

THE ARTIC OCEAN AND THE UNCLOS: LEGAL CHALLENGES IN THE HIGH NORTH

AUTHOR – V.SANKALP, STUDENT AT AMITY LAW SCHOOL, AMITY UNIVERSITY, MUMBAI

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INTRODUCTION

WHO OWNS THE ARTIC?

American news outlets began to cover the issue of Arctic sovereignty in the summer of 2007. A deep-sea submersible, paid for by the Russian government, sank 14,000 feet to plant a Russian titanium flag, one metre tall, on the 1,100-mile-long Lomonosov ridge. Given the existing legal system for resolving Arctic border disputes, many saw Russia's flag deployment as little more than a PR stunt. Russia has maintained for over a decade that the Lomonosov ridge is part of its continental shelf and that it has authority over resource exploration and exploitation on the ridge, even if this act alone may not have been enough to form a valid territorial claim. Two major oil companies, Royal Dutch Shell (\$2.1 billion) and ConocoPhillips (\$506 million), participated in a 2008 U.S. government lease auction for Alaskan waters in the Chukchi Sea. Five Beaufort Sea licenses were acquired by BP Exploration Ltd. for \$1.2 billion in the same year at a Canadian auction. Despite delays to its plans in the Chukchi Sea due to the Obama administration's decision to end offshore drilling following the Macondo well blowout in the Gulf of Mexico in April 2010, Royal Dutch Shell is currently requesting approval to drill in the Alaskan portion of the Beaufort Sea. Cruise lines and other operators are offering more trips to more places in the Arctic as the ice melts, which is leading to an increase in tourism to the region. Even in the middle of summer, there are dangers to travelling in the Arctic.

The issue of "who possesses the Arctic" has taken on more urgency in light of the current uptick in activity.¹

As a result of the melting Arctic, new maritime trade routes are becoming available, which have the potential to significantly reduce shipping distances in comparison to the Suez and Panama Canals. For instance, the NWP across Canada and the NSR over Russia may potentially shorten the trip between Europe and northeast Asia by nine thousand miles, or perhaps half that amount. The Arctic is

believed to have thirteen percent to thirty percent of the world's total oil and natural gas reserves; as it thaws, it will become easier to exploit these resources. Conflicts over distribution of resources and navigational liberties, which were hitherto thought to be of little immediate importance, are becoming more heated as a result of this enormous economic potential.²

¹ Otts, S.S., 2010. A Review Of Who Owns The Artic?.

² Féron, H., 2018. A new ocean: the legal challenges of the Arctic thaw. *Ecology Law Quarterly*, 45(1), pp.83-128.

Environmental Stewardship and provisions in UNCLOS

What is Stewardship?

Stewardship represents a metaphorical role where an individual has the authority to act on behalf of another person. This function has been characterised by a variety of names, including agency, custodianship, guardianship, and public trusteeship. Stewardship and similar ideas are more widespread in common law systems. It has come to mean the way the government oversees communal natural resources for the betterment of all members of the community. Riverbanks, fisheries, woodlands, and aquifers are all examples of potential resources. The concept is usually seen as a responsibility to exert authority or management with a certain degree of care when dealing with a restricted or precious resource, based on specified values, for the benefit of others. This concept aims to fulfil certain recognizable social goals by adjusting the collection of rights and responsibilities that define property. These goals might encompass public interests like fulfilling fundamental human necessities. Stewardship may also involve safeguarding biodiversity, ensuring sustainability, promoting responsible usage, and conserving resources, taking into account the needs of both current and future generations as well as the natural environment. Stewardship involves not merely the use of ownership rights but also a commitment to fiduciary responsibilities. The unique aspect of stewardship lies in the obligation to both conserve and protect. Stewardship encompasses several components: the subject of the responsibility (what), the individual or organization responsible (who), the recipients of the benefits (for whom), and the principles to be upheld through stewardship (for what). Identifying the subject of responsibility shapes the kind of stewardship involved. Environmental stewardship pertains to shared resources of

interest, such as the climate, marine biodiversity, rivers, and ecosystems.³

According to Part XII of the UNCLOS, governments are obligated to safeguard and maintain ecosystems that are unique or delicate, as well as the homes of species that are in risk of extinction, have had their populations drastically reduced, or are otherwise in danger of severe degradation.⁴

