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Squaring the Circle: The Arctic States, “Law of the Sea,” and the Arctic Ocean

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Abstract

Two competing conceptions of the Arctic Ocean have circulated since the infamous planting of a Russian flag on the bottom of the seabed in 2007. Ideas of a “scramble for territory” depended on accepting that the Arctic Ocean was a *terra nullius*, that is, belonging to no one. The Danish-sponsored Ilulissat Declaration of May 2008 was an explicit rejection of that Arctic vision. Using the Law of the Sea, it outlined the sovereign rights of the five coastal states. The Declaration was an important pre-emptive strike against growing global interest in the Arctic, and a determination to re-territorialize the Arctic Ocean. The Arctic Council, as the leading inter-governmental organization, remains critical in helping to mediate politically the interests of Arctic and non-Arctic parties.

Introduction

For some commentators, the Arctic Ocean is an unwitting accomplice in a “scramble” or even a new “great game” involving states and corporations.¹ Such a “scramble” is said to involve resource, strategic access and territorial advantage-based considerations in the midst of an “ice-free Arctic.”² Notwithstanding some exaggerated claims about the disappearance of sea ice (when thinning actually might be more of an issue in the short term for some areas and not for others), these Cassandra-like predictions can garner impressive citations within academic and policy-making circles.³

The focus for this short intervention is on something rather different. While disputing this “scrambling” narrative, attention is given to why senior representatives from the five Arctic Ocean coastal states travelled to western Greenland in May 2008 to sign a declaration reflecting on the geographical, legal, and political state of the Arctic Ocean. These five states – Canada, Denmark/Greenland, Norway, Russia, and the United States – comprise the Arctic Five. Why go to all that trouble, in short, to produce a short statement about the Arctic Ocean?

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¹ Richard Sale and Eugene Potapov, *The Scramble for the Arctic* (London: Frances Lincoln, 2010).

² Barry Zellen, *Arctic Doom Arctic Boom* (London: Praeger, 2009).

³ Scott Borgeson, “Arctic Meltdown: The Economic and Security Implications of Global Warming,” *Foreign Affairs*, March/April (2008). Accessed October, 2013: <http://www.foreignaffairs.com/articles/63222/scott-g-borgeson/arctic-meltdown>

This Greenlandic meeting achieved several significant objectives, which are significant for Arctic governance in the here and now, as well as the future. It consolidated the collective interests of the Arctic Five, it affirms the central role of the United Nations Law of the Sea Convention/Law of the Sea, it marginalized alternative governance proposals, such as the Arctic Treaty, and, finally, it helped prepare the ground for the expansion of the Arctic Council membership in May 2013. The admittance of new states, especially China, India, Japan, and South Korea as observers to the Arctic Council marks a new phase in the forum's history and the Arctic region more generally. In essence it marks a shift away from having European observers (with the exception of Italy that also joined in May 2013) to Asian-based observers.⁴ It is worth noting that, although the word "permanent" is often used to describe the observer community, the only permanent actors are the Arctic states and the permanent participants (the six international indigenous groupings). Observers, including the longer standing ones such as the United Kingdom, are renewable (or not as the case may be) as set out in the Nuuk Criteria, established during the Arctic Council Ministerial Meeting in May 2011.

In this intervention, therefore, two apparently competing conceptions of the Arctic (*terra nullius* v. sovereign space of Arctic states) are considered, for the purpose of understanding how a diplomatic intervention (the Ilulissat Declaration) sought to affirm the latter vision and thus dismiss the idea that the Arctic Ocean was being "scrambled" over. Without this Declaration, subsequent political developments affecting the Arctic Council might not have been possible such as facilitating the diplomatic and political involvement of extra-territorial actors such as China and Korea. The concluding section considers the recent Arctic Circle meeting in October 2013 and speculates on how this Icelandic-inspired international forum might compliment the work of the Arctic Council.

Representing a *Terra Nullius*?

