THE POLAR BEAR IN THE ROOM: 
THE ROLE OF INSTITUTIONS IN THE CHANGING ARCTIC

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Abstract

This thesis focuses on the role of international institutions in the Arctic. Specifically, it examines the two main governance structures in the Arctic—the Arctic Council and the United Nations Law of the Seas Treaty (UNCLOS)—in light of the changing Arctic environment. It evaluates to what extent these two governance structures have been effective at keeping the peace in the Arctic, and whether this cooperation is likely to continue in the future. While the Arctic—and its institutions—are frequently cited as a model for geopolitical cooperation, this thesis finds that predictions that this cooperation will continue are overly optimistic. This conclusion is based on two overall findings. The first is that the Arctic Council, the preeminent forum for cooperation in the Arctic, is unlikely to adapt to upcoming issues, as it is limited by its primarily environmental mandate. The second argument concerns the role of UNCLOS, and finds that, despite its effectiveness in bringing states to the negotiation table for some territorial disputes, it has generally been unable to mandate long-term solutions. By showing the limitations of the Arctic Council and UNCLOS in regards to their ability to provide cooperative governance, this thesis questions the existing literature about the Arctic and raises the question of what other structures—perhaps economic or security related—are needed to ensure that the Arctic remains a peaceful sphere of cooperation in the future. As such, it is valuable for policymakers or academics that have to deal with the Arctic in particular, and international cooperation more generally.
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Figure 1: Political Map of the Arctic Region

\[1\] Political Map of the Arctic. Austin, TX: University of Texas Libraries, The University of Texas at Austin, 2012. Print.
Chapter One: Symbols and Institutions

What Nationality is Santa?

“The Government of Canada wishes Santa the very best in his Christmas Eve duties and wants to let him know that, as a Canadian citizen, he has the automatic right to re-enter Canada once his trip around the world is complete.”

On the surface, these words, spoken by the Canadian Minister for Citizenship, Immigration and Multiculturalism in December 2013, seem innocuous. Claiming Santa as a citizen would appear to be a harmless joke—as a jolly man who gives presents to children all over the world, he seems like he would be a model citizen. However, similar remarks by Paul Calandra, Parliamentary Secretary to the Prime Minister, struck more to the heart of the issue. “Join with us in making sure the North Pole remains part of Canada…[Santa Claus] is a Canadian citizen and we will defend him all the way to the United Nations when we make our claim for the North Pole.”

These quotes set off a veritable maelstrom of controversy, with headlines all over the world announcing, “Canada lays claim to the resource-rich Arctic” or “Canada to lay claim to North Pole amid Arctic resources rush.” Given that Canada was submitting a claim to the United Nations Commission on the Limits of the Continental Shelf (CLCS) to increase its maritime territory at the same time that the comments were made, it was natural to link the claiming of Santa with the broader claiming of the North Pole. While the partial claim that was submitted by Canada in December did not include the North

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Pole, Canada’s foreign minister John Baird underscored that the next Canadian claim to the United Nations Commission on the Limits of the Continental Shelf would include scientific data proving the North Pole should be part of Canada’s territory.5

In response, the day after the Canadians made their Santa comments, President Putin asked his defense chiefs to focus on building up infrastructure and military units in the Arctic. During this meeting, President Putin specifically stated that “Russia is evermore actively reclaiming this promising region” and that Russia must possess “all the levers necessary for protecting its security and national interest” in the area.6 This dispute over which country will effectively claim the North Pole—a dispute that also includes Denmark—is understandably controversial: the state that manages to extend its continental shelf to the northernmost point in the Arctic will have the exclusive right to access the resources—oil, gas, minerals and otherwise—that lie within the seabed.7

**Beyond Santa: Conflict or Cooperation in the High North**

From the reaction of Arctic nations, we can see that the controversy that erupted in December 2013 was not exactly over Santa’s questionable nationality. More fundamentally, it was about who would control the North Pole. However, symbolic gestures still play a role in determining the broader question of what country owns what territory. These gestures—exemplified in actions like giving Santa citizenship—have been an important part of the history of the Arctic since the beginning. Explorers in the late 19th century planted flags to assert territorial claims; today, both Canadian and Danish military forces leave their flag and the country’s trademark liquors on Hans

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7 The Continental Shelf, 2012 Division for Ocean Affairs and the Law of the Sea.
Island, a disputed spit of rock in the midst of the Arctic Sea. Nevertheless, at the same time that these symbolic gestures are inflaming tensions, countries are still going to the United Nations in order to make their claims and they are still cooperating through other circumpolar institutions, like the Arctic Council.

This disjunction between highly nationalistic, symbolic actions and the adherence to institutionalized forms of cooperation is also reflected in the differences between popular media and academic accounts of the Arctic. Newspaper headlines about the Arctic frequently talk about the new “Arctic gold rush,” increased incentives for a “resource race,” or provocatively question, “who owns the Arctic?” In response, both the academic literature and Arctic leaders tend to assert that, despite the media hype, the Arctic will continue to be a sphere where cooperative efforts are prized over potential resource conflicts. Often, these scholars argue that the existence of the Arctic Council and the United Nations Law of the Sea Treaty will be enough to extend cooperation even as the Arctic region is changing. Thus, there is a divide over what the Arctic may look like in the future. It has been an extraordinarily cooperative geopolitical zone for the past two and a half decades, but new developments in the ecosystem of the Arctic may

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10 Weir.


12 A sample of Arctic leaders and think tanks who have claimed that the Arctic will continue to be cooperative: Anton Vasiliev, Russian representative to the Arctic, both Norwegian and American think tanks, Iceland’s President Olafur Grimsson, and Russia’s President Putin.

challenge this cooperation. These new developments are intrinsically tied to the fact that the icy Arctic region continues to melt at unprecedented rates; as the ice cover recedes and more economic potential is discovered, these questions of whether the Arctic will continue its cooperative path will only become more imperative.14

**Limitations of Institutional Cooperation in the Arctic**

The Santa case is thus important because it highlights a tension that my thesis attempts to address. Do symbolic actions taken by states—like Canada trying to claim Santa—matter if the state is participating fully in cooperative structures like the Arctic Council or the United Nations? More crucially, will these cooperative institutions continue to take precedence over state sentiment that is reflected in inflammatory statements and actions? My thesis attempts to address these questions by examining institutional cooperation in the Arctic. Since the concept of cooperation is integral to my thesis, we will take a brief moment to define it. Cooperation as defined in this thesis is taken from the definition set forth by Robert Keohane, who is arguably the most important scholar on institutional cooperation. Keohane defines intergovernmental cooperation as taking place “when the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives, as the result of a process of policy coordination.”15 Cooperation—as opposed to harmony when state interests align without the need for discussion—is thus highly political. It is a reaction to the threat of conflict, but results in the absence of conflict.

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14 Andrea Thompson, "How Low Will the Arctic's Summer Sea Ice Go?" *Scientific American* 15 March 2014.

With that definition established, we can move on to the structure of the thesis. The thesis itself is framed by three large questions: 1. How do the institutions that are frequently cited in arguments about Arctic cooperation—namely, the Arctic Council and the United Nations Law of the Seas Treaty—fit into the broader history of the Arctic? 2. Are these institutions effective at promoting cooperation? 3. Will they be enough to combat tendencies towards conflict as the Arctic takes its place on the world stage?

My argument, briefly, is that the institutions that are frequently cited as key contributors to Arctic peace are important, but only up to a point. As we will see, there are two contradictory trends at work in the Arctic. On one hand, there are institutions in the Arctic that help promote cooperation. On the other hand, there are economic shocks to the value of the Arctic that have been historically sporadic, but are increasing. Both the literature on territorial conflicts and the past history of the Arctic itself will examine these contradictory trends and will show that cooperation is never guaranteed. In fact, it is exactly at times of greatest economic interest that institutions in the Arctic—both informal and formal—were challenged. As the Arctic is currently facing its greatest shock of economic interest in its history, this institutional cooperation will be challenged once again. Although the current institutions have helped usher in a remarkable period of Arctic geopolitical cooperation over the past twenty-five years, they are limited by their mandates, enforcement mechanisms and adaptability when addressing contentious issues that are coming to the surface as the ice continues to melt in the Arctic.

While this thesis focuses on the Arctic region, there are lessons to be drawn from this region that are applicable to other areas. At its core, the Arctic is a region with tenuous borders and vast stores of resource wealth; however, it is also a place with a
history of institutional cooperation. These broad outlines can be seen in areas around the world, such as the South China Sea. Examining trends in the Arctic towards conflict or cooperation thus can be instructive for other regions of the world that face similar issues.

**Looking Forward**

In order to advance the argument outlined above, this thesis will be broken into four sections. The first section, Chapter Two, will look at the broader picture to see how both hard and soft law institutions affect areas of territorial conflict, with an eye towards understanding the two paths—conflict or cooperation—that the Arctic could follow. The second section, Chapter 3, will situate the Arctic’s recent history of cooperation into the broader history of the Arctic. This section will show that the current atmosphere of cooperation is all the more remarkable given the periodically contentious history of the Arctic. This section will attempt to show how the Arctic went from a sphere where explorers planted flags to claim territory and states created new theories of law to govern their territorial claims to a place where, at least nominally, there is a legally constituted cooperative regime. The third section, Chapters 4 and 5, will situate the two most important cooperative institutions in the Arctic—the Arctic Council and the United Nations Law of the Sea Treaty (UNCLOS)—into the story. UNCLOS will be used as an example of a hard law institution in the Arctic, while the Arctic Council is an example of a soft law institution. This thesis will examine both of these institutions in order to understand why scholars believe that they are effective at ensuring cooperation in the Arctic sphere and will consider both the strengths and weaknesses of these institutions moving forward. Finally, Chapter 6 will constitute the final section of the thesis. Here, we will address potential areas of concern in the Arctic moving forward and how these areas of concern relate to institutional cooperation in the Arctic.
Chapter Two: The Anomaly of the Arctic

Hallmarks of Conflict

When we look at territorial disputes, one aspect above all others stands out. As John Vasquez—a widely cited territorial conflict scholar—has shown, “in the modern global system, and long before then, it has been territorial issues, particularly issues involving territorial contiguity, that are the source of conflict most likely to end in war.”16

Paul Hensel—another scholar of territorial conflict and war—comes to a similar conclusion in his analysis of over 2,000 cases of territorial conflict since 1816. He found that, although territorial issues account for the primary issues at stake in less than one third of the 2,000 studied interstate disputes, they had an outsized impact on the use of military force. He also showed that when adversaries are engaged in a conflict over territorial claims, they are more likely to act in an escalatory manner. States were also less than half as likely to react in a non-militarized way during territorial disputes as compared to their reactions to other contentious issues.17

Additionally, disputes involving natural resources—in particular, reserves of oil and gas—are a large contributing cause to war. Between one quarter to one half of interstate conflicts since 1973 have been linked to oil.18 With prices remaining high and climate change driving uncertainty over the continued supply of natural resources, the trend of conflict being linked to resource disputes is unlikely to change.19 Considering that the Arctic has both of these trigger factors—territorial disputes as well as large stores

of resource wealth—it would appear that the region would be a prime candidate for conflict.

Furthermore, there are large incentives to go to war over territory. Scholars generally tend to believe that territory is valuable both for what it contains and for its strategic advantage. Paul Diehl and Gary Goretz—two preeminent territorial dispute scholars—consider territory to be intrinsically important to states; still, the value of the land—or in this case, the sea—is determined to a large extent by the size of the area. The larger the area, the greater chance that the territory will contain resources or other factors that make the land inherently valuable.\(^{20}\) In the Arctic, the disputed territorial claims are on an immense scale: the Arctic region itself occupies over 1/6 of the world’s landmass and territorial claims within it frequently concern areas that are larger than many European countries.\(^{21}\)

On a strategic level, territory is often considered to be intrinsically important because it can increase a state’s security. If the territory under debate contains natural defensive elements, like rough terrain or mountains, then it is considered to be an important security defense. Classical realist scholars such as Morgenthau also believed in the importance of territory as a means to acquire security.\(^{22}\) More recently, the scholars Huth and Allee have shown that states are more likely to initiate militarized territorial disputes when territory has strategic value (such as location near an army base or an important shipping lane).\(^{23}\) This strand of territorial dispute literature, mainly predicated

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on a realist paradigm, therefore suggests that territorial disputes often lead to war. When a contested area is large, economically valuable, or strategically important, states are incentivized to try to claim and control the territory.

**How Institutions Shape Interstate Cooperation**

Despite its general explanatory power, the theory that territorial conflict leads to war is not the whole story. If it were the whole story, there would be no examples of areas—like the Arctic—where territorial disputes did not immediately lead to war. Although it has been stated, “for every thousand pages published on the causes of war, there is less than one page directly on the causes of peace”\(^{24}\), there is a sense in the literature that institutions can help prevent conflict in two ways. The first is by incentivizing cooperation between states. The second is by helping states mediate their territorial disputes. However, before we can address how institutions operate in these two ways, we must have a working definition of what an institution actually is. In essence, an institution is a system of established and prevalent social rules that structure social interactions.\(^{25}\) Generally, institutions both constrain and enable state behavior by—on the one hand—providing rules and norms for state action, while opening up avenues of cooperation that may not otherwise be available on the other. International institutions function by setting clear standards of behavior, which both enhances cooperation and serves to identify states that violate these standards. Institutions are also important

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because they provide procedures for making collective decisions, whether that is by voting or by setting up dispute resolution boards that states agree to abide by.\textsuperscript{26}

Specifically, scholars believe that states use institutions to facilitate cooperation on substantive problems in mutually beneficial ways.\textsuperscript{27} Institutions can help promote cooperation by providing information, reducing transaction costs, and encouraging fair distributional gains between states that participate in the institutions.\textsuperscript{28} In the Arctic as in other international arenas, institutions are broken down into hard and soft law institutions. Hard law institutions are effective at strengthening state credibility and commitments, but they restrict actor behavior and constrict state sovereignty.\textsuperscript{29} Soft law institutions facilitate compromise because the stakes are lower; for this reason, soft law institutions are also effective at bringing states to the table to deal with issues that are dynamic, or issues that require a learning process. However, by their nature, soft law institutions lack enforcement mechanisms; they rely on state members to voluntarily comply with their recommendations by setting a norm of cooperation.\textsuperscript{30} Often, as is the case in the Arctic, hard and soft law institutions interplay with each other. Indeed, scholars have suggested that soft law institutions strengthen hard law institutions when they regulate overlapping issues or have the same core base of states.\textsuperscript{31}


\textsuperscript{27} Keohane.


These institutions function well when there is incentive to cooperate. However, cooperation is difficult in cases like the Arctic when there are mixed motives. On one hand, we have states that are incentivized to claim as much territory as possible and skew distributional gains towards themselves. On the other hand, there is an incentive to cooperate because of the joint gains that can come through cooperation. These gains can be as varied as preventing conflict or increasing economic trade. As we will see in the next sections, the challenge for institutions—and the hope of the states that participate in them—is that institutions will provide a way to solve distributional problems without upsetting collective gains.

**How Institutions Help Mediate Conflict**

Therefore, we can see that institutions can help incentivize states to cooperate with each other. But can institutions also help mediate inflammatory issues, like territorial conflicts? The scholarship on territorial conflicts has shown that legal remedies are important at multiple stages of the dispute process, from deciding to address an issue through international arbitration to establishing legally binding boundaries. In a realist sense, states want jurisdictional certainty over their own territory (for security and/or resource extraction purposes). While a state might lose some of the tangible value of a territory (if the court decides to split the territory), the costs of having a festering dispute

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are usually higher. While a festering territorial dispute has a high chance of devolving into war, Gibler, Huth and Vasquez have all shown that legal agreements over borders and alliances significantly decrease the chance of territorial disputes in the future. In the past two centuries, there have been at least twenty-seven instances of states exchanging or settling the status quo of territory through a legal alliance, with only four of those cases leading to war. This proportion is much lower than would be expected from a normal territorial conflict.\footnote{Douglas M. Gibler. "Alliances that Never Balance: The Territorial Settlement Treaty." \textit{A Road Map to War: Territorial Dimensions of International Conflict}. Nashville: Vanderbilt University Press, 1999. 181-205. Print.} Schultz goes farther to show that the legal status of borders is important beyond its distributional effects; the creation of a legally binding border helps mediate conflict even when the distribution of goods is not affected.\footnote{Schultz. 14-21.} Therefore, the fact that effective legal remedies can be set in place before conflicts even have a chance to arise shows that states have a good chance of avoiding territorial conflicts if they can agree on the demarcation of borders.\footnote{Andrew P. Owsiak. "Signing up for Peace: International Boundary Agreements, Democracy, and Militarized Interstate Conflict." \textit{International Studies Quarterly} 56.1 (2012): 60-64. Print.}

Now that we understand why and how states can settle territorial disputes, we can ask a further question. Why would states choose international mediation to solve territorial disputes instead of another mechanism, like bilateral treaties? Scholars advance two main answers to this question. The two main answers advanced are that international settlement helps provide domestic cover for agreements and that international settlement provides legal “focal points” that can help solve contentious disputes. Simmons, Huth and Allee advance the domestic cover argument. Simmons argues that the reason that states submit to formal institutional arbitration is because they have common problems
that are difficult to solve unilaterally or politically. In some cases, domestic factors may prevent a state from negotiating a bilateral settlement; however, when an international body is involved, states can defer to a disinterested third party. This type of settlement may be more acceptable to domestic constituencies. Huth and Allee find that states have respected the settlement of territorial disputes by a third party to an extremely high degree. They explain this success by noting that mediation by a third party provides a degree of political cover for a national government that fears domestic opposition to a settlement but wants to have their territorial dispute solved. Decisions reached by third party dispute resolution boards are likely to be viewed as legitimate by domestic groups, which helps to explain why states would want an international, institutional settlement to their dispute.

International law mediation can also provide “focal points” that help solve territorial disputes. Focal points, as described by Huth, Croco and Appel, emerge when legal principles relevant to the territorial dispute are unambiguous and clearly favor one side. The scholarship suggests that the allocation of territory suggested by international law will emerge as a focal point around which negotiations can proceed. International law—and the institutions that facilitate it—thus can be helpful to states by providing a precise solution to the problem of how to distribute territory. This precise solution, advocated by an impartial third party, can help alleviate the domestic problems that may

41 Huth and Allee. "The Pursuit of Legal Settlements to Territorial Disputes."
be associated with giving up territory. Thus, international law can help make a final agreement more likely, since it can provide a baseline of negotiations for a dispute that theoretically can be settled any number of ways. 43 States are also incentivized to submit to legal arbitration because a formal agreement lends legitimacy to their territorial claims. 44 Thus, the evidence suggests that states do accept international arbitration for contentious issues like territorial disputes. Although there is a marked realist paradigm in territorial dispute literature—as seen in the first section of this chapter—there is also evidence to suggest that territorial disputes need not lead inexorably to conflict.

**Whither the Arctic?**

This brief literature review suggests that there are contradictory forces at work in areas with territorial disputes, such as the Arctic. On one hand, according to the realist paradigm, the Arctic should be a zone of conflict. It has tenuous borders, conflicting territorial claims and vast stores of resource wealth, as can be seen in the two maps shown below. 45 These factors are all hallmarks of areas that have experienced territorial conflicts; moreover, as the economic value of the Arctic increases, these factors will become more relevant to states. In addition, the scholarship dealing with motivations for territorial wars suggests that the Arctic fits the criteria for a greatly desired region. Not only is it a large area with exploitable resources, but also it is an area that is important to maintaining border security. Border security is especially relevant in regards to the changing Arctic. Before the ice started to melt, states like Russia could depend on the

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45 See Figures 2 and 3.
impassable ice for a measure of security around its borders; with the prospect of an increasingly accessible border, these states will be incentivized to claim sea territory that may give them increased security. While traditional geopolitical analyses from the likes of Alfred Mackinder or Nicholas Spykman assumed that a country like Russia would be bounded to the North, we can see that the changing environment of the Arctic will soon create new geopolitical and security challenges. 

On the other hand, this literature review points out that territorial disputes do not always lead to conflict. In fact, institutions like that found in the Arctic can sometimes lead to cooperative outcomes. The two main institutions in the Arctic—the Arctic Council and the United Nations Law of the Sea—both have elements that can help provide a cooperative outcome in the Arctic. The Arctic Council helps create a norm of

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47 *Maritime jurisdiction and boundaries in the Arctic region* (Durham, United Kingdom: Durham University, 2008).
cooperation in the Arctic by spreading knowledge about important issues, particularly environmental issues, among its member states.\textsuperscript{49} In addition, in an area like the Arctic where there is little history of institutional cooperation and knowledge about core issues is changing rapidly, soft law institutions can greatly help facilitate cooperation between states.\textsuperscript{50} As a high-level forum, it requires little effort by their member states to participate but lowers the transaction costs associated with engaging in Arctic affairs. UNCLOS also helps coordinate cooperative outcomes by providing a mechanism for addressing territorial disputes in the Arctic. As a global regime, UNCLOS provides clear legal focal points for the resolution of boundary issues, while—to some extent—providing a mediative body to adjudicate disagreements. Furthermore, UNCLOS is beneficial because it was already a functioning institution by the time Arctic states began relying on it for territorial mediation purposes.\textsuperscript{51} This pre-existence could also explain why UNCLOS has helped create a legal system in the Arctic that is privileged over other forms of territorial claims; at the most basic level, UNCLOS is used in the Arctic because there is no reason for states to invest the time, willingness or resources that would be needed to create a different system.\textsuperscript{52}

Thus, we can see that the Arctic is an anomaly. It has all the hallmarks of a conflict zone, but it has been generally peaceful. The question for the rest of this thesis is whether there is reason to believe that peace will be maintained. As we have examined in this chapter, there are two competing ideas in the literature that can be applied in the


\textsuperscript{51} Ibid.

Arctic. Institutionalist literature suggests that as institutions develop, they support interstate cooperation while the realist literature suggests that economic shocks can impact cooperation. Historically in the Arctic, institutionalization has increased but the region has also been impacted by sporadic economic shocks that have challenged this institutionalization. As we will see in the next chapter, institutions in the Arctic—both informal and formal—have been challenged multiple times by shocks of economic interest. This thesis will think about the implications of these diverging trends, in light of the fact that economic shocks are increasing as the Arctic takes its place on the world stage. The rest of this thesis will be focused on understanding how the institutions that we have discussed here have shaped Arctic cooperation, how they have been challenged by economic interest, and what strengths and weaknesses they exhibit.
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Chapter Three: An Institutional History of the Arctic

Staking a Claim: Past Attempts to Discover the Arctic

In August 2007, a Russian expeditionary crew became the first to descend to the ocean floor underneath the North Pole. While this voyage was remarkable for a variety of scientific reasons, the world’s attention was caught by the fact that the crew left a titanium tube carrying the Russian flag on the seabed directly under the North Pole. International outcry soon followed, with the Canadian Foreign Minister Peter Mackay saying, "This isn't the 15th century. You can't go around the world and just plant flags and say 'We're claiming this territory’" and the United States Department of State spokesman, Tom Casey, declaring that "I'm not sure whether they've -- you know, put a metal flag, a rubber flag, or a bed sheet on the ocean floor. Either way, it doesn't have any legal standing or effect on [Russia’s] claim.” Despite the fact that Russia was well within their rights to explore the seabed under the North Pole and use that data to help their Arctic territorial claim under the Law of the Seas Treaty, the placement of the flag signaled more than just exploration to observers: it signaled possession.

The planting of the flag raised a storm of controversy, with newspapers breathlessly predicting a future “race for resources” in the Arctic. But how did the Arctic region get to this point? Back in the days of early exploration, it would have been acceptable under the principle of terra nullius for a state to claim land merely by sticking a flag in the ground and pronouncing the land conquered. In fact, much of our societal memory around the Arctic conjures up these type of images; intrepid explorers bravely facing the icy unknown, filled with both scientific and nationalistic fervor to become the

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first to conquer the final frontier of Earth. The best way to explain why we—as an
international community—no longer accept the planting of flags on untouched areas is
because, as Mr. McKay so eloquently stated, “this isn’t the 15th century.” It isn’t even the
late 19th century, when planted flags could realistically signal a legal claim. It is the 21st
century; a time when we like to think that the institutions we have created have an effect
on what constitutes a legally binding claim. Even in the midst of the minor hysteria over
Russia’s planted flag, there is an understanding that there is a system of rules that govern
these actions; that, indeed, we have moved beyond the system of the 15th century.

Nevertheless, areas flush with potential—especially natural resource potential—
have been flash points of conflict throughout history. The Arctic has many hallmarks of
an area that should be prone to conflict: it has states vying over unclaimed territory, with
that territory containing large amounts of natural resource value. While those natural
resources have been largely inaccessible, climate change already has and will continue to
make those resources exploitable. However, it is historically inaccurate to think that we
are living in a new age where the possibilities of an opening Arctic are just being
understood. As we will see in this chapter, the Arctic has been a focus of state interest for
the last one hundred years. Whether that interest was in the form of claiming unexplored
territory or gaining strategic advantage in war, the Arctic has been a desirable area for
generations.

Taking the time to briefly explore the complicated history of this region is
important for two reasons. The first is to show that while there were trends towards
cooperation in certain sectors of Arctic affairs in the past, the international cooperation
that has reigned in the Arctic since slightly before the fall of the Soviet Union is unusual.
Since the main focus of this thesis is to examine two institutions that have been central to maintaining cooperation in the Arctic since the early 1990s and the possibility for continued cooperation in the future, it is important to understand what the history of the region was before those two institutions came into effect. Secondly, this chapter will attempt to elucidate the transition between a system where it was perfectly acceptable to plant a flag and stake a claim (a system that is very individualized to the state and depends on customary law) to a system where states chose to enter into both hard and soft law institutions that would—to a large extent—govern the Arctic.

The main question to be explored in this chapter is to what extent—if any—increased economic or military interest in the Arctic has effected institutions in the Arctic. How did the Arctic develop from a sphere governed by informal institutions—like customary law—to a sphere governed by cooperative institutions? What has caused periods of both conflict and cooperation in the Arctic? By looking at periods of both conflict and cooperation within the Arctic region, we will be able to understand the incentives to cooperate and what shocks to the system, if any, have challenged cooperation in the past. Although the past is never quite determinative of the future, examining what has happened to the Arctic in the past when it has been exposed to increased levels of interest may have instructive lessons for our understanding of how institutions respond to exogenous shocks today. While not every Arctic nation or event in this period will be highlighted (given the impossibility of doing so), this historical review is meant to underscore key facts, trends and events that are still cited in debates over Arctic cooperation today.
Early Arctic exploration

The symbolic placement of the flag by the Russians in 2007 was nothing new in Arctic history; explorers have been planting flags and claiming territory for their respective countries in the Arctic since the late 19th century. However, unlike the Russian planting, the exploration and conquest of Arctic lands were accepted ways to claim territory in the 19th and early 20th centuries.\(^5\) Indeed, early polar exploration can be traced back not only to the individual explorers desire to traverse new lands, but the incentive by states to have their own citizens be the one to discover these new areas. As we shall see, initially the states were happy to have explorers discover new lands for nationalist pride; however, these expeditions would soon be part of a concerted effort to define sovereignty in the high North.

In the early phases of its history, individuals dominated Arctic exploration. Since the late fifteenth century—although with more success in the twentieth century—explorers have been fascinated with “discovering” the last frontier and exploring new routes into and through the Arctic. In keeping with the institutional history of the Arctic, it is important to note that the very process of exploration depended on informal institutions of customary law. Explorers implicitly depended on the well-accepted idea of terra nullius to stake claims to new lands that were either uninhabited or inhabited by indigenous peoples.\(^6\) Discovery with the symbolic taking of possession was considered sufficient to claim territory in the early days of Arctic exploration; as we shall see, this principle would quickly be overtaken by that of effective occupation. As the 20\(^{th}\) century dawned, explorers would be caught between two legal worlds. Explorers would still


claim new lands through flag planting, but the legal community started to develop the idea that effective occupation was necessary to really claim new territory for a state. The North Pole, as we will see below, remained a territory that was claimed through the process of discovery and flag planting; however, this is mainly because the North Pole was completely inhospitable and unable to be occupied. For lands that were valuable for resource extraction, effective occupation became the legal theory of choice.

The original history of exploration in the Arctic—the type that depended on discovery instead of effective occupation—centered on discovering two legendary routes. The first was the Northwest Passage, a sea route that would connect the Atlantic and Pacific Ocean and thus provide a quicker route from Europe to Asia. The second was the Northeast Passage (now known as the Northern Sea Route), which runs from the Atlantic to the Pacific Ocean using a route that hugs much of the Russian coast. Thanks to a series of inaccurate maps and misunderstandings of ice levels, many of these explorers did not make it through the Northwest Passage, or worse—as in the case of Captain James Cook—did not live to tell the tale of their adventures in the High North.\textsuperscript{57} In 1906, Norwegian explorer Roald Admundsen became the first person to traverse the Northwest Passage, a three-year voyage that was undertaken with a small ship and a small crew. He and his crew tried unsuccessfully—due to heavy ice—to navigate the second passageway, now called the Northern Sea Route along Russia’s coast, but they later became the first to reach the North Pole by airship in 1926.\textsuperscript{58}

However, the Norwegians were not the only explorers who were trying to reach the Arctic’s highest point. Other North Pole discoveries had been claimed in the past by


American explorers (Frederick Cook, 1908; Robert Peary, 1909; and Richard Byrd, 1926), although recent scholarship has questioned these discoveries. Despite the fact that Peary’s claim to have discovered the North Pole was formally recognized by the United States Congress in 1911, it was done with little investigation and Peary himself even admitted that the examination of his polar instruments by the National Geographic Society had taken place after dark in a railroad station—not the most ideal conditions for determining the accuracy of his instruments. Historian Lisa Bloom has explained this willingness to accept that an American explorer had indeed reached the Arctic, despite evidence to the contrary, as an extension of the American desire to conquer new lands and attain status as a world power.

While the ideology of conquest is an important part of the story, the historical narrative of who got to the Arctic when would also prove to be an integral part of country claims that continue to be contentious to this day. As we will see, all Arctic countries have been involved in territorial disputes at one point. Many of these territorial disputes, to some degree, rely on the history of “who got there first”; although institutional remedies are used to help solve these disputes, the “pre-institution” history is important when states stake legal claims to territory.

60 Ibid.
Raising the Stakes: Resource Discovery in the Arctic

The informal principle that allowed explorers to claim lands that were considered terra nullius started to break down when the land itself became more valuable. The understanding of the resource-rich nature of the Arctic region began in the latter 19th century, when an intrepid American whaling captain voyaged from Long Island to the Bering Strait in the midst of an oil shortage to find a new source of whales. When he returned bearing eleven whales—and a resultant 1,600 barrels of oil—fellow Americans and observers from other countries began to see the value of whaling in the western Arctic. That, combined with the early journeys of American Arctic explorers discussed above, contributed to the government’s decision to purchase what is now present-day

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Alaska from the Russians in 1867, commonly known as “Seward’s Folly” since it was Secretary of State William H. Seward who proposed the deal. Seward himself believed that “the nation that draws most materials and provisions from the earth, and fabricates the most, and sells the most of productions and fabrics to foreign nations, must be and will be, the great power of the earth.”

The New York Times (then the New York Tribune) deplored the vote, claiming, “Nobody knew anything about the country, about the savages…about how human life could be sustained there by civilized men.” Although the paper also declared that the “yes” vote only happened because “it is fatal to a public man to vote against an acquisition of territory”, the acquisition of over 586,000 square miles for $7.2 million made America a bona fide Arctic nation.

The previous Russian owners—although future generations bemoaned their decision to sell—sold due to the fact that the main trade company based in the territory was in major debt after the Crimean War. Given the company’s inability to maintain a presence in the area, they believed that the land would be absorbed by Britain or the United States anyways—without compensation—and so they readily sold it for a small sum. Thus, despite the fear that the purchase would be “folly”, the benefits of their Arctic lands made the United States eager for more. Thus, we can see that the even in the early stages of Arctic exploration, states were incentivized to buy and claim territory because of the promise of future economic rewards—a situation very much like the one in the current day Arctic. As we will see, this economic interest also incentivized a change in how states claimed territory; the Arctic went from a place governed by the

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informal norm of terra nullius to an area where occupation was key to claiming new lands.

Figure 5: Map of Russian America, 1860.

**Imposing Sovereignty: Squatters, Traders and the Arctic**

The acquisition of present-day Alaska did not satiate America’s desire for Arctic lands. During the early 20th century, America periodically considering buying Greenland from Denmark (a proposition that was very seriously considered in 1946 by the U.S. Congress). America also attempted to claim Arctic islands that encircled Canada, such as

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modern day Ellesmere Island, which Norway was also claiming. These attempts to claim far-flung Arctic lands meant that Canada was faced with American whalers and traders who were establishing permanent stations in Canadian territory, usually in remote locations that were not subject to licensing or custom fees.68 These permanent stations would greatly increase America’s legal standing when it came to making claims under the legal doctrine of effective occupation. In response, Canada also started programs of settlement in the far-flung northern regions of Canada, which will be discussed more in depth below.

The theory that backed both American and Canadian settlement claims was that of “effective occupation.” During the Berlin Conference of 1884-1885—which attempted to place some order on territorial claims in Africa—effective occupation was defined as the standard by which territorial claims would be recognized. Effective occupation meant that a European country had to prove that they had effectively occupied a territory before they were allowed to make claim to it.69 Thus, if Canada and America wanted to make a legally viable claim to resource-rich lands in the lower Arctic, they would have to show that American or Canadian citizens were living and working the land. The issue between the countries was that these resource-rich lands were objectively much closer to Canada; this meant that the prospect of American settlers in these lands challenged Canada’s sovereignty. This tension over sovereignty, as we will see, became a hallmark of U.S. and Canadian Arctic relations and impeded full cooperation on a number of issues.

Canada’s feeling of sovereignty infringement was even more pronounced given Canada’s relationship with Britain and thus its legally tenuous claims on new territory. Complicating Canada’s attempts to exert control over its territories was the fact that Canada was in fact the Dominion of Canada. Since 1867, Canada—as a federal state—had been under the British Crown’s control. A major reason for the decision to join the confederation under the control of the British was due to the fear of incursion or annexation by the United States.\(^70\) Canada had fended off invasion by Americans during the Revolutionary War and the War of 1812, but the acquisition of Alaskan lands had made them particularly wary of their southern neighbors. As a Canadian politician wrote in 1865, “I would be quite willing, personally, to leave that whole country a wilderness for the next half century, but I fear if Englishmen do not go there, the Yankees will.\(^71\)

Thus, for good reason, the Canadian government was paranoid that the United States would act to annex Arctic territory, which is why Canada started making attempts to exert authority in even its most far-flung regions which had never been governed before. This concern over the possible expansion of America led the Canadian government to expand quickly to the northwest. The Canadian government bought Rupert’s Land and parts of the Northwest Territory from the Hudson Bay Company in order to assert territorial control, although the British still remained in de facto control of the legal rights.\(^72\) Even claims to the Canadian Arctic archipelago—an area that anchored Canada’s Arctic sphere—were on shaky legal ground since the islands were gifted by


Britain in 1880. Despite this shaky legal foundation, the incentive to claim Arctic lands was clear: the lands were valuable for fur and mineral exploitation, as well as for their value in asserting a larger national presence.

Figure 6: Rupert’s Land Acquisition, 1870.

As mentioned above, this quick purchase of land was due to fear of American incursion. This fear was more pronounced due to Britain’s—not Canada’s—solid relations with America. For example, during the Alaska boundary dispute between Canada and America, the Hay-Hebert Treaty was signed between an American and British representative, not an American and Canadian representative. Canadians, as a result, did not feel in control of their own destiny—Britain sacrificed their interests at any cost for the sake of pleasing the United States.

To combat this seeming lack of legal control, Canadian government officials sent two expeditions in the year the Hay-Hebert Treaty was signed to enforce sovereignty

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claims in places occupied by Americans (specifically, Fort McPherson in the Northwest Territories and Fullerton Harbor on the banks of Hudson Bay). In these areas, police outposts were created in order to implement administrative duties like collecting customs and issuing licenses. The Canadian government also sent out other expeditions to look at islands north of Hudson Bay and claim them if they were uninhabited. As a result of these expeditions, the Canadian flag was raised on Ellesmere Island and Beechy Island, two important islands within the modern day Canadian Arctic archipelago. The Canadian’s claim on these strategic islands was further enhanced by the decision to create an informative geological, wildlife, trading and Inuit reports. No other exploratory country had done as much to interact with the newly claimed lands, which greatly strengthened Canada’s argument for taking these lands into their Arctic purview.

Figure 7: The location of the contested Ellesmere Island

76 Ibid.
Thus, we can see that the informal institutional principle of effective occupation incentivized efforts by both Canada and America to claim and occupy northern lands. Although the Arctic did not experience the same level of competition which characterized the scramble for Africa, we can see that customary territorial norms were influencing Canada’s decisions to occupy far-flung reaches of the Arctic through the mechanisms of police posts, patrolling cruisers and planted flags. Despite the lack of formal legal authority to claim northern lands, Canada set a precedent for asserting sovereignty in creative ways in the Arctic; namely, through the power of settling and administering uninhabited lands. Thus, in the early part of the 20th century, Arctic claims were governed more by informal settlement than by formal institutions.

The Arctic in the Interwar Period: Balancing Claims and Interests

This desire to claim new lands extended beyond Canada’s shores: with the scramble to Africa in the late 19th century, there was a hunger for lands that had previously been “terra nullius” or belonging to no one. As mentioned before, this was around the same time that Peary was searching for the North Pole, in order to claim it for America. However, there was still a sense of uncertainty about what claiming these lands would mean. For example, when Peary called President William Taft to inform him that it was his honor to “place the North Pole at your disposal”, Taft replied, “Thanks for your interesting and generous offer. I do not know exactly what to do with it.”78 This sentiment was repeated in Sweden and Norway, as explorers claimed more and more land for governments that did not know exactly what to do with the land, although the nationalistic fervor associated with claiming new lands continued.

However, this sense that the lands were mainly useless from an economic perspective was sharply challenged in the period post WWI. As we will see, Russia became increasingly aware of the strategic value of the Arctic post WWI, while other states were just starting to realize the mineral resources that could be available in the Arctic. However, with talk of the League of Nations swirling around and the concept of “self-determination” on everyone’s lips, it was no longer as tenable to rely on theories like effective occupation to cement territorial claims. Instead, the period before WWII was defined by states trying to claim zones of exclusive national sovereignty.

Contentious sovereignty claims ran rampant in the early 20th century. Denmark asserted its claims over Greenland, while getting assurances from other countries that they would not disturb their claim. In the case of America, that assurance required Denmark to sell the (now) US Virgin Islands during WWI in exchange for US supporting economic and political control of Denmark over Greenland. Norway was not as eager to comply; after initially agreeing to Denmark’s terms, Norway then occupied the east coast of Greenland in protest until the situation was settled two years later. At the same time, Canada claimed a series of islands (including Wrangel Island, which ended in tragedy when most of the explorers died.) The Canadians were strong believers in the idea that settlement supports a claim; more than other countries, Canada sent settlers to the front lines of sovereignty conflicts to assert their authority.

The exception to this trend was the Svalbard Treaty of 1920, which gave Norway limited sovereignty over a hotly contested Arctic archipelago but allowed other states to

engage in commercial activities near the islands. Although the archipelago was discovered in 1596 and had been used for fishing purposes since the 1700s, there was little contention over it until mineral deposits were discovered on the main island in the early 20th century. Historians of the treaty point to conflicts between mining companies and the near-extirmination of the bowhead whale and walrus population due to over-hunting as two key reasons why the archipelago was placed under a treaty mechanism. While the treaty gave sovereign rights to Norway due to their claim that Norwegian explorers discovered it in the 12th century, other countries were allowed to use the islands for mining and economic purposes. Despite periodic contention—particularly between Russia and Norway over fishing rights around Svalbard—this treaty exists to the present day. This treaty points to a larger theme in the Arctic that we will see later on when discussing the United Nations Convention on the Law of the Seas; although much of Arctic history has been a contentious story of varying territorial claims, economic incentives can also play a part in bringing different nations to the bargaining table.

**Manufacturing Claims: Canada and Sector Theory**

Nevertheless, the successful Svalbard Treaty was a relative anomaly in early 20th century Arctic relations. For the most part, states were more eager to assert their independent authority and claim new territories than to collaborate under a treaty mechanism. While theories of first discovery and effective occupation were used in the late 19th and early 20th century, the period before WWII brought forward a new conception of sovereignty claims. Parliamentarians in Canada came up with the idea of

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“sectors” in which all lands (and eventually all waters) within a pie-shaped area between lines of longitude extending all the way to the North Pole were underneath their jurisdiction. Sector theory was created to supplement other claims to Arctic territory that arose from discovery or effective occupation. Sector theory would extend Arctic claims by one more degree: instead of relying on occupation or discovery, states could project their claims outward and rely on geographical continuity from their Arctic coasts upwards. At the time, sector theory was contentious, with many people arguing that effective occupation of the land made more sense than dividing the Arctic up into sectors of authority.

Despite these debates, the newly formed Soviet government asserted their own sector claims for the ocean above Siberia, indirectly supporting the Canadian claim of sectors. This unlikely support came from similar causes; both Canada and Russia were being threatened by other state claims. Particularly for Canada, their assertion of Arctic boundaries in 1925 was in response to US claims. Both Canada and Russia also used new theories of international law to insist that both the Northwest Passage (for Canada) and the Northern Sea Route (for Russia) were internal waters. This assertion, which would be hotly contested, was an attempt to insulate their claims from other countries’ assertions that those routes should be held in common. Canada was particularly concerned about their claims to the Northwest Passage after Norwegian explorer Roald Amundsen went through in 1903-1906. Amundsen managed to find more unclaimed islands on his

journey, prompting Canada to send settlers to those islands and thus claim them by a joint use of effective occupation and sector theory.\textsuperscript{87}

After Canada advanced their sector theory, America declared their opposition.\textsuperscript{88} America believed that, given their advantage in airpower, they would have a better chance to claim lands based on discovery, not colonization or sector theory. However, both Canada and Russia reasserted their sectors in the face of American intransience. Russia based their sector claim on the 1867 Convention of Washington, in which they sold Alaska and delineated borders to stem American expansion.\textsuperscript{89} Russian policy makers were supporters of the sector theory because they believed that an imperialist battle had begun over the possession of a trans-Arctic route and they had to defend their Arctic rights. Similarly Canada asserted their theory of sectors, while maintaining occupation of a series of islands. In 1924, Canada created a sector that stretched to the North Pole by amending a law relating to the Northwest Territories. During that time they also incorporated sea and ice into the sector theory—which was originally only about land—because of the possibility of an aerial route over the High North. Although the sector theory was not legally binding, it provided a succinct way for both Russia and Canada to assert their claims.\textsuperscript{90} As late as 1946, Canada’s ambassador to the United States was claiming waters based on the fact that the sector theory justified their claim “not only to the land within the sector, but to the frozen sea as well.”\textsuperscript{91} Even though the theory was

contested by states like Norway, it was not officially given up until 2006 by the Canadian government. Thus, the sector theory had an outsized effect on how states interpreted their claims (whether or not they supported the theory), even though it was not legally sanctioned in the international sphere. Despite the fact that one Canadian parliamentarian essentially created the theory in 1907, its persistence speaks to two important facts. One is that powerful actors can shape legal norms. Both Canada and Russia believed that the sector theory would be beneficial for their claims and thus supported it alongside other, more customary, interpretations of territorial claims. The second item it highlights is that legal frameworks matter in the Arctic; instead of simply asserting their territorial claims, states were incentivized to use legal theories—albeit very creative ones—to declare their territorial titles.

**Beyond Sector Theory: Russia and the Development of the Arctic**

In the explorer period detailed above, America, Great Britain and Scandinavian nations were obsessed with exploring and claiming the North and South Pole. The discovery of the North Pole was eventually credited to America while the discovery of the South Pole was credited to the Norwegians. At the same time, Russia was concerned less with discovery than the practical uses of the Arctic. Russian government officials were interested in explorers, like Amundsen, who showed that they could live and travel in Arctic for long periods of time. Despite this interest, before the Russian revolution, regime support was minimal, with individuals mainly funding any exploration or mapping that was done by Russians. This lack of exploration—at least compared to other

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nations—became a problem during the Russo-Japanese war of 1904-1905. The Russian government discovered during this war that their forces were hopelessly overextended and were undersupplied due to the fact that the Trans-Siberian Railroad was overused and there was no usable sea-lane along the coast.\textsuperscript{94}

The necessity of using Arctic transportation was underscored further by both WWI and the Russian revolution. During WWI, Arctic western communities were used as a re-supply stop, while lack of access to the sea almost destroyed the revolutionary movement by cutting them off from key resources. After the revolution—and particularly during the famine of 1921-1922—the new government began to realize the importance of their Arctic lands. Over six million Russians died as a result of inefficient railroads during the famine. Having oceangoing vessels move the food inland using a series of rivers mitigated the famine, but Soviet policymakers realized that they would need a new source of food (for the people), furs (for trade) and a place to centralize production.\textsuperscript{95}

Developing Russian Arctic lands, like Siberia, were a perfect opportunity to solve both their supply and infrastructure problems.

The importance of the Arctic to the Soviet government necessitated a plan to administer the area: they realized that military takeover was not the same as territorial control. In order to assert control, the Soviets wanted to incorporate the North into the “homeland.” To do so, they started instituting Kara Expeditions in 1921 to stimulate foreign trade and teach Russian seamen to operate in Arctic conditions.\textsuperscript{96}


expeditions lasted into the 1930s, with exports to Germany, Norway and Britain increasing every year. On top of helping the Soviet economy, one of the Kara expeditions ended up saving an Italian ship and its crew that was lost in Arctic. This successful rescue heightened the Soviet Union’s prestige and they were highly praised for their efforts.97 Also in the early 1930s, the Soviet government organized the first expedition through the Northern Sea Route. It was an important expedition that established exploration rights as well as proving that the route was potentially viable, even though it took a significant amount of time to traverse the passage.

Apart from the Northern Sea Route, Russians began to move beyond the international sector theory. The government started to make moves that signaled that the development of the Arctic was going to be an exclusively Soviet affair. For example, Soviet ships and workers started mining in areas beyond their agreed upon sector. Motivating this expansion was the theory, advocated by officials from the People’s Commissariat for Foreign Affairs, that sector theory was really a western weapon for expansion into the Soviet Arctic.98 In an attempt to establish claims beyond their sector, Soviets started creating new histories of the Northern Sea Route that prioritized exploration of the northern coasts of Russia and Siberia. These histories claimed that Russian influence had operated in the area for over 400 years, despite weak evidence for Russian exploration during that time period.

Overall, the importance of the Arctic for both natural resources and transportation helped secure its place in the Soviet imagination. The Soviets even went so far to make new “model cities”, like Igarka, in previously uninhabited parts of the Arctic. As one

report detailed, “Soviet Power has made the North unrecognizable…Igarka is not only a town or a port. It is a forepost of culture.”

Even though these accounts of model cities were mainly used for propaganda, given that these towns were populated by Soviet exiles and the gulag system was being set up in Siberia, the myth of the Arctic held strong sway over the people under the Soviet regime.

As we can see from this brief foray into the Russian Arctic, strategic interests are a powerful inducement to Arctic claims. While Canada mainly used effective occupation and sector theory as a hedge against other states operating in the Canadian Arctic, the Russians were even bolder in their claims. While recognizing the value of asserting a legal presence—both through sector theory and by creating model cities in the Russian Arctic—the Russian government also valued the importance of the Arctic as a strategic area. This acknowledgement by the Soviets (and to a lesser extent, other Arctic governments) that the Arctic was a strategically important area played a large role in the next stage of Arctic history—its use in WWII.

**WWII and Conflict in the Arctic**

During WWII, the Arctic was mainly used for its strategic location. In this case, the exogenous shock to the Arctic—in the form of increased militarization—created incentives to cooperate between northern states. For example, the Northern Sea Route was used during the war to bring lend-lease goods to the Soviet Union, while the Soviets were mining their own Arctic lands for nickel, ore and coal supplies, all of which were vital to wartime maintenance. At the same time, America increased its presence in the Arctic through installing military facilities in Greenland and Iceland, along with new

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100 John M. Barr, "Lend Lease to Russia," *World at War.* October-November 2012: 26-31, .
icebreakers in the area. Importantly, the governments of the home countries supported the construction and use of these bases during the war. Cooperation was further enhanced by the creation of the Permanent Board on Joint Defense between America and Canada. This board pursued a broad mandate to “consider in a broad sense the defense of the north half of the Western hemisphere” through joint defense projects, such as an early warning radar detection program.

The Arctic was a particularly contentious area because it was instrumental to keeping the Soviet army supplied. German subs were continually patrolling the Siberian coast, which proved to be a direct threat against American and Russian control of the coast. Western allied convoy ships carrying fuel, munitions, raw materials and food to Russia had to navigate a very treacherous, icy path while continually being attacked both by subs and by air strikes. Despite these hardships, Arctic convoys delivered over four million tons of vital supplies to the Soviet Union between 1941 and 1945. During this effort, more than 100 ships were lost and 3,000 soldiers died. Although the Arctic sphere is rarely remembered in histories of WWII, the cooperation between the northern countries was integral for both resupplying and protecting the Soviet armies. In the case of WWII, the exogenous condition of wartime militarization in the Arctic enhanced cooperation between the northern states mainly because they were fighting a common enemy. Thus, although cooperation was robust during the war, the Cold War period would challenge that cooperation and again put the Arctic in the spotlight.

102 Thule Air Base: Greenland, 21 February 2012, United States Air Force.
Reluctant Cooperation

The end of WWII did not signal the end of interest in the Arctic. Indeed, the Arctic became an important front in the Cold War, as the American government developed a “polar strategy” for the first time soon after the end of WWII. Although the militarization of the Arctic continued, the cooperative efforts that existed during the war increasingly broke down. Concerns from previous eras of Arctic history—especially an emphasis on sovereignty—cropped back up as the Cold War made the Arctic an increasingly important space. This legacy of tenuous cooperation on defense issues is also important to the Arctic today because, despite cooperation in a number of areas, defense and security issues are usually not discussed in international forums in the Arctic.

How did defense cooperation broadly shift from being cooperative during WWII to being tense during the Cold War? The story begins after the war as America prepared troops and sent more materials to their pre-existing Arctic bases, instead of shutting them down as had been expected after the war. This preparation was to counter an increasingly aggressive Soviet Union. One of the main reasons for this preparation was because American policymakers were nervous about the strength of Soviet airpower and knew that the Soviet strength in the Arctic provided them easy access to the North American mainland. In return, the Soviet government thought that the American posturing was aggressive and believed that America was using the circumstances to achieve Arctic hegemony.

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106 Mann.

To counter the Soviet threat, Northern countries would have to work together. However, tensions between Canada and the United States over the sovereignty implications of America’s Arctic defense ran high. In response to the Americans increased investment in defense, Canada began to assume control of all defense facilities in 1944. Despite this, America kept on requesting more airfields, more over-flight authorizations and more control towers. These requests were perceived as a threat against Canadian sovereignty.\footnote{Shelagh D. Grant. "Postwar and Cold War, 1946-91." \textit{Polar Imperative: A History of Arctic Sovereignty in North America.} Ed. Jean Wilson. 1st ed. Vancouver: Douglas & McIntyre, 2010e. 293-301. Print.} Canadian fears worsened to the point that Lester B. Pearson, then Canadian Ambassador in Washington, declared in 1946 “…[that] there is already an increasing and in some of its manifestations an unhealthy pre-occupation with the strategic aspects of the North; the staking of claims, the establishment of bases, the calculation of risks. For no country have these faint stirrings of unhallowed but all too familiar fears had a greater or more sinister significance than for Canada.”\footnote{Michael T. Fawcett. "The Politics of Sovereignty--Continental Defense and the Creation of NORAD." \textit{Canadian Military Journal} 10.2 (2010): 33-40. Print.}

While sovereignty issues continued to fester, Canada and America agreed that the threat from the Soviet Union—particularly after they developed long-range strategic bombers—was enough that they would set aside some issues to work on cooperative defense. To that end, they developed an continent wide early detection radar system that was meant to be controlled by Canada, but thanks to a lack of trained personnel, was mostly manned by American forces. This added to the tensions already existing between the countries. The radar system, called the DEW line, would give the countries a 3-6 hour advance notice of an air attack.
Although Canada feared infringements of their sovereignty based on the fact that many American forces would be stationed on their soil, they could not realistically afford to implement the DEW line on their own. After the DEW line was created, NORAD (North American Air Defense Command) was also created. The necessity of a joint command was clear, although Canada preferred to have sole control over their airspace.  

Sovereignty concerns were further heightened by the fact that British, American, and Soviet submarines were all patrolling under the ice. These submarines were a source of concern for both Denmark and Canada, who suspected that the submarines were violating their territorial waters. In response, Canada threatened to get satellite and underwater detection technology. This was in direct response to acting secretary of the

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111 Fawcett.
Canada-U.S. Permanent Joint Board on Defense J.T. Jockel’s assertion that “quite simply, the US Navy does not welcome the prospect of partners in Arctic antisubmarine warfare and is more than willing to be relied upon alone in Canadian Arctic waters.”

Denmark also protested their sovereignty claims when it was discovered that US Strategic Air Command bombers carried nuclear weapons through Denmark’s airspace for over a decade, despite Denmark’s protests. Despite these slights, in the end, defense concerns won out over sovereignty concerns for both Canada and Denmark, but those issues still festered in Arctic bilateral relationships. Cold War defense cooperation, therefore, was much more tenuous than during WWII. Although institutions like NORAD were born from the cooperative defense efforts, concerns about sovereignty precluded the development of multi-national institutions to address security and defense issues.

**Beyond Militarization: Burgeoning Institutions in the Arctic**

The festering issues of both sovereignty and defense were compounded by a major oil discovery in 1968-1969 on Alaska’s north slope. This discovery further called into question sovereignty issues between the US and Canada, since underwater oil deposits existed in a tenuous legal space. While traditionally the oceans had been subject to the freedom of the seas doctrine, events twenty years before the discovery of Alaska’s vast stores of oil had started an impetus towards a new governing system for the ocean. In 1945, President Truman had asserted exclusive jurisdiction over the nation’s continental shelf and all natural resources within it. Other states followed suit, spurring the development of offshore oil and mineral exploration. Offshore oil in the Gulf of Mexico

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had reached 400 million tons by the late 1960s, while fish stocks were showing signs of
depletion across the world.\textsuperscript{114} It became clear that without some type of multilateral
governance system, states would encroach on each other’s territory and soon the vast
natural resources contained in the ocean would be depleted.

The necessity of a mechanism like the United Nations Convention on the Law of
the Seas was thus mainly born from economic concerns; states wanted to make sure that
their territory was sufficiently delineated, while ensuring their rights to exploit natural
resources within that territory.\textsuperscript{115} While the process towards signing and ratifying
UNCLOS was extremely complicated, suffice to say that the Arctic sphere was both
governed and ignored by the original treaty. Since the UNCLOS conferences spanned the
1960s through the 1980s, the thought that the Arctic may melt sufficiently to be deemed
an exploitable ocean was far from anyone’s minds. Indeed, Article 234 (the only article to
deal with ice-covered regions) was known as the “Arctic article” and only dealt with
questions of pollution and the safety of navigation for icebreakers.\textsuperscript{116} While the Arctic is
now governed by UNCLOS, the treaty was not created with the specific circumstances of
the Arctic in mind.\textsuperscript{117} However, as we will see in the ensuing two chapters, both
economic incentives and a less contentious geopolitical stage created the environment
from which Arctic cooperation was born.

As we have already seen in this brief history of the Arctic, the cooperative
institutions that exist in the Arctic today were not always present. Indeed, throughout

\textsuperscript{115} Ibid.
\textsuperscript{116} Stuart B. Kaye. "Territorial Sea Baselines Along Ice Covered Coasts: International Practice and Limits
\textsuperscript{117} Scott Borgerson, "The Road to the Arctic," Foreign Affairs June 2008.
Arctic history, it has been exogenous economic shocks to the system—whether that is through whaling or through the discovery of offshore oil—that have created incentives for states to engage with the Arctic. States have cooperated when it has benefited them—especially during WWII and when the specter of dwindling resources inspired the creation of UNCLOS—but they have also asserted their individual interests while pursuing contentious issues like territorial disputes. The question for the next two chapters is to see how the institutions created in the latter part of the 20th century—specifically, the Arctic Council and the United Nations Law of the Sea Convention—have nurtured cooperation in the Arctic and what factors are important to evaluating that cooperation in the future.
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Chapter Four: Addressing Arctic Council Cooperation

The Birth of the Arctic Council

This past year Ólafur Ragnar Grímsson, the president of Iceland, was asked by Foreign Affairs about the future prospects for geopolitical competition or cooperation in the Arctic. After acknowledging Cold War militarization in the Arctic, Grímsson posited that “Russia, the United States, Canada, and the five Nordic countries—Finland, Sweden, Norway, Denmark, Iceland—developed through the Arctic Council a way of discussing and deciding.” He also said—in reference to the new non-Arctic nations that recently gained status as observer nations at the Arctic Council—that “I believe—or hope, at least—that these newcomers will be sophisticated enough to respect what has already been established. The Arctic will not be the Wild West.”\(^\text{118}\)

As the previous chapter has shown, the Arctic has not been the “Wild West” since early in its exploratory history. However, that does not mean that the region has been entirely cooperative. As we have seen, post-WWII cooperation in the Arctic was minimal, since institutional circumpolar governance was hampered by the Cold War rivalry between Russia and America. Only a few, relatively limited agreements—such as the Polar Bear Convention and a bilateral agreement on Barents Sea fisheries stocks\(^\text{119}\)—were completed before the tail end of the Cold War. However, starting in the late 1980s, new organizations were developed to cover predominantly environmental and indigenous peoples’ issues. These organizations were created as a result of Gorbachev’s Murmansk Initiative, a series of policies proposed by the Soviets in order to transform the Arctic from a Cold War military theater to an international “zone of peace.” While the

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Murmansk Initiative included ideas ranging from restriction on naval activity to cooperation on resource development, proposals on “soft” (non-military) issues won the day.¹²⁰

A chief outcome of this rapprochement between the Soviets and other Arctic nations was the creation of two non-governmental organizations: the International Arctic Science Committee and the Arctic Environmental Protection Strategy (AEPS) working groups, which both focused on cooperative intergovernmental strategies for the research and mapping of the Arctic. Then, in 1996, AEPS was integrated into the Arctic Council’s structure. The Arctic Council—the institution Grímsson spoke about as crucial to Arctic cooperation—is an intergovernmental forum with eight member nations and multiple Permanent Participants that addresses key Arctic issues through working groups within the Council and through non-binding declarations to its sponsor states. It came into being in 1996, supplementing the structure of Arctic governance that existed before it. The United Nations Law of the Seas Treaty (UNCLOS) is a major part of this pre-existing governance structure. Since UNCLOS came into force in 1991, it has been used to settle maritime claims around the world. These governance structures—formed out of the collapse of the Cold War—have come to define a remarkable period in Arctic cooperation, one that has outpaced any period of limited cooperation detailed in the previous chapter.

When government officials, think tank members or other interested Arctic observers talk about the future of the Arctic sphere, they rely on the history of cooperation since the late 1980’s—mainly pursued through governance structures—to

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predict that the future of the Arctic region will be similarly peaceful.\textsuperscript{121} There are two main explanations cited for why the Arctic sphere has been cooperative and will continue to be: the presence of the Arctic Council as a soft law regime and the existence of UNCLOS as a hard law regime to cover potentially contentious territorial claims. The purpose of this chapter is to investigate the first of these explanations of Arctic cooperation—the Arctic Council as a soft law regime—and situate it within its theoretical and historical context. The overarching question to be addressed is two fold. The first is investigating the effectiveness of the Arctic Council as an institution. We will investigate the strengths and weaknesses of the Arctic Council in order to see how a soft law institution has historically operated in the Arctic. We will then investigate whether predictions that the Arctic Council will adapt to new situations within the Arctic sphere are justified. By situating the Arctic Council in both its theoretical and historical contexts, its potential as a cooperative institution moving forward will be elucidated.

The Construction of the Arctic

While scientists typically define the Arctic according to longitude, tree line or temperature, in this chapter we are dealing with the concept of the Arctic as a constructed geopolitical area.\textsuperscript{122} E.C.H Keskitalo—a prominent author who deals with regime building in the Arctic—argues that an expanded notion of how the Arctic area is defined has helped create a recognized international region in the Arctic, but has also caused problems. He argues that states that have traditionally viewed their Arctic regions as a


\textsuperscript{122} What is the Arctic?, 2013, National Snow and Ice Data Center.
“frontier”—for instance Canada, America (Alaska), Greenland and Russia—see the Arctic as a distinct sphere, one where environmental and indigenous peoples concerns are an important foci that distinguishes “the north” from the rest of the country. Countries that view the Arctic as a frontier also tend to infuse the High North with almost mythic qualities; this in turn creates incentives to subsume this “wild” sphere into a quasi-governmental system to match the rest of the country. Accordingly, America, Canada and Russia have all historically wanted to conquer and control their northern lands.

However, for the Nordic countries, international cooperation in the north is not separate from the country as a whole. Nordic cooperation in the region mainly arose from the need to ally against East-West pressures during the Cold War, rather than from a shared perspective on what constituted “northern” issues. Additionally, in these countries, the indigenous and non-indigenous peoples divide is not as strong as it is in the frontier countries. Thus, although the eight Arctic nations are typically grouped together and their lands collectively referred to as “the Arctic”, it is important to remember that the histories and the motivations of the countries are distinct and that the Arctic region is more complex than the scientific definitions of the Arctic may suggest. As we will see in this chapter, state motivation for constructing institutions like the Arctic Council were varied, but all were influenced by how “the Arctic” was imagined within their own countries.

The Arctic Council: Historical Cooperation

“It is well known that, if you stand alone, you cannot survive in the Arctic. It is very important to maintain the Arctic as a region of peace and cooperation.”

Although President Putin said this quote in 2010, it equally applies to the motivations for developing the Arctic Council back in 1996. The Arctic Council stemmed from a series of meetings between the eight Arctic nations between 1989 and 1991. As we have seen, these meetings were focused on creating environmental protection standards for the increasingly delicate Arctic ecosystem, which resulted in the adoption of the Arctic Environment Protection Strategy. They were also the result of increased cooperation between the Soviet (later Russian) governments and western governments. The AEPS focused on scientific research cooperation through four main programs: Arctic Monitoring and Assessment; Protection of the Marine Environment in the Arctic; Emergency Prevention, Preparedness and Response in the Arctic; and the Conservation of Arctic Flora and Fauna. When the AEPS was absorbed into the Arctic Council in 1996, the Arctic Contaminants Program and the Sustainable Development Working Group were also added. As can be seen from the make up of these groups, the mandate was generally limited to technical, environmentally focused issues.

Specifically, the Ottawa Declaration—which formally established the Arctic Council—declared that the Council would “provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and

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other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.”¹²⁷

But why prioritize these two issues? The question of prioritization is important because it sheds light on both the original mandate of the council and how this mandate has been incorporated into its organizational structure. Both John English and E.C.H Keskitalo—significant authors dealing with the construction of legal regimes in the Arctic—argue that Canada’s role was crucial in setting the agenda of the Arctic Council. Canada—one of the countries who views the Arctic from the frontier lens described previously—has historically been heavily involved in circumpolar governance. On the practical side, Canada has the world’s longest Arctic coastline and the second-largest territory in the region; but Canada also has long had a special interest in preserving their northern identity, as seen by their attempts to expel other countries from their northern territories and claim those lands as their own.¹²⁸ This identity can perhaps be most evocatively seen in the Canadian national anthem, as the song proclaims, “with glowing hearts we see thee rise, The True North strong and free!” Thus, for both practical and identity-based reasons, Canada has been and remains a strong actor within the Arctic sphere.

Importantly for this discussion, Canada was instrumental in setting up both the Arctic Environment Protection Strategy and the Arctic Council. By helping set the agenda for both of these organizations, Canada was able to effectively marry two occasionally competing interests—environmental protection and traditional indigenous

rights—together and put both on the table for intergovernmental cooperation. The Canadian government was also instrumental in involving both indigenous peoples groups and NGOs in the Arctic Council, a move that was not initially widely accepted but was strongly pushed by activists within Canada.\textsuperscript{129} This involvement on the part of Canada helped set the environmental protection and indigenous rights agenda early and helps to explain why these two issue areas have dominated the discourse both within the Arctic Council and in the general Arctic region. As Keskitalo argues, other states with different interests to Canada accepted membership in the Arctic Council mainly because, as a “high level forum” it “has not required much from its participants. This made it possible to set up the Arctic Council although support for it and established knowledge among all parties on its suggested issues were weak.”\textsuperscript{130}

This is not to say that other countries blindly followed Canada’s initiative. Finland supported major parts of the initial Arctic Council plan, while opposing the idea that the Arctic Environmental Protection Strategy should be formalized by treaty. America similarly opposed making either the Arctic Council or the AEPS into a formalized legal instrument, preferring informal cooperation in the Arctic. In a “non-paper” about the subject given to the Canadian delegation working to create the Arctic Council, America stressed that the Council should be under rotating leadership and should subsume the environmental cooperation started under AEPS into its mandate. The Americans also specifically posited that the United States and Canada should “agree that the Arctic Council is not the appropriate forum to discuss national security and defense


issues.” According to John English, in the negotiations surrounding the creation of the Arctic Council, America opposed provisions “that presume that the Council’s mandate would extend to the domestic economic and social policies of the Arctic Governments.” As we can see, even with strong Canadian leadership, other countries intervened to make sure that the Arctic Council’s goals and mandate was relatively limited. This history, as we will see in the next section, is very relevant to the issues that the Arctic Council has faced and the theoretical underpinnings behind the council.

The Arctic Council Effectiveness as an Environmental Regime

A key assumption that underlies policymaker’s reliance on the Arctic Council today is that, since the Council has been effective in pursuing its mandate for interstate cooperation thus far, it will continue to be a vehicle for cooperation in the future. The first part of that line of thinking is correct: over its eighteen year long history, the Arctic Council has mainly been effective at producing influential scientific assessments, promoting the concerns of the indigenous peoples of the Arctic and developing important international agreements like the search and rescue agreement signed in 2011 and the oil spill preparedness agreement signed in 2013. Oran Young and Paula Kankaanpää’s survey of a large number of Arctic policymakers highlighted similar successes: a majority of the respondents thought that the Arctic Council had been successful in raising the profile of the Arctic region and promoting interstate cooperation, while it had been moderately successful at protecting the Arctic environment on a local and regional level.

The respondents also cited scientific assessments as the most effective products of the Arctic Council, while saying that concrete capacity building, the harmonization of Arctic nations strategies and changes in international agreements were significantly less effective.\textsuperscript{134}

If we look at the Arctic Council as an international environmental institution, regime theory can help answer critical question of whether the historically effective Arctic Council can adapt to the new circumstances that face the Arctic today.\textsuperscript{135} In essence, regimes are social institutions composed of agreed upon principles, norms, rules and decision-making procedures that govern the interactions of actors within specific issue areas.\textsuperscript{136} International environmental regimes are particularly important in a highly globalized world, as individual states are ill equipped to deal with trans-boundary pollution or the preservation of natural sites that are jointly claimed, like those in the Antarctic.

The Arctic Council fits the role of an international environmental regime, albeit a regime that is supplemented by a system that includes the United Nations Law of the Seas Treaty (discussed next chapter) and various treaties including the Polar Bear Treaty. As we saw in the literature review, the Arctic Council, as a soft law regime, does not have the power to create or enforce treaties.\textsuperscript{137} The agreements that they do pass—like the Search and Rescue Agreement—are not binding on states but are suggested by the


Arctic Council representatives to their colleagues back home. This structure extends to assessments created by the Arctic Councils’ working groups as well. For example, the Arctic Environmental Impact Assessments are a set of specific guidelines that help determine the positive and negative effects of a project in the Arctic. These guidelines are meant to establish a base standard for operating in the Arctic, but countries are not obliged to cooperate with them. The Council has leverage through the soft power of their extensive research capabilities, but not through the hard power of forcing countries to comply with the guidelines.  

Thus, as an environmental regime, the Arctic Council has been effective both because it has increased awareness around key issues and because it has generated certain standards of behavior that are helpful to the states that have joined the regime. For example, even though the Arctic Environmental Impact Assessment guidelines are not mandatory, both states and individual companies use them to gain a deeper understanding of the specific environmental issues that arise in the Arctic and not in other areas of operation. These roles accord well with the definition of soft law institutions that we saw in the second chapter; often, states join soft law institutions in order to gain information and lower the transaction costs of working together.

Regime effectiveness is also determined by the ability of the institution to mitigate problems, ability to politically mobilize member states and the ability to connect inhabitants of the region that it encompasses.  

The Arctic Council has successfully achieved these goals by tackling core environmental issues. The Council has mobilized action based on their working group’s recommendations: for example, the Protection of

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the Arctic Marine Environment group developed the Arctic Offshore Oil & Gas Guidelines, which member states adopted in 2002. Similarly, all eight Arctic ministers signed the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic in 2013, which made it a binding agreement. The Arctic Council also has a diverse representation. On top of the eight Arctic nations, there are twelve permanent observer nations and a host of NGO observers. There are also six indigenous groups with Permanent Participant status, meaning that they can address the group and participate fully in the working groups that make up the Council. By most counts, the Arctic Council is effective within its mandate and within its status as a non-binding, soft power regime.

Can the Arctic Council Adapt?

As important as these positive contributions have been—especially in the areas of pollution management and search and rescue response—the overarching question is whether these patterns of cooperation within the Arctic Council can persist, given new challenges in the Arctic sphere. The greatest challenge is that of climate change: as the Arctic ice melts, many pundits have predicted that we will see new resource conflicts between nations that had little incentive to engage heavily in the Arctic (apart from environmental and indigenous peoples issues) historically. Territorial claims related to resource control, increased shipping and increased travel/tourism through the area are all probable outcomes of a rapidly melting Arctic. Can the Arctic Council, as a soft law,


141 Alex Boyd, "Binding Oil Spill Agreement Signed," *Barents Observer* 2013, sec. Arctic.

environmentally based regime, adapt to these changes and become a bigger actor on the political or economic stage?

This question is best answered by examining the question of whether regimes can adapt in general. We know that, within its mandate, the Arctic Council is a relatively effective regime. However, as stated on the Arctic Portal—a website co-authored by over forty Arctic organizations—“in the next few years then, the states have a challenge of reforming the Arctic Council to better correspond to the contemporary challenges. The mandate must be broadened to cover issues other than environment as well and the restructured Council must be presented with a higher level image to equal other international actors in the Arctic region.”143 While it is easier for regimes to broaden their mandate than it is to make an entirely new regime144, the particular stresses facing the Arctic Council point to an inability to drastically expand that mandate.

These particular stresses are ones that commonly arise under environmental regimes. Oran Young, a scholar of environmental regimes, points to a number of both endogenous and exogenous stressors that can affect environmental regimes and cause them to break down. Most applicable to the situation of the Arctic Council are the internal stress of new entrants coupled with the exogenous stressors of increased socioeconomic interest and a changing environment. Young also points out that disagreement between members of a regime about what the future should look like for that organization is a significant stress factor. Young, using examples of a variety of environmental regimes, cites institutional learning and programmed review procedures as

key to an adaptive regime. Keohane, talking more broadly about regimes in general, also pointed to the fact that regimes tend to be “sticky” when there are established procedures and stakeholders in place. This appears to be true of the Arctic Council, as its formats and procedures have not greatly changed since its inception in 1996. While there is evidence that the Council sees the Arctic as a region in change, there has not yet been serious engagement within the Council as to how it can adapt for the future.

**Stressors to the Arctic Council regime: have they adapted?**

Given the theoretical difficulty of coping with multiple stressors, how has the Arctic Council as an environmental regime responded to stresses on the system? In this section, the four stressors brought up by Young above will be broken down and examined one by one in order to see how the Council has or has not adapted and what that history means for the Council moving forward.

**Exogenous stress: Climate change**

As we have seen, the Arctic Council’s mandate promoted environmental protection and sustainable development as two main pillars of the Council’s work. As climate change has become more pronounced, the issue has had a profound impact on the Council. With snow cover retreating at 17% per decade since 1979 and sea-ice coverage reaching record lows, the Arctic is feeling the effects of climate change to a greater extent than much of the world. The Arctic Council, acting alongside other governance structures like UNCLOS or the Convention for the Protection of the Marine Environment

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in the North-East Atlantic (OSPAR), has reacted to climate change concerns by coordinating regional guidelines for climate change response, drafting reports about the resilience of Arctic ecosystems, and working with other scientific organizations to improve predictions of climate change in order to analyze holistically the impact and potential responses to change in the Arctic.\footnote{Russell Shearer. "Adaptation Actions for a Changing Arctic." \textit{Senior Arctic Official Meeting}, November 14, 2012. Haparanda, Sweden. Arctic Monitoring and Assessment Programme. 2012. 12. Print.}

While climate change has been on the agenda of the Arctic Council since its inception, the 2004 Arctic Climate Impact Assessment was one of the first documents that spoke directly to the dangers of climate change in the Arctic. The ACIA was widely disseminated, but two years later during the Ministerial Meeting little was practically done beyond endorsing Arctic climate change expertise and increasing the adaptive capability of residents.\footnote{Timo Koivurova, E. C. H. Keskitalo, and Nigel Bankes. "Climate Governance in the Arctic." \textit{Environment & Policy} 50 (2009): 70-72. Print.} Since 2006, the ACIA report has inspired multiple spin-off reports from member states, including NOAA’s annual Arctic Report Card. The Arctic Council’s working groups have also produced reports on Arctic biodiversity, Arctic contaminants and black carbon and methane emissions.

The continual process of evaluating and creating reports about key environmental issues in the Arctic show that the Arctic Council has been able to adapt to the stress of a changing environment in a positive way in terms of research. While there is evidence that as a soft-law institution, the report recommendations are not easily put into practice, the Council’s reports have contributed to setting the policy agenda in the Arctic and placing climate change for consideration on the world stage.\footnote{Oran R. Young. "Whither the Arctic? Conflict or cooperation in the circumpolar north." \textit{The Polar Record} 45.1 (2009b): 79-80. Print.} Based on this record of success in
influencing decision-making processes and placing important issues into the climate change discussion, the Arctic Council could successfully adapt to this stressor by placing renewed emphasis on the relations between the Arctic Council and other governmental institutions. A glimmer of this possibility was shown in the October 2013 SOA meeting, where communications outreach was highlighted as a key issue for the Council moving forward. In addition, there is strong hope for adaptation within this stressor because of the aforementioned “stickiness” factor. Assembling working groups comprised of participants from all different countries has created an atmosphere where representatives consider each other as partners in a fight against climate change instead of defenders of specific national interests. This type of long-term, involved partnership has created a system of dealing with new problems that is likely to hold strong even with the increasing pace of climate change.\textsuperscript{152}

**Exogenous stress: Dealing with increased economic interest**

The Council is still constrained by both its mandate and its structure, while outside nations—particularly China—have established themselves in the Arctic. China has attempted to buy up real estate within Iceland and has recently established greater free trade ties and an embassy with the country. Chinese companies have also invested over $400 million in energy and mining projects in the Arctic, on top of a promise to invest $2.3 billion dollars and 3,000 workers for a British-led mine in Greenland.\textsuperscript{153} Japan


has also asserted an economic presence in the Arctic, with deliveries of liquefied natural gas arriving on their shores through Russia’s Northern Sea Route.\textsuperscript{154}

Thus, while the Arctic Council has been effective at promoting guidelines and reports about a changing Arctic, the economic and political realities of the Arctic are quickly surpassing the Council’s mandate. Even as the Council itself branches out and adapts to new actors, the Council will have little effect on the future of the Arctic without developing a greater economic focus. The sustainable development focus that the Council does have—particularly under Canada’s chairmanship theme, which is “Development for the People of the North”—appears to be focused on facilitating the economic development of indigenous small to medium sized businesses in the Arctic. While support for indigenous businesses is crucial to helping maintain a sustainable business sphere in the Arctic, the ever-increasing pace of large-scale investments seems to be outpacing the work of the Council.

This does not mean that the Council has ignored the implications of these large-scale investments. In May 2013, the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic was negotiated under the auspices of the council, making it the second legally binding instrument—along with the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue (SAR) in the Arctic—to be negotiated through the Arctic Council. Thus, there is a recognition that adverse effects can come from the increased opportunities and investment in the Arctic. However, as has been acknowledged by other commentators, these agreements mainly recognize and do not react to the problem. As the Director of the Alaska Rescue Coordination Center said,

there is a “tyranny of time and distance” when it comes to rescue operations in the Arctic. Even as accidents become increasingly probable, most rescue infrastructure is located hours away and is prohibitively expensive to transfer further north. While the seven Arctic nations have signed onto both of these binding agreements, they are mostly symbolically significant. The actual search and rescue (SAR) capabilities are still managed by the individual states, although states often work together during SAR exercises. Therefore, while there is recognition that some form of international cooperation is needed for these difficult issues, the actual work will by necessity be done by the individual states. The Arctic Council’s status as a high level forum thus helps draw attention to these issues but is unable or unwilling to engage more deeply with economic concerns.

**Endogenous stress: Reaching agreement within the Council**

As mentioned above, a significant stress factor for an environmental institution can be disagreement within the institution about its future role. In its history, the member states of the Arctic Council have had three large debates over the role and future of the institution.\(^{155}\) The first, mentioned at the beginning of this chapter, occurred as the institution was created. While some states pushed for an expanded mandate—even one that included security issues—states like the United States vehemently advocated for a limited, environmental role.

The second debate occurred around the time of the Illulisaat Declaration in 2008 (a document that will be expounded on in the following chapter.) The Illulisaat

Declaration, which was signed by the so-called “Arctic Five” nations\textsuperscript{156}, reinforced interstate cooperation on a number of issues not addressed by the Arctic Council, including the peaceful settlement of territorial disputes. The Arctic Five justified the leaving out of other Arctic nations by asserting that “[b]y 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 […] possibilities and challenges” within the Arctic.\textsuperscript{157} Statements uncovered by an Arctic scholar, Torbjørn Pedersen, show that while Canada was concerned about the Arctic Five leaving out other states and indigenous voices, Denmark believed that the increased interest in the Arctic justified the groups need to reaffirm core principles of cooperation in the Arctic. Additionally, while Norway argued for a more “political” Arctic Council, it was overruled by the United States, who believed that the Arctic Council was “unwieldy for political discussions.”\textsuperscript{158}

However, only a year later, the United States switched its position on the merits of the Arctic Five over the Arctic Council. Secretary Clinton spoke to an Arctic Five meeting, saying that “significant international discussions on Arctic issues should include those who have legitimate interests in the region.” She further went on to say, “I hope the Arctic will always showcase our ability to work together, not create new divisions.”\textsuperscript{159} These comments contravened America’s support for the Arctic Five only a year earlier. While the reasons for this switch are unclear (beyond a switch in the administration), what is clear is that Russia continued to prefer a strong role for the Arctic Five. Russia

\textsuperscript{156} The “Arctic Five” are Canada, Denmark, Norway, Russia and the United States.


\textsuperscript{158} Pedersen.

\textsuperscript{159} Atle Staalesen, "Formalizing the Arctic G5," Barents Observer 30 March 2010, sec. Politics.
generally opposed the introduction of new observer states and believed that the Arctic region should be managed by those states that had direct stake in it.\textsuperscript{160}

Even from this brief history, we can see that the members of the Arctic Council have disagreed in the past about how the Arctic Council should be structured moving forward. While the Arctic Council is still the foremost interstate body in the Arctic, the Arctic Five meetings have not been abandoned; there was an Arctic Five meeting as recently as February 2013. The debate over the future of the Arctic Council as a political body seems to have quieted down for the moment, but these type of latent disagreements do not bode well for the strengthening of cooperation within the Council.

\textbf{Endogenous stress: Incorporating outside voices}

The final stressor that can affect regimes like the Arctic Council is how to increase the incorporation of other actors. A year ago, along with the eight Arctic nations and the Permanent Participants, there were six non-Arctic countries with observer status: France, Germany, the Netherlands, UK, Poland and Spain. The Netherlands reflected a common goal of these long standing observer nations when a representative from the Netherlands, speaking about the cooperation of Arctic and non-Arctic states, said that the Arctic is “fragile, and especially vulnerable to influences, including harmful substances, originating in the outside world” and that the Netherlands would “do what we can to support the activities of the Arctic Council directly.”\textsuperscript{161}

These long-standing observer nations were supplemented in May 2013, when the Council added six more observer nations: China, India, Singapore, Japan, South Korea

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and Italy. While observer nations cannot fully participate in the work of the Council, the acceptance of new member states signals a greater inclusion of non-Arctic states in the debates over the future of the Arctic. Commentators generally were not surprised that non-Arctic states desired a place at the table, acknowledging that potential economic gains, particularly in shipping, drew countries like China to the Arctic. The former Chinese ambassador to Norway illustrated China’s interest by saying that “China has the right to engage in Arctic scientific research and navigation and has the willingness and capability to contribute to the work of the Arctic Council.”

Despite the Arctic Council not having mandated duties over resource extraction or shipping, Asian states were still eager to join the Arctic Council. Involving these countries into the Arctic decision making process can be beneficial in that new countries will be incentivized to comply with voluntary agreements passed by the council. The new countries also add both a monetary and a legitimating force to the Arctic Council, both items that will be crucial to the Council moving forward. However, although the Council does not lose out by including new nations into their discussions, it does not mean that simply including new voices will help the Council adapt to shifting economic and political realities.

In addition, adding these new voices to the Arctic Council can have negative repercussions. As we have seen, Russia opposed adding new countries to the Council from the beginning; since Russia has a large influence on the Arctic Council, it is

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unlikely that the new states will have much of a voice in Arctic affairs. In addition, the mainly mute voice of observer nations within the Council produces a tension with the fact that states like China and India are being proactive in the Arctic outside of the Council. While it is unlikely that China and India will try to force themselves into a greater participatory role in the Arctic Council, their actions outside of the body may contribute to the Council playing an ever more negligible role in important issues outside of the environmental sphere.

Overall, the Arctic Council seems unlikely to be able to fully adapt to new stressors within the Arctic. As a soft law institution, the Arctic Council has been effective at creating a norm of cooperation in the Arctic. While the Council is likely to continue its record of effective cooperation on environmental affairs, problems of increased economic interest and outside state interest have not been sufficiently addressed. As we saw in the historical review chapter, this lack of adaptation to economic shocks can affect institutionalization in the Arctic; moving forward, it is possible that the Arctic Council will be relegated to a smaller role within the Arctic. While these adaptability problems are not likely to cause the Arctic Council to lose its mandate within the Arctic, they do suggest that new ways of thinking about how to act cooperatively on economic issues in the Arctic are necessary.
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Chapter Five: UN Convention on the Law of the Sea Mediation

UNCLOS and the Arctic

As we learned in the previous chapter, in May 2008, the Arctic Five came together in Ilulissat, Greenland to discuss the future of the Arctic sphere. The conference itself arose out of concerns about two jurisdictional issues that came to a head during 2007: the controversy between Canada and Denmark over Hands Island and the planting of the Russian flag on the seabed underneath the North Pole. Out of the conference came the Ilulissat Declaration. In the declaration, the Arctic Five discussed the international legal frameworks of the Arctic, with a special focus on the United Nations Law of the Sea Treaty. The nations noted that 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, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea” while declaring their commitment “to this legal framework and to the orderly settlement of any possible overlapping claims.” To end the declaration, the five nations asserted, “we therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.”

The Ilulissat Declaration—with its determination that the current legal regime was enough to govern the Arctic—was written in response to a number of important issues, with perhaps the most important being the perceived lack of governance in the Arctic itself. Commentators after the Russian flag plant in 2007 spoke of renewed rivalries over sovereignty that had tapered off after the Cold War and a potential rush for

165 “The Ilulissat Declaration”.
resources.\textsuperscript{167} The unexpected nature of the flag plant—even though it was part of a sanctioned underwater ridge claim intended for UNCLOS mediation—touched a nerve relating to early exploration efforts of the Arctic, when a planted flag was indicative of a new claim. Before the conference in 2008, outside Arctic actors—most notably within the European parliament—spoke about the need to create a binding legal regime similar to the Antarctic Treaty for the Arctic region.\textsuperscript{168} While these outside calls had predated the Russian flag plant, the attention from the flag plant further incentivized the Danish representatives to call a conference of the Arctic Five to address the concerns about the international legal regime.

By most accounts, the Danish delegation issued the invitation to the Ilulissat conference in order to “reinforce a consensus that the parties were committed to an orderly management of the Arctic Ocean”, specifically through UNCLOS.\textsuperscript{169} While some European parliamentarians were calling for an Arctic Treaty—modeled on the Antarctic Treaty that set aside Antarctica as a scientific preserve and a global commons\textsuperscript{170}—the nations that came to Ilulissat were not interested in the further internationalization of the Arctic sphere. However, the important item to note is that the Ilulissat Conference was organized in direct response to increased interest in the Arctic.\textsuperscript{171} As the economic interest in the Arctic grew, there was a question of whether the Arctic would continue on

\textsuperscript{167} For example, see: Paul Reynolds, "Russia Ahead in Arctic 'Gold Rush'," BBC News 1 August 2007, sec. Special Reports.


\textsuperscript{171} Pedersen.
its cooperative path.\textsuperscript{172} As we saw in Chapter Three, historical precedent for a breakdown of cooperation in the Arctic in the face of economic interest exists; the question addressed at Illulisaat was predominantly about how to ensure that the economic interest in the Arctic did not disrupt the cooperative efforts in the region. Thus, while it is unsurprising that the Arctic coastal states would resist efforts to make the Arctic into a global commons, the idea sponsored by top Arctic delegates that the UNCLOS regime would be enough to deal with a changing Arctic should be examined.

The questions to be addressed in this chapter—similar to the previous chapter about the Arctic Council—stem from the acknowledgment by the Arctic Five that the current international legal regime for the Arctic—most notably, the United Nations Convention on the Law of the Seas—is adequate for the changing circumstances of the Arctic. This chapter will attempt to answer whether UNCLOS is indeed adequate by viewing the efficacy of UNCLOS—particularly its mechanism for mediating territorial disputes within the Arctic—through an institutional lens. We will then address a major territorial dispute case between Norway and Russia that was settled in 2010 in order to view the impact of UNCLOS mediation on that conflict. The chapter will then conclude with a look at currently existing conflicts and how UNCLOS has played a role in conflicts that have not been settled in order to more fully explore the effectiveness of UNCLOS in the Arctic.

**Brief Description of UNCLOS**

Before analyzing the successes and potential problems of the United Nations Convention on the Law of the Seas (UNCLOS) regime in the Arctic, it is important to

give a brief description of what UNCLOS is and why it is important in the High North. At its core, UNCLOS is a “constitution for the oceans”\textsuperscript{173}; it defines both the rights and responsibilities of nations when they use the world’s oceans. UNCLOS provides a regulatory framework for the use of the world’s oceans in order to ensure both the conservation and equitable usage of marine resources. Importantly for this discussion, UNCLOS also addresses the amount of area that a state is allowed to claim. Furthermore, in case of tension between areas that have overlapping state claims, UNCLOS provides for dispute mediation through three avenues: the International Tribunal for the Law of the Sea, the International Court of Justice or international arbitration under UNCLOS itself.\textsuperscript{174} The applicability of these avenues to the Arctic will be explained in a later section.

Overall, in the High North, UNCLOS is the primary legal mechanism that governs territorial claims. Importantly for the Arctic, the treaty sets different boundaries (all measured from an initial baseline) that extend from the coast into the open water. There are six categories of territorial boundaries (shown below.) Briefly, internal waters are zones of full sovereignty: states can regulate navigation and natural resource exploitation, while denying foreign nations lack of passage. The territorial zone, extending out 12 nautical miles, continues the right of states to regulate natural resources but foreign nations are allowed “innocent passage” through these waters. The next 12 nautical miles, known as the contiguous zone, is a space where states are allowed to enforce anti-smuggling laws and prohibit illegal immigration activities. Within the


Exclusive Economic Zone, which extends 200 nautical miles beyond the baseline, a state is empowered to explore and use marine resources. Thus, within that zone, a state has the exclusive right to fish, drill for oil, conduct research or do other economic activities.

Finally, the continental shelf limit can provide an extension of a state’s right to explore and use marine resources. Under UNCLOS Article 76, the continental shelf is the stretch of seabed adjacent to the shores of a particular country to which it belongs. An extended continental claim allows a country to claim territory beyond the 200 nautical mile limit mandated by the EEZ. A country can claim an extended continental shelf by submitting documentation to the UN Commission on the Limits of the Continental Shelf within ten years of ratification of UNCLOS. So far, this has meant that four out of the five coastal Arctic states have submitted or are in the process of submitting extended continental shelf claims (America is the only one who has not begun the process, given that they have not ratified UNCLOS.) The benefit of submitting an extended continental shelf claim is clear; under UNCLOS, states have exclusive rights to harvest mineral and non-living material in the sub-soil (like petroleum or natural gas.)

Disputes in the Arctic: Who Owns the North Pole? Who decides?
The potential problem in the Arctic is that the four states’ extended continental shelf claims overlap with each other. This produces tensions about who controls what

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176 Isted.
areas. A contentious issue today deals with a roughly circular area around the North Pole that is beyond the reach of any states’ exclusive economic zone. This territory is unclaimed, since in order to claim more territory, states must submit proof to the Commission on the Limits of the Continental Shelf (CLCS) that the area in question is geologically linked to their existing continental shelf.\textsuperscript{180} The CLCS is a group made up of twenty-one members chosen for their expertise in geology, geophysics and hydrography. These members then review state applications about the extent of their continental shelf and issue recommendations. Should a coastal state agree to establish the limits of their shelf according to the council’s recommendations, those limits become “final and binding.”\textsuperscript{181} However, these limits are final and binding only for the coastal state that submitted the claim.\textsuperscript{182}

The Commission on the Limits of the Continental Shelf plays an important role in the Arctic because the limits of state’s continental shelves are not evident. In order to lay claim to the territory around the North Pole, Russia, Denmark and Canada have all expressed interest in the 1,100-mile long Lomonosov Ridge. While the ridge itself is rich in oil, gas and metals, its extension underneath the North Pole is what makes it very attractive to the states that seek to claim it as part of their extended continental shelf. Since the ridge extends from the New Siberian Islands in Russia all the way to Canada’s Ellesmere Island, proof that the ridge belongs to a country could vastly increase the territorial claims of whatever country provides the strongest claim.\textsuperscript{183}

\textsuperscript{181} Commission on the Limits of the Continental Shelf (CLCS): Purpose, functions and sessions, 2012, United Nations.
\textsuperscript{182} Ibid.
\textsuperscript{183} The Arctic is Melting and Relations are Heating, 2012, Canadian Forum for Policy Research.
In 2001, Russia claimed 460,800 square miles of the open territory around the North Pole (an area roughly the size of Western Europe). Russia’s claim relies on the contention that the 1,100 mile long Lomonosov Ridge connects Russia to the North Pole. This claim is disputed by the other Arctic nations, resulting in a myriad of exploratory efforts to try to claim the ridge for themselves. These efforts intensified after 2007, when Russia began substantial work on scientific research to prove their Lomonosov Ridge claim. A further Russian submission to the CLCS in 2009 reinforced the Russian case. Denmark is widely expected to claim the Lomonosov Ridge by late 2014, when their claim

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is due to the CLCS.\textsuperscript{186} Surprisingly, Canada only submitted a partial claim in early December 2013, when their claim was due. Initial speculation thought that the partial submission was due to a lack of hard data about their claims to the North Pole.\textsuperscript{187} However, this setback has not reduced their desire to submit a fully updated claim sometime in the near future. Indeed, immediately after Canada’s partial submission to the CLCS their Foreign Minister, John Baird, stated that “We have asked our officials and scientists to do additional and necessary work to ensure that a submission for the full extent of the continental shelf in the Arctic includes Canada’s claim to the North Pole”\textsuperscript{188}, making it clear that the claim presented to the CLCS was not the full claim Canada intends to seek. As discussed in the first chapter, in response to the submission of Canada’s initial claims, Russian President Putin elaborated on Russia’s interest in the Arctic in a December 20\textsuperscript{th} speech, saying that Russia must have "all the levers to protect its security and national interests" in the Arctic, adding that the Ministry of Defense should "pay special attention to infrastructure deployment and military units on the Arctic direction."\textsuperscript{189}

\textbf{UNCLOS and CLCS mediation in the Arctic: Are institutions effective?}

The Lomonosov Ridge dispute brings up interesting questions about the efficacy of UNCLOS in the Arctic. Typically, treaties are effective at mediating territorial disputes when they address one or more levels of the dispute. In other words, treaties can be effective on three levels. The first level involves creating a governance norm: treaties can

\begin{footnotesize}
\textsuperscript{187} Steven Chase, "Arctic claim will include North Pole, Baird pledges as Canada delays full seabed bid," The Globe and Mail 9 December 2013, , sec. Politics.
\textsuperscript{188} Max Paris, "Canada's claim to Arctic riches includes the North Pole: Leona Aglukkaq and John Baird talk about the science behind Canada's bid," CBC News 9 December 2013, , sec. Politics.
\textsuperscript{189} Canada lays claim to seabed below North Pole, 1 January 2014, Oilprice.
\end{footnotesize}
create a shared norm under which disputes are settled. The second level of effectiveness is when the treaty sets up a system by which disputes are resolved. The third level of effectiveness is when this dispute system has “teeth”, or is able to enforce its own rulings.

How does UNCLOS—specifically in this case, through the CLCS—fit into this three-pronged approach? At the most basic level, treaties are effective when they create norms of behavior that states follow. In the case of UNCLOS, the mere use of the Commission on the Limits of the Continental Shelf represents a success for legal governance in the Arctic. By submitting claims through the CLCS, states in the Arctic have shown that they value the organization and its scientific expertise. States like Russia and Canada have spent a decade of time and millions of dollars in scientific research to make their CLCS claims, an endeavor that states would be unlikely to invest in if they believed that claims outside of the CLCS system were equally valid. Moreover, as we have seen, states have been attentive to the deadlines set out by UNCLOS. Every state in the Arctic that has ratified UNCLOS (which is every state besides America) has submitted claims to the CLCS—or plans to—in accordance with the 10-year post ratification rule. Indeed, Canada’s hastened partial submission in December 2013 only makes sense when it is viewed as an attempt to stay within the letter of the law set out by UNCLOS—a fuller submission would have taken more time than that allotted by the 10

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year rule.\textsuperscript{194} Thus, although the claims themselves may be contentious, Arctic states have recognized the value of the CLCS in reviewing and issuing recommendations about continental shelf claims.

Has UNCLOS—through the CLCS system—been effective beyond setting governance norms? Has the Commission on the Limits of the Continental Shelf had an impact on territorial dispute solution? And if it has been effective, how far does the CLCS mandate extend? Fortunately, in the Arctic, there is a particularly instructive case that combines these questions and comes out with a positive view of the role of the CLCS in mediating boundary disputes. As we will see, the Commission on the Limits of the Continental Shelf helped bring about a remarkable case of bilateral cooperation in the Arctic. After examining this case, we will have a better understanding of the strengths and limits of CLCS—and by extension, UNCLOS—in mediating disputes in the Arctic. In the case that we find limitations beyond which the CLCS is unable to help, we will then look at other avenues of dispute resolution under UNCLOS and their potential use in the Arctic.

CLCS and the Barents Sea Dispute: Investigating CLCS Effectiveness

The instructive case that shines a light on the role of the CLCS in Arctic boundary disputes concerns a long-festering dispute between Russia and Norway over territory in the Barents Sea. At stake was an area of over 175,000 square kilometers, which is bigger than both Ireland and Portugal combined. The disputed area itself is the home of large stores of oil and productive fisheries, in addition to being the gateway to Russia’s only year-round ice free port at Murmansk. During a state visit to Norway in 2010, President Medvedev and Prime Minister Stoltenberg signed an agreement on the delimitation of maritime zones in the strategic region, bringing over forty years of negotiation to an end. Sergei Lavrov, Russia’s foreign minister, wrote an op-ed in the Global Mail a few months later where he said that although UNCLOS “does not outline

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specific policy answers to all the challenges we face in the North” it “represents the primary and indispensable legal basis for future negotiations and co-operation concerning the Arctic region.”197

But why was UNCLOS effective in helping mediate this dispute in 2010, when debates had been swirling around the area for over forty years? A key part of the solution, I will argue, was a decision by the CLCS on Norway’s continental shelf claims just a year before the Norway-Russia dispute was settled. As we will see, the norms set forth by UNCLOS regarding maritime delimitation of borders had been affecting both Norway and Russia’s claims throughout the forty year history of the dispute, but it was not until the CLCS recommendation that Norway settle its dispute with Russia over the Barents Sea that formal progress was made. Although there are other factors that influenced the decision, we will see that the historical arc of the conflict helps illuminate the power of UNCLOS in helping to mediate these types of disputes.

A History of the Barents Sea Dispute

When formal negotiations over the resource-rich area started in 1974, both Norway and Russia had clear visions of where the proper boundary lines should be. Norway based its original claim on the “median line” principle, a theory that draws boundaries at an equidistant point between the coastlines of two countries.198 Norway’s reliance on the median line principle was in accordance with standard practice that was integrated into the text of UNCLOS six years later. UNCLOS mandates that the boundary line for a continental shelf claim is the median line between the two states coasts, unless

another boundary is justified by “special circumstances”—an idea that had its roots in the 1958 Convention on the Continental Shelf. For its part, Russia had long argued that special circumstances were indeed present. Russia claimed that the disproportionality between the length of the coastlines and the special circumstances surrounding Svalbard Island (owned by Norway but operated jointly), along with Russia’s greater economic and security interests, meant that the boundary for the EEZ and the continental shelf should follow a pre-existing sector line and not the median boundary between the states.

However, with Russian ratification of UNCLOS, the previously nonnegotiable claim based on sector theory became implicitly negotiable. Under UNCLOS, an “equitable solution” of the delimitation of continental shelves and exclusive economic zones “shall be effected by agreement on the basis of international law…as referred to…in the statute of the International Court of Justice.” The International Court of Justice—ruling in similar delimitation cases—has relied on the median line principle and has limited “relevant circumstances” to include permanent characteristics of the neighboring territories, like the length of a state’s coastline or the presence of any islands within the contested area. Historical sector claims—like those put forth by Russia—are not part of these relevant circumstances. Thus, both UNCLOS and the ICJ set up focal points—as discussed in Chapter Two—that were supported by international law, which excluded other legal norms like the principle of historical waters or sector theory.

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201 Ibid.

Although Norway and Russia did not choose to take this case to the ICJ (since Russia has explicitly not accepted the jurisdiction of the ICJ), the general precedents from the ICJ have constricted the claims set forth by the Russians.

Thus, disagreement over the boundary line continued through the decades, even after both states had ratified UNCLOS. This can be partially explained by the fact that the wording of UNCLOS surrounding maritime delimitation—specifically that “the delimitation of the exclusive economic zone [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution”—was taken from the 1958 Convention on the Continental Shelf directly. Until 2007, when Norway and Russia decided on a slight northern extension of the 1957 boundary line, there was little progress made regarding the delimitation of the boundary. The only bilateral cooperation of note was the so-called Gray Zone Agreement, which was a provisional agreement meant to solve unanswered questions about fishery and resource access in the Barents Sea between the two states.

Thus, with very little exception, Norway and Russia stuck to their preconceived notions of what the boundary in the Barents Sea should look like for over forty years. This forty year time period included transitions between governmental structures, as well as a shift to the UNCLOS regime. This lack of movement on the boundary question is indicative of a number of issues, although it is interesting to note that throughout the process both countries have respected international law as the only valid means of

establishing delimitation boundaries. In the period up to the late 2000s, it seems that UNCLOS has served as more of a constraint on this contentious boundary dispute, rather than helping achieve a peaceful settlement of it. For example, while Norway and Russia attempted bilateral negotiations, neither one was incentivized to take the issue to the International Court of Justice or the International Tribunal for the Law of the Seas, although both paths of mediation are available for boundary disputes.205

Why was the dispute solved? Common explanations

Therefore it may seem surprising that such a long-standing dispute was solved quickly and painlessly by bilateral negotiation in 2010. However, when we look at external factors and how those factors were impacted by the preexistence of a hard law regime, we can see the impact of international institutions on solving this contentious issue. Although some commentators argue that the biggest external factor that helped solve this dispute—after decades of negotiations—was the economic incentive for both states to settle the dispute,206 a purely economic argument does not make sense. Oil deposits in the Barents Sea area had long been expected to yield significant oil reserves. While these expectations have been recently confirmed by the discovery of between 60-160 million barrels of oil and 140 billion cubic meters of gas in Norway’s northern Arctic waters,207 suspected deposits were a factor throughout the decades of negotiations. In addition, the importance of the area’s fisheries was acknowledged explicitly through bilateral cooperation agreements between Norway and Russia. The Executive Director of the Arctic Institute, for his part, saw the delimitation agreement as a positive economic

step between the two countries that would “offer the basis for an active energy dialogue, the exchange of knowledge on hydrocarbon exploitation, and new partnerships between Norway and the Russian Federation.” Since 2010, this economic cooperation has manifested itself most clearly in an important joint oil development project between Norway’s Statoil and Russia’s Rosneft in the Barents Sea that was finalized in May 2012.

In the aftermath of the border delimitation treaty, commentators lumped together Russia’s desire to be a constructive international actor, resolve costly territorial disputes and support UNCLOS as key factors for why the agreement was signed in 2010. Russian policymakers and think tanks underscored this point both before and in the aftermath of the decision. In Russia’s Arctic Strategy—released in 2009 but with an eye towards 2020 and beyond—there was a strong emphasis on international cooperation. Specifically, the strategy called for “improvement…[in] international cooperation in the Arctic on the basis of international legal norms and the Russian Federation’s international responsibilities.” This sentiment was echoed at the joint press conference given President Medvedev and Prime Minister Stoltenberg after the delimitation treaty was signed; both men spoke about the agreement being a result of meticulous effort on the

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basis of international law, which is of great importance to both coastal states. Furthermore, Sergey Lavrov—the Russian Foreign Minister—emphasized the constructive nature of the agreement during a 2010 article about strengthening NATO-Russian ties. He wrote about the delimitation treaty as an example of how “the climate has warmed in international life”, and how the treaty has showed the “inevitability of solving any problems in the Arctic on the basis of international law, including the UN Convention on the Law of the Sea.”

Therefore, there is substantial evidence that although UNCLOS did not solve the boundary dispute immediately upon its ratification in the late 90s by Norway and Russia, it still played an important role in the 2010 negotiations. It played this role by giving states a common language to work under (as seen in its evocation by both Norwegian and Russian policymakers), which is the first mechanism by which treaties are effective.

**Importance of the CLCS in the mediation process**

The second mechanism by which treaties are effective is by setting up clear ways by which states can mediate disputes. As we saw in Chapter 2, scholars have written about the impact of international law in terms of setting a focal point for negotiations. Huth, Croco and Appel suggest that when there are clear legal principles available and one state’s legal claim is stronger than another’s, the division of territory suggested by the applicable international law is likely to be accepted by the states party to the dispute. We already saw that UNCLOS and the ICJ set up legal focal points that helped establish that Norway had a stronger legal claims under international law. As we will see

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in this section, UNCLOS provided a further focal point for territorial dispute negotiations in the Barents Sea and helped ensure a successful end to the forty-year dispute.

How did UNCLOS provide a focal point for the border delimitation negotiations? As mentioned before, Norway and Russia avoided using the binding dispute resolution processes found in UNCLOS (which would involve referring their boundary dispute to ICJ or ITLOS)\(^\text{215}\). Instead, both states have accepted the authority of the CLCS (under UNCLOS) in recommending continental shelf delimitations. Examining the wording of the CLCS recommendation on Norway’s application elucidates the helpful role that the CLCS had in solving the boundary dispute between Norway and Russia.

In 2006, when Norway submitted its continental shelf requests to the CLCS, the boundary dispute with Russia was accepted as a complicating factor to the clear settlement of their continental shelf. In 2009, the CLCS incorporated Norway’s requests into its continental shelf recommendations, thus adding three new areas to Norway’s continental shelf. However, there was one important recommendation that the CLCS made in regards to Norway’s claim in the Barents Sea: while acknowledging Norway’s continental shelf claim, the CLCS also pointed out that Norway and Russia “share entitlement to the seabed and subsoil located beyond 200 M in this part of the Barents Sea [the so-called “Loop Hole”] as the natural prolongations of their land territories.”\(^\text{216}\)

This meant that Norway’s maritime boundaries would not be fully complete until they did as the CLCS recommended and finalized boundary delimitation with Russia.


Specifically, the CLCS declared “only a bilateral delimitation between Norway and the Russian Federation remains to be carried out to delineate the extent of each coastal State’s continental shelf in the Loop Hole.” The CLCS further recommended that “Norway proceed with the delimitation of the continental shelf beyond 200 M in the Loop Hole by agreement with the Russian Federation” and once that was done, Norway should “deposit with the Secretary-General of the United Nations charts, or a list of geographical coordinates of points, showing the line of delimitation of the continental shelf beyond 200 nautical miles.” Thus, the CLCS provided a clear road map for Norway if they wanted to formalize their continental shelf claims: settle the dispute with Russia through bilateral negotiation.

The fact that the bilateral delimitation treaty was announced less than a year after the CLCS recommended a formal boundary—after forty years of intransience between Norway and Russia—suggests that the mechanism for resolving continental shelf claims under UNCLOS has had a tangible effect. States that had preexisting reasons to care about the boundary delimitation—such as the economic reasons outlined above—used the CLCS in order to legitimize their own claims and to legitimize the international system under which the CLCS was set up. Although a defined boundary was recognized as important by both states, the recommendations of the CLCS and the focal points set up by UNCLOS and the ICJ were integral to creating a boundary treaty that was amenable to both sides.

Notwithstanding the success of the CLCS in this case, it is interesting to note that the third mechanism by which a treaty can be effective—namely through the binding

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217 Ibid.
218 Ibid.
resolution of disputes—was not used in this case. UNCLOS in general provides for the compulsory third party settlement of disputes, using the International Court of Justice, ITLOS or other mediation. However, for maritime boundary disputes there is an exception to the compulsory settlement rule. For maritime boundary disputes, states are still subject to compulsory mediation for cases arising after UNCLOS enter into force. 219 However, since the Norway-Russia dispute was simmering for forty years, compulsory settlement under UNCLOS did not apply. This is true of most disputes in the Arctic; the disputes are so long-standing that they would not be subject to compulsory settlement. While some maritime delimitation claims in this area have gone to the ICJ—such as the case between Denmark and Norway over a contentious boundary dispute that was settled by the ICJ in 1998—both states in that case were party to an optional clause that allowed adjudication by the ICJ. 220 The refusal of Norway and Russia to bring this case to a binding dispute mediator, especially considering the economic and security implications of the area in question, calls into question the efficacy of mediation by treaty in the Arctic sphere.

The efficacy of UNCLOS in solving boundary disputes in the Arctic can also be examined by comparing the Barents Sea and the Beaufort Sea disputes. The Beaufort Sea dispute between Canada and America shares many of the same traits as the Barents Sea dispute, with one crucial exception: one party in the Beaufort Sea dispute—namely the United States—has not ratified UNCLOS. As we saw, UNCLOS was effective at mediation in the previous case because it was able to set up legal focal points and incentivize the creation of a mutually agreeable boundary. While the CLCS was effective

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in the earlier dispute examined, a key prerequisite for its effectiveness was the fact that both parties in the dispute were members of the UNCLOS regime. The method of solving the dispute was thus not intertwined with the dispute itself; since both parties were pre-existing members of UNCLOS, international law provided a relatively clear way out of the dispute.

When we look at the Beaufort Sea dispute, there are objectively many similarities with the Barents Sea dispute. Like the Barents Sea, a substantial section of the Beaufort Sea (about 8,100 square nautical miles)\(^{222}\) is claimed by both the United States and Canada, with the maritime boundary unclear.\(^{223}\) The Beaufort Sea itself contains vast hydrocarbon resources\(^{224}\): seismic surveys and exploratory wells have already established that the seabed in the area contain oil and gas reserves comparable to Prudhoe Bay, Alaska which is the largest oil field in all of North America.\(^{225}\) Clearly, this has made the area economically important to both states as the ice has receded. Additionally, like the Barents Sea, the maritime delimitation dispute over the Beaufort Sea has been going on—officially—since 1976. Canada and America’s claims break down in much the same way as Russia and Norway’s claims in the Barents Sea. Canada believes that there are special circumstances—mainly the existence of a 1825 treaty that Canada believes set both the land and maritime boundary at the 141\(^{st}\) meridian—while America believes that the disputed area should be divided by a median line where every point on the boundary is


\(^{223}\) Ibid.


equal distance from both coasts. Due to the geography of the Alaskan coast, the American definition would place more of the disputed territory within America’s coastal economic zone.

The fundamental differences between these two state claims have inhibited