Article 76

“A coastal state's continental shelf, defined under Article 76 of the United Nations Convention on the Law of the Sea, is its underwater extension of territory. This shelf may sometimes go beyond the 200 nautical mile Exclusive Economic Zone (EEZ). The coastal state also has sovereign rights over the resources on that continental shelf, according to Article 76. In contrast to resources in the water column, those situated on or below the seabed outside of the EEZ are subject to these rights and duties. The technical recommendations of the Commission on the boundaries of the Continental Shelf (CLCS) and Article 76 specify the procedures that states must follow in order to determine and record the outer boundaries of their continental shelf. Based on the long history of cooperation in the area, it is logical to expect that the states that border the Arctic Ocean would choose to submit their maritime borders to the UNCLOS.⁵

Article 234 of UNCLOS

Ice-covered areas

In order to prevent, reduce, and control boat-related marine pollution in ice-covered areas, coastal governments have the sole power to create and implement non-discriminatory restrictions. Commercial zone, where degradation of the marine environment has the

³ Henriksen, T., 2016. The Arctic Ocean, Environmental Stewardship, and the Law of the Sea. *UC Irvine L. Rev.*, 6, p.61.”

⁴ “Tugend, M., 2021. What Role for Traditional Knowledge in the Conservation of Marine Biodiversity in the Arctic High Seas?”

⁵ Kullerud, L., Beaudoin, Y.C., Poussart, J.N., Prokosch, P. and Sund, H., 2012. The Arctic Ocean and UNCLOS Article 76: are there any commons?. In *Environmental Security in the Arctic Ocean* (pp. 185-194). Dordrecht: Springer Netherlands.

potential to significantly damage or irreversibly disrupt the biological equilibrium, and where year-round ice cover and very severe weather patterns make navigation exceedingly difficult or risky. Laws and regulations pertaining to navigation and the marine environment must be based on the most up-to-date scientific evidence. The sole provision of the LOSC that is especially tailored for the Arctic is Article 234.”⁶

Article 122 of UNCLOS

The term “enclosed or semi-enclosed sea” is used in this Convention to describe a body of water that is either completely or mostly made up of the territorial seas and exclusive economic zones of two or more coastal states, or that is bordered on all sides by at least two states and connected to another body of water or the ocean through a narrow outlet.⁷

The cooperation of states bordering confined or semi-enclosed oceans is discussed in Article 123. States that share a border with an enclosed or semi-enclosed sea shall work together to fulfil their responsibilities and exercise their rights under this Convention. In order to accomplish this, the participating states will either collaborate directly or form an appropriate regional organisation to do the following: (a) oversee the management, conservation, exploration, and exploitation of the sea’s living resources; (b) ensure that each state fulfils its legal obligation to protect the marine environment; (c) “harmonise its policies on scientific research and, if needed, join forces with other relevant states or international organisations to carry out the measures described in this article.”⁸

When it comes to stewardship, the problem is that it’s too focused on specific sectors and has a framework nature. It is up to the relevant States to organise, rather than UNCLOS, to provide a clear collective governance. Even if it doesn’t have any legal weight, the idea could

serve a useful purpose in drawing attention to the shared duty of states to the international community to safeguard the environment (including living marine resources), which is crucial in the fight against climate change and biodiversity loss.⁹

Current Legal Provisions and Role of Traditional Knowledge in achieving Sustainable goals