The Ilulissat Declaration, to be discussed in more detail, would have been an unremarkable document had its genesis not been rooted in something rather spectacular. In August 2007, two submersibles piloted by a multinational team descended to the bottom of the central Arctic Ocean. While this event in itself would have been impressive given the depth and inaccessibility of this part of the Arctic Ocean, it became altogether more noteworthy when photographs taken of the dive revealed that a Russian flag was gently deposited on the seabed by one of the submersibles. Once photographs of that Russian flag attached to a titanium pole began to circulate, headlines warning of a new "scramble" for the Arctic proliferated. The rust proof nature of the flag pole was highlighted by some to suggest that this particular material object would have a long-standing presence on the bottom of the ocean floor. Unwittingly, perhaps, the former Canadian Foreign Minister Peter MacKay added further frisson to the framing of this event by retorting, "This isn't the fifteenth century. You can't go around the world and just plant flags and say, 'We're claiming this territory.'"⁵

⁴ Klaus Dodds, "Environment, Resources, and Sovereignty in the Arctic Region: The Arctic Council as Regional Body," *Georgetown Journal of International Affairs* 14:2 (2013): 25–34.

⁵ "Russia Plants Flag on North Pole Seabed," *The Guardian*, August 2, 2007, Accessed October, 2013:

Putting Flag Planting in its Place

The tradition of planting flags to claim territory in fact continued past the fifteenth century. There is a rich twentieth century, and indeed a continuing one to this day, archive of explorers, mountaineers, and even astronauts, planting national flags on the polar continent, North Pole, and the Moon. In the polar contexts, the planting of a flag has been likened to formal acts of claiming. By way of contrast, the Apollo 11 expedition was careful not to claim the Moon as American territory in July 1969, the symbolism of planting a national flag was not lost in an era when exploration, science, and geopolitics were Cold War bedfellows. In August 2013, photos were released of Spanish divers holding the Spanish flag close to the disputed territorial waters of Gibraltar and the resultant images drew sharp criticism from the United Kingdom and Gibraltar governments as a “stunt.”⁶

So we should not be surprised, perhaps, that images of a Russian flag on a remote part of seabed in the Arctic Ocean unsettled others. International lawyers were swift to dismiss the gesture as baseless, a “stunt” as the United Kingdom government did in the case of Gibraltar and the Spanish flag. The flag-planting incident, whether in the Arctic or Gibraltar, was inconsequential. In the Arctic case, the Canadian foreign minister was guilty of rhetorical excess, possibly confusing long-standing sensitivities over the international legal status of the Northwest Passage with that of the central Arctic Ocean. In the case of the Northwest Passage, the Canadian government believes that this body of waters is “internal waters” and thus subject to a higher level of sovereign control rather than an international strait where non-coastal states would have greater rights to transit free of coastal authority. The waters around the North Pole are indisputably international waters, lying outside the sovereign authority of states such as Canada.

Russian officials and senior ministers, however, varied in their interpretation of the flag planting event itself. Three explanatory factors were cited at various times – technical/scientific, territorial-legal consolidation, and cultural/symbolic. The first, and most reassuring from the point of view of others, was that this high-profile descent of the two submersibles (one of which deposited the Russian flag on the bottom of the central Arctic Ocean) was just a small element in a scientific expedition designed to collect further geophysical and oceanographic data pertaining to a Russian submission to a United Nations body, the Commission on the Limits of the Continental Shelf (CLCS), outlining Russia’s belief that its continental shelf extended all the way to the North Pole, via the Lomonosov Ridge. In other words, the underlying rationale was technical-scientific and following the demands of Articles 76 and 77 of the United Nations Convention on the Law of the Sea (UNCLOS). The implication being that Russia was trying to convince the CLCS that there might be a possibility that its sovereign rights to the seabed extended beyond 350 nautical miles from the coastline.

The second factor, encouraged by the commentary of one of the Russian expedition members Artur Chilingarov, exceeded the technical-scientific requirements of UNCLOS and CLCS.

<http://www.guardian.co.uk/world/2007/aug/02/russia.arctic>

⁶ “Spanish police criticized for Gibraltar diving stunt,” *The Daily Telegraph*, August 24, 2013, Accessed October, 2013: <http://www.telegraph.co.uk/news/worldnews/europe/gibraltar/10263782/Spanish-police-criticised-for-Gibraltar-diving-stunt.html>

For Chilingarov, a polar oceanographer as well as a member of the Russian Duma, the flag planting was reminiscent of a ceremony of possession – an accomplice of territorial-legal consolidation. As he noted, “The Arctic is Russian. We must prove the North Pole is an extension of the Russian land mass.”⁷ Other senior Russian scholars made reference to the U.S. flag planting on the Moon as if to say there was little to choose from in terms of geographical environments; in this case a submersible descended and ascended a height of around 10,000 feet in remote and challenging waters. While this parallel with the Moon was confusing given that the United States did not press a formal territory claim, it highlighted the importance of the polar regions, the oceans and the Moon as technological testing grounds. Places, in other words, for states and their agents to demonstrate capacities to occupy remote spaces in, as noted below, highly nationalistic ways.

