falls under the purview of the International Seabed Authority.

Although the decision on 'who owns the North Pole' will ultimately be determined by an agreement between Canada, Denmark and Russia, wherein lies a latent potential for conflict, the five Arctic littoral states' public commitment to use UNCLOS as the basis for settling any sovereignty disputes is an important step towards 'sustainable security'. It will take three to five years just for the CLCS to review the latest evidence submitted by Russia on 9 February 2016. The CLCS is already overwhelmed by the number of applications received globally. Since the prospects for oil and gas development further from shore are still highly uncertain, and claims to the North Pole are primarily symbolic, the CLCS arguably has time on its side.

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As long as the Arctic states maintain their trust in the process, UNCLOS should be able to prevent any 'race' to carve up the Arctic seabed, which could lead to tension between the littoral states.

High Seas and the Area: Accommodating New Interests

Where UNCLOS reaches its limits is in the parts of the Central Arctic Ocean (CAO), we will be dealing with High Seas, parts of the water column beyond the EEZs of coastal states, and 'the Area' – seabed areas which cannot be claimed by any state (see map). Theoretically, anyone can fish and mine in these parts of the Arctic, but such activity is likely to be limited for the time being by the continued prevalence of thick sea-ice covering the surface of the ocean (and other environmental factors).

In another step towards 'sustainable security', the five Arctic coastal states have initiated a process to create a governance framework to manage future fishing activity in the CAO.

In July 2015, the littoral states signed a 'Declaration' preventing unregulated high seas fishing in the CAO, and promising to only authorise their own fleets to conduct commercial fishing in the CAO if it was in accordance with recognised international standards.

The littoral states' problem is that they do not have the authority to dictate the terms under which the rest of the international community can access CAO high seas fisheries. China's, Japan's, Korea's, Iceland's, and the EU's finishing fleets are entitled under international law to fish in the CAO.

Consequently, the littoral states took another preventative step by calling a second meeting in December 2015, where negotiations for fisheries agreement

for the CAO's high seas was opened up to these other parties. Other nations such as Taiwan are expected to join future deliberations, eventually ensuring buy-in for a governance framework from all nations with an interest in future Arctic fisheries.

Again, this is a long-term process, providing another example of how governance structures developed now can prevent certain unwanted futures from becoming present, including, for example, tension and conflict over fisheries and continental shelves.

Navigating Arctic Waters

Can similar preventative steps be taken to ensure that disputes do not flare up over the problem of maritime activity in the Arctic? There are two issues to address. Firstly, the status of two 'international straits' in the Arctic: the North West Passage and the Northern Sea Route. Secondly, the regulating of ice-covered waters in littoral state EEZs as addressed by [Article 234](#) of UNCLOS.

Canada and Russia do not consider the North West Passage (passing through the Canadian archipelago) and the Northern Sea Route (across northern Russia) to be 'international straits'. Consequently, foreign vessels have no right of 'transit passage' through these waters—a right that entitles foreign ships to pass through without coastal state permission, and foreign submarines may remain submerged. Both countries claim that their sovereignty over nearby islands effectively means these waters should be considered 'internal waters', requiring foreign vessels to seek permission before entering.

The US and the EU contest Canada and Russia's claims, not least because of concerns about setting a legal precedent that could be applied to more

important southerly shipping routes.

There seems to be little ambition to settle the disagreement, because Arctic transit shipping is still a niche activity. Several uncertainties remain about whether large-scale transit shipping will ever become commercially viable, not least because of the competition posed by more southerly trade routes and the general unpredictability of seasonal sea-ice retreat that makes seasonal passages possible without expensive icebreaker escorts.

The problem with the current stance is that Russia is actively investing in icebreakers, port infrastructure, marine services, search and rescue facilities and constabulary forces with the ambition of turning NSR into a viable shipping route. The more Russia builds up infrastructure around the route and offers to accommodate shipping on Russian terms, the greater the historical precedent it will set that the NSR is part of Russian-controlled waters. This feeds Western fears about Russian militarization of the Arctic building a security dilemma.