In 1982, the US Convention on the Law of the Sea (UNCLOS) was ratified and became a law. Under the auspices of UNCLOS, a legally enforceable instrument (ILBI) is now in the works to address the preservation and responsible use of marine biodiversity in areas outside of national jurisdiction (BBNJ). The BBNJ agreement must be concluded before almost 40% of Earth’s surface may be legally protected from ecosystems and environmental degradation. The Arctic is seeing some of the most remarkable and fast-paced changes in climate and other aspects connected to CO₂. The melting of glaciers and permafrost, for example, has altered ocean chemistry, reduced snow cover, increased emissions of methane, and the loss of habitats as a result of melting sea ice. Roughly 2.8 million km are categorised as ABNJ, indicating they are not under the authority of coastal governments in any of the five coastal states that surround the Central Arctic Ocean (CAO): Canada, Greenland (part of the Kingdom of Denmark), Norway, Russia, and the United States. The BBNJ sensor will so significantly impact the outer waters of the Arctic Ocean. Half a million people, or around 10% of the global population, call the Arctic their home (Arctic Centre). Thirty million km are traversed, including seven countries and three continents. Native American groups in the Arctic include many more, such as the Chukchi, Even, Evenk, Nivkhi, Nenets, Sámi of Russia, Inupiat, Inuvialuit, Yupik, Aleut, Inuit, Greenlandic, Canadian, and Fennoscandic peoples. These include hunters, fisherman, and reindeer herders, among others. All of them rely on a

⁶ Bankes, N. and Das Neves, M.M., 2019. The United Nations Convention on the Law of the Sea and the Arctic Ocean. In *The Palgrave Handbook of Arctic Policy and Politics* (pp. 375-391). Cham: Springer International Publishing.”

⁷ “The United Nations Convention on the Law of the Sea, 1982, art. 122

⁸ The United Nations Convention on the Law of the Sea, 1982, art. 123

⁹ Henriksen, T., 2016. The Arctic Ocean, Environmental Stewardship, and the Law of the Sea. *UC Irvine L. Rev.*, 6, p.61.”

environment and a wealth of biodiversity to sustain their traditional ways of life. They are the true environmental stewards and can help in achieving sustainability goals.¹⁰

Need for ARTIC Laws for Legal Sustainability

Given that every case is unique, the existing domestic and international legal systems that deal with Arctic issues show that there is no agreed-upon solution to the question of how best to handle future legal problems in the North. An example of the difficulties in utilising national laws and other local traditions to support claims for control of the island by either side is the continuing dispute between Canada and Denmark over Hans Island. This conflict arises from the partial insufficiency of present international accords. Another case in point is the protracted dispute over the Northwest Passage, which involves competing claims to the seas of the Arctic Archipelago, primarily among the United States of America, Canada, and the European Union. The increased traffic in the Arctic and the Northwest Passage's melting surface indicates that the long-standing question of who controls the Passage must be addressed by the United States and Canada. Additional factors that are adding fuel to the fire of this conflict include the topic of environmental regulation in the region and the anticipated surge in offshore resource exploitation in the near future. A possible ownership dispute between Greenland and Canada arose in 2004 when two British businesspeople proposed diverting icebergs from the East Coast of Canada to Europe (for example, Spain and Portugal). Some estimates put the value of the fresh water provided by a 50-million-ton iceberg at about \$3 million. When it comes to iceberg production, Greenland is unrivalled. Drift icebergs from Greenland are sold by Canada to the European Union. So, it's fair to wonder who the icebergs' rightful owners are.¹¹

Conclusion

The changing landscape, abundance of natural resources, and growing geopolitical significance of the Arctic Ocean make it a particularly difficult legal case. Overlapping territorial claims, unclear continental shelf borders, and environmental issues all make it difficult to apply UNCLOS in the Arctic, despite the fact that it offers a thorough legal basis for maritime administration. As climate change accelerates ice melt and opens new navigation routes, the urgency for legal clarity and international cooperation intensifies. Addressing these challenges will require not only strict adherence to UNCLOS principles but also creation of ARTIC Laws. This is possible only by strengthened multilateral dialogue mechanisms to ensure peaceful, equitable, and sustainable management of the Arctic Ocean.

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¹⁰ "Tugend, M., 2021. What Role for Traditional Knowledge in the Conservation of Marine Biodiversity in the Arctic High Seas?"

¹¹ "Loukacheva, N., 2008. Legal Challenges in the Arctic. In *The Borderless North, Oulu: The Fourth Northern Research Forum* (pp. 129-135)."



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