The final dimension is the most interesting and nourished a geopolitical imagination, which recorded this flag planting episode as akin to an aggressive polar nationalism, which was animated as much by past events as it was by a future that might emerge. In other words, highlighting both a longer Russian tradition of spectacular events designed to “excite” domestic audiences of the country’s Arctic exploratory heritage, but also to warn others that Russia, both in the here and now but also in the future, believes its sovereign territory extends all the way to the North Pole. One reason why the Canadian foreign minister criticized the flag-planting incident was that it touched a particular Canadian nationalist nerve – the idea of the Arctic being a *terra nullius*. But another reason why the flag planting episode mattered is provided by the Arctic commentator, Charles Emmerson when he notes that, “From 1867 to 1880 the mantle of responsibility for a large part of the Arctic passed from the Old World to the New. The Russian flag was brought down over Sitka, Russia America, and in 1867, an event that subsequent Soviet historians would view as a geopolitical disaster [emerged with the sale of Alaska to the U.S. government of the time]... It was then that the American Arctic was created...the result of a legal, diplomatic and political game played out in London, Moscow, Ottawa and Washington.”⁸ So, one way to make sense of this moment in August 2007 is, therefore, one that was much as about “correcting” (in a symbolic and material way) a momentous decision to give the United States an Arctic territory in the shape of Alaska.

All the way to the North Pole: Polar Sovereignty and “Sector Theory”

Both Canada and Russia have, at various moments in the twentieth century and beyond, articulated and reproduced a vision (through maps and charts) of their country enjoying a theoretical form of sovereignty extending over territory to the North Pole; this was not a so-called no man’s land. While this claim, based on so-called sector theory, was formally abandoned, territorial sector imagination remains a feature of Canadian and Russian public cultures.⁹ Sector theory, which was popular in the 1920s and 1930s, involved extending maritime boundaries along lines of latitudes all

⁷ “Russia Ahead in Arctic ‘Gold Rush,’” *BBC News*, August 1, 2007, Accessed October, 2013: <http://news.bbc.co.uk/1/hi/6925853.stm>

⁸ Charles Emmerson, *The Future History of the Arctic* (London: Bodley Head, 2010), 73.

⁹ Michael Byers, *Who Owns the Arctic?* (Vancouver: Douglas & McIntyre, 2009).

the way to the North Pole. The United States and Denmark also used sector theory to advance their own sovereign claims. Other international parties outside the Arctic region did not recognize sector theory. Foreign Minister Mackay informed an audience that, “The question of sovereignty of the Arctic is not a question. It’s clear. It’s our country. It’s our property. It’s our water.”¹⁰ The Arctic was, in his eyes, “Canadian.” Maps produced by Natural Resources Canada still use this sectorial projection in order to colonize vast sways of the Arctic Ocean north of Canadian land territory despite the Department of Foreign Affairs and Trade no longer citing the so-called sectorial principle.

The visual element (operational through objects such as the map and the flag and practices such as high profile prime ministerial/presidential visits to the Arctic) is critical to the exercise of geopolitical power as states and their leaderships attempt to frame and demarcate (including hiding from sight) events, sites, and processes. The image of a Russian flag sitting on the central Arctic Ocean floor, attached to a rust proof flagpole, proved durable as a stubborn material presence. Its existence fueled stories about Arctic sovereignty rivalries, resource and territorial intrigue, and even a return of Cold War era Soviet Russian opportunism. Something had to be done; how could the flag-planting incident be defused?

Two Days in May 2008

Defusing the Flag-planting Incident

The background to the Ilulissat Declaration is, in part, rooted in the flag planting incident. But the Danish invitation to convene a meeting in Greenland also has more local origins in Danish-Greenlandic politics. The then Danish government and Foreign Minister Per Stig Moller were deeply involved in climate change diplomacy and had been active in launching a “Greenland dialogue” in August 2005, which sought to draw attention, at the ministerial level, to the implications of climate change for Arctic environments. In June 2007, he warned an audience in London that sea ice thinning and polar cap melting in the Arctic was geopolitically significant with implications for Arctic resource extraction, shipping, maritime policing, and territorial ownership. Two months later, “evidence” for possible dispute and tension manifested in the form of that Russian flag. The “scramble for the Arctic” had begun in earnest. In the same year, it was announced that Denmark was to host the United Nations Climate Conference (COP 15).

Orderly Management of the Arctic Ocean

The foreign minister’s interest in convening a conference of the five coastal states was designed to reinforce a consensus that the parties were committed to the orderly management of the

¹⁰ The former Danish Foreign Minister Per Stig Moller also asserted that “We will soon have to discuss and decide: who owns the North Pole. That, by the way, I think we do.”

Arctic Ocean.¹¹ Far from being a *terra nullius*, the Arctic Ocean was just like any other regional ocean subject to the existing provisions of international law. While the eventual invitation to the four other coastal states included references to sustainable development and environmental protection, the reference to UNCLOS was foundational, without which the meeting might not have been possible. In so doing, it avoided the perception that the meeting was “blaming” Russia for generating speculation about the lack of governance in the Arctic. Rather, the Danish planned to use the meeting to reinforce a consensus that the provisions of UNCLOS applied to the Arctic Ocean, and thus defuse the flag-planting incident per se.

Filling the apparent Void: The Law of the Sea and the Arctic Ocean

This focus on UNCLOS also explicitly addressed the contention of some commentators that the Arctic was caught up in a legal void, and this very void-like nature was feeding “scramble” like narratives. Within the European Parliament, for example, some parliamentary figures called for the development of an Arctic Treaty modeled on the 1959 Antarctic Treaty. In other words, a treaty that emphasized that the Arctic was a global common where sovereignty politics might be placed to one side in favor of a moratorium on resource exploitation and scientific collaboration. This was not a vision of Arctic governance shared by the Arctic 5. The Danish initiative was designed, explicitly, to challenge the notion that the Arctic should be further internationalized. It is worth noting that environmental groups such as Greenpeace continue to campaign for the Arctic to be “saved,” and have recently put forward the idea that the central Arctic Ocean should be a global common free from any form of exploitation.¹² As 30 Greenpeace activists campaigning in “Russian” Arctic waters found out to their cost in October 2013, the “Save the Arctic” campaign is not being well received by an Arctic state determined to protect its sovereign interests.

The meeting in May 2008 was positioned as an initiative that would highlight the obligation of the Arctic 5 to act responsibly and co-operatively in the Arctic Ocean. The eventual declaration argued the following:

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,

¹¹ Regional rivalries might also have played their part in accelerating the Danish initiative in other words as it was known that the Norwegian Ministry of Foreign Affairs planned to convene a meeting in October 2007 to discuss the Arctic Ocean and International Law. The Norwegian Ministry of Foreign Affairs released a press release after the meeting. Accessed on August 23, 2013: <http://www.regjeringen.no/en/dep/ud/press/News/2007/The-Arctic-Ocean--meeting-in-Oslo-.html?id=486239>

¹² *Greenpeace Save the Arctic campaign*. Accessed October, 2013: <http://www.greenpeace.org.uk/arctic>

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 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.¹³

The Arctic 5, notwithstanding criticism from other Arctic states such as Iceland for being excluded from the meeting, positioned themselves as coastal states who enjoyed sovereign rights and responsibilities, and who were committed to strictly following procedures that delimit outer continental shelves.

The Arctic 5 claimed to enjoy full jurisdiction over territorial waters and hold sovereign rights over exclusive economic zones and outer continental shelves. While disagreements exist within the Arctic 5 over the international status of two Arctic passages (the Northwest Passage and Northern Sea Route) and maritime boundary delimitation, they reaffirmed their commitment to resolve such disputes peacefully. The central Arctic Ocean is a global common because it contains the high seas and seabed and subsoil beyond national jurisdiction. In the high seas, all states have the freedom to fish subject to international law pertaining to highly migratory and straddling stocks and enjoy other freedoms including navigation.

Legal and Political Uncertainties: The Continental Shelf and Beyond

The exact extent of sovereign rights over the Arctic seabed is still to be determined by the United Nations Commission on the Limits of the Continental Shelf (CLCS), but is likely to extend at least 350 nautical miles beyond the coastal baseline, and possibly further as a consequence of rules governing such matters.¹⁴ One area of the Arctic Ocean seabed that is of great interest to Canada, Denmark and Russia is the Lomonosov Ridge, which extends around 1,000 nautical miles from north of Greenland across the Arctic Ocean to Siberia. All three “claim” the Lomonosov Ridge is a natural extension of their continental shelves. The CLCS will not adjudicate in this issue, but will review any materials submitted by coastal states. Russia was the first to do so in 2001 and was advised that its

¹³ Kingdom of Denmark, “The Ilulissat Declaration.” Accessed October, 2013: http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf

¹⁴ The delimitation of the outer continental shelves of the Arctic 5 will involve bilateral and multi-lateral negotiation. The UN CLCS is a technical body and issues “recommendations” on the limits of the outer continental shelf but it is not a body invested with legal competence. Article 76 and 77 set out the rules for OCS delimitation which include the stipulation that within a ten-year period post accession to the Convention, states submit materials to the UN Commission on the Limits of the Continental Shelf (CLCS) to those parts of the continental shelf which stretch up to 150 nautical miles beyond their Exclusive Economic Zones or – depending on various technical details – up to 100 nautical miles beyond the 2500 metre isobath.

submission needed further technical details, especially regarding the relationship between underwater ridges and the continental shelf.

The United States, as a non-party to UNCLOS,¹⁵ cannot submit any materials to the CLCS, while other states such as Canada, Denmark and Russia are still involved with the collection and collation of relevant materials. They are expected to submit their compilations to the CLCS in either 2013 or 2014. Thus far, Norway is the only member of the Arctic 5 to settle its outer continental shelves.¹⁶ The seabed beyond those outer continental shelves becomes “The Area” wherein resources (both on the seabed and below) are the common heritage of humankind. The International Seabed Authority manages The Area throughout the world’s oceans and seas. The Area is open to use by all states provided it is done so in a peaceful manner. So far, there is no evidence to suggest that the Arctic 5 have not followed the rules and procedures as set down in Article 76 of UNCLOS.

While the Arctic 5 acknowledged that there was more to be done in terms of environmental stewardship of the Arctic Ocean, the intent of the declaration was to reject the notion that this region needed a new comprehensive Arctic Treaty. The Arctic 5 noted that other issues needed to be addressed such as navigation in the Arctic Ocean. While Article 234 of UNCLOS acknowledges the rights of coastal states to impose more stringent measures to ensure higher standards of shipping safety and environmental protection,¹⁷ other organizations such as the International Maritime Organization are providing new guidance and binding rules for ships working in ice-covered waters. The Polar Code, which might enter into force in 2015, will co-exist alongside coastal state intervention by Canada and Russia to regulate shipping through the Northwest Passage and Northern Sea Route respectively.¹⁸

Coastal States and the Exercise of Sovereign Authority

Coastal states such as Canada and Russia have used Article 234 to intensify their sovereign authority over ice-filled areas via legislative, constabulary, and surveillance-based initiatives and interventions. Some countries, including the United States, had misgivings about Article 234 at the time of the UNCLOS negotiations precisely because there was a concern that coastal states would use “environmental protection” as a pretext to impinge upon freedom of navigation. For example, Canada

¹⁵ The United States observes the provisions of the Convention as part of customary international law but cannot for example submit materials to the CLCS.

¹⁶ Coastal states will have the exclusive right to resources on and below the outer continental shelf, but the revenue derived is subject to “tax” by the International Sea Bed Authority.

¹⁷ Article 234 of UNCLOS provided extra reassurance for Arctic coastal states such as Russia, with its provision for coastal states 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...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.”

¹⁸ This is an area of dispute; the United States believes the Northwest Passage and Northern Sea Route to be international straits (with associated rights of innocent passage) and not the “internal waters” of Canada and Russia respectively.

passed the Arctic Waters Pollution Prevention Act (extended in 1985 to cover 200 nautical miles from the Canadian baseline and amended again in 2009) to impose greater restrictions on those seeking to navigate through the Northwest Passage. It has also insisted that foreign vessels participate in Northern Canada Vessel Traffic Services Zone (NORDREG), a database of all vessels entering Arctic waters in the proximity of Canada. The Canadian government is also investing in a Northern Watch project designed to help the country literally “listen” for users of Canadian “internal waters” via a network of underwater sonar devices.

In the context of the Northern Sea Route (NSR), Russia will continue to assert a desire to control all maritime traffic within 200 nautical miles of its Arctic coastline. At present, Russia insists that all vessels transiting the NSR have to obtain prior permission from Moscow and operates a strict policy on escorting vessels throughout the NSR. Between 2012 and 2013, the Putin government issued a series of directives, which reinforced these requirements and established a new NSR administrative body to oversee this regulatory structure. Canada and Russia are committed to either monitoring, and where possible actively administering the movement of commercial shipping.

With further predictions of an ice-free Arctic in the coming decades, the relevance and applicability of Article 234 is likely to come under closer scrutiny. Navigation rights in the Arctic Ocean might well be a far more divisive issue than resource rights, which grabbed the global headlines in 2007 and 2008. In other words, the flag-planting incident might come to be seen as a visual distraction with undue emphasis on fixity rather than mobility.¹⁹ Most of the new icebreaking carriers are icebreakers in their own right and can operate independently of icebreaker escorts. The specific provisions attached to Article 234 and “ice filled waters” may well have less traction in the years to come both legally and materially.

After the Ilulissat Declaration

The Ilulissat Declaration was divisive and other Arctic states, namely Finland, Iceland, and Sweden, were aggrieved at not being invited alongside indigenous peoples organizations (the so-called Permanent Participants in the Arctic Council).²⁰ Iceland, which considers itself an Arctic Ocean coastal state, deepened its relationship with non-Arctic states, especially China, and promoted itself as a trans-shipment center between the Arctic and East Asia. In April 2013, the Icelandic President was involved in creating an Arctic Circle, which has explicitly assumed the mission of promoting an “open tent or public square” regarding Arctic governance, especially where business and commerce was concerned.²¹ Sweden organized a conference in September 2008 under the

¹⁹ The United States will be particularly mindful of coastal states attempting to restrict the movement of commercial traffic such as oil tankers if and when the Alaskan EEZ and OCS regions are further exploited.

²⁰ The timing was also interesting for Danish-Greenlandic relations. In May 2008 the two governments released an Arctic strategy and a Defence Commission was established to review implications for Greenland’s security with respect to resources and search and rescue. The Danish Parliament also approved recommendations for Greenlandic “Self Rule” following a referendum in Greenland in November 2008.

²¹ The Arctic Circle website details this mission, accessed October, 2013: <http://www.arcticcircle.org>

auspices of the Nordic Council called “Common Concern for the Arctic.” Finland has worked closely with the European Union and encouraged the EU’s candidature for permanent observer status at the Arctic Council. In their different ways, the three other Arctic states responded to their exclusion by highlighting their connectivity to the Arctic Ocean regardless of whether they possessed a geographical coastline.

Preparing for the Future: The Arctic 5, Arctic 8 and the Arctic Council

All three Arctic states continue to emphasize that the Arctic 5 cannot assume that they alone will determine how this “orderly framework” might be applied to the Arctic Ocean. Hackles were raised further when Canada convened a second Arctic 5 conference in Chelsea, Quebec, without inviting the other Arctic states and indigenous peoples organizations. U.S. Secretary of State Clinton was publicly critical of the exclusion of indigenous peoples in particular, fueling further debate about whether aboriginal and First Nations communities were being systematically excluded from discussions on Arctic sovereignty and resource management.²²

This sense of divisiveness between the Arctic 5 and the remaining Arctic states (Finland, Iceland, and Sweden making up the so-called Arctic 8) was ultimately managed by refocusing on the institutional development of the Arctic Council. As the main inter-governmental forum for the Arctic region, it provided common cause. Three noteworthy developments followed. First, the Arctic Council expanded the membership of observer states, which in May 2013 included China, India, Italy, Japan, Singapore, and South Korea. All new observers acknowledged, as part of their application process, the collective sovereignty of the Arctic states (including their sovereign rights as coastal states). The European Union application was deferred because of ongoing anger in Canada over the seal products ban and residual irritation at earlier proposals for an Arctic Treaty.²³ All the non-state organizations such as Greenpeace were simply not considered (because of time constraints) at the ministerial meeting in May.

Second, the member states of the Arctic Council agreed to their first legally binding agreements, the most notable being the Agreement on Co-operation on Aeronautical and Maritime Search and Rescue in the Arctic (the Search and Rescue Agreement) at the 2011 Arctic Council ministerial meeting. Notably, the portions of the Arctic assigned to each of the Arctic 5 and Iceland appeared to follow sector-like from each country’s outermost borders.²⁴ Finally, the Arctic Council has undergone further institutional strengthening with the creation of a permanent Secretariat based in

²² A point made in the release of the 2009 Circumpolar Declaration Sovereignty in the Arctic. Accessed October, 2013: <https://www.itk.ca/publication/circumpolar-declaration-sovereignty-arctic>

²³ The EU’s application might be re-considered in the 2015 Ministerial Meeting of the Arctic Council, as might those non-state organizations that applied in 2013. The EU and others such as China had been refused consideration in 2009 and 2011.

²⁴ Article 3.2 of the Search and Rescue Agreement notes, however, that “the delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States or their sovereignty, sovereign rights or jurisdiction.” Accessed October, 2013: <http://www.ifrc.org/docs/idrl/N813EN.pdf>

northern Norway. This has helped consolidate a vision of the Arctic region being under a form of “orderly management,” and thus not “needing” further treaty development let alone UN/regional organizational involvement.

Calming those Arctic Fevers

Since the feverish reporting of 2007 and 2008 of Arctic scrambles, the Arctic 5 and even 8 have generally committed themselves to represent and implement a view of the Arctic that is governed according to the principles that operate anywhere in the world. In other words, they agreed to treat the Arctic Ocean as an unexceptional space, governed by international law. The Ilulissat Declaration was all about reinforcing the message that UNCLOS/Law of the Sea is paramount and the ongoing collection of oceanographic and bathometric data by the Arctic states of Canada, Denmark, and Russia is simply illustrative of three states following Article 76 of UNCLOS and behaving in a way that is unremarkable in the global maritime context. The coastal states will enjoy sovereign rights and these activities will outline the limits of the outer continental shelf and not formal international boundaries. All three countries are in dialogue with one another and there is no reason to think it will not ultimately be co-operative as they seek to define those outer limits.

Conclusion

Images of a Russian flag being planted on the bottom of the central Arctic Ocean unleashed a tsunami of commentary about “Arctic scrambles.” At its most extreme, there were dire warnings about the future of the Arctic. The flag became a powerful signifier of unclaimed space and unruly behavior. Arctic states, whatever their protestations to the contrary (e.g. Canadian Prime Minister Stephen Harper’s “use it or lose it” speech in 2007 being one example of a political leader apparently expressing concern that Arctic sovereignty could be “lost”), are perfectly capable of mobilizing their own populations with their own images (including maps which often conveyed a sense of coastal states enjoying full sovereignty over the continental shelf) and stirring rhetoric, while all the time reassuring international audiences that they will be compliant with international law. The Ilulissat Declaration was one of those moments in international politics when a document, an inter-state gathering, and accompanying photographs, were designed to both reassure and to remind global audiences that the Arctic Ocean was not *terra nullius*. All of this mattered at a time when the European Union and others, including China, were highlighting the global common features of the Arctic, such as the high seas, The Area and rights of innocent passage.

UNCLOS/Law of the Sea provides a framework but the Arctic states and others recognize that there are substantial knowledge and governance gaps when it comes to protecting the marine environment either from oil/gas exploration and exploitation or shipping. The Canadian chairmanship of the Arctic Council (2013-2015) will face some challenging contradictions, one of which is encouraging economic development in northern communities while recognizing that the Arctic continues to undergo profound geophysical change. As the Ilulissat Declaration acknowledged, “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.”

And as the inaugural meeting of the Arctic Circle in October 2013 demonstrated, there is growing interest in the Arctic region. Six months earlier the rationale was explained in public – the idea was to create an “open tent” where interested parties could come to discuss Arctic futures. On 17 April 2013, the President of Iceland addressed the National Press Club in New York to discuss this initiative further. The timing was significant. Iceland had signed a free trade agreement with China (15 April 2013) and entered into various negotiations with Chinese and Icelandic organizations including oil exploration and shipping. Presidential talks also coincided with Iceland’s growing interest in being understood by others as an Arctic Ocean coastal state. President Grimsson’s talk was significant as he told his audience about the growing “visibility” of what he termed a “global Arctic.” Significantly, he told his audience about his private meetings with South and East Asian political leaders who all mentioned their interest in the Arctic, and desire to obtain Observer status at the Arctic Council. The Arctic Circle initiative was, as he concluded, driven by recognition that “the Arctic is not just our Arctic, it is a global Arctic and what happens there will have fundamental consequences for every nation in the world.” If the Iceland president is right, and I suspect he is, then a meeting of Arctic state ministers in May 2008 at a northern Greenlandic town makes even more sense. As we might say, the Ilulissat Declaration was an intervention designed to “square a circle.”