While US and EU lawyers might question the validity of such a precedent, the *de facto* claim will remain and Russia will likely continue resisting attempts to change the status quo. It might therefore be worthwhile considering preventative steps sooner rather than later to resolve the NSR and the NWP's legal status, before marine activity in the Arctic increases further and positions become more deeply entrenched.

The issue is complicated by the second issue referred to above—the regulating of ice-covered waters by Arctic littoral states, notably Canada and Russia. As already noted, under Article 234 of UNCLOS, Arctic littoral states are entitled to regulate marine activities in ice-covered waters within their EEZs. Both the NSR and the NWP fall within these provisions, allowing Canada and Russia to

regulate marine activity beyond their territorial waters regardless of whether they have the status of 'international straits' (see, for example, Canada's Arctic Waters Pollution Prevent Act).

So what happens when these waters are no longer ice-covered for a large part of the year? Article 234 indicates that ice-cover must be present for most of the year (i.e. 6 months and one day), while other points of contest exist in determining exactly what is meant by 'severe climatic conditions' and 'exceptional hazards to navigation' and who would decide whether such conditions prevailed (littoral states, non-littoral states, international organisations?).

This remains a longer-term issue, but if as most scientists predict the amount of sea-ice cover each year continues to spiral downwards, the issue of whether littoral states can regulate in Arctic waters beyond 12 nm could become a significant point of tension with those seeking to benefit from new opportunities for regional marine activity. Currently, unlike in the cases of fisheries and continental shelves, few preventative steps are being taken to resolve this outstanding issue, despite its potential to cause future confrontation in Arctic waters. The situation is exacerbated by the deterioration of relations between Russia and the West over the Ukraine and Syria crises, likely making dialogue difficult.

Prospects for Sustainable Security

On the issues of resource competition and militarisation sustainable security's prospects, in the Arctic for the most part look good. Since the end of the Cold War, international cooperation on various scientific and environmental protection initiatives have provided the basis for constructive engagement

between the Arctic states and other interested actors (such as the UK) on many issues.

Bilateral and multilateral arrangements have provided a governance structure that all Arctic states, and other interested actors, have indicated provides a firm basis for resolving inter-state disputes peacefully in accordance with international law, especially concerning fisheries and the delineation of the continental shelf. However, access to the NWP and NSR could lead to future contention. Potential flashpoints remain over how regional marine activity should be governed in EEZs where the sea-ice is in fast retreat, especially if Russia and Canada refuse to accept that Article 234 might lose purchase in the future.

Whether preventative action is politically possible on this issue remains to be seen, but the sooner a constructive dialogue begins between Russia, Canada and potential users of the NWP and NSR, the more likely it will be to find a sustainable solution. Speculatively, an Arctic agreement on shipping activity negotiated under the Arctic Council's auspices (but accommodating interested non-Arctic states as seen in the fisheries discussions) to complement the International Maritime Organisation's Polar Code (due 2017) could be one way of consolidating international understanding that these waterways are to some extent shared spaces requiring the international community's shared stewardship.

An important dimension of sustainable security not discussed in this state-centric article is that of human security—especially of indigenous peoples and other local communities that live and work in the Arctic. The decline of traditional cultures, environmental pollution and other threats to human health and well-being are prevalent in nearly all of the Arctic states, and there has

been a long history of marginalisation of Arctic residents. However, all of the Arctic states have readily admitted the need to address the challenges facing Arctic indigenous peoples and other local communities, and the Arctic Council is somewhat unique to the extent that it invites representatives of indigenous people's organisations to sit at the table with government ministers.

The sustainable security outlook is also weaker with regards to climate change. Huge uncertainty remains over how soon we are likely to see an ice-free Arctic in the summertime. The temperature spikes witnessed in January and February this year suggest this event horizon might be closer than we think. The impacts of climate change pose a particular risk to human security in the Arctic, threatening food, housing, infrastructure and livelihoods. It remains to be seen whether these communities will be able to adapt to the drastic changes that are being observed.

Science team in the Arctic. Image by [NASA Goddard Space Flight Center](#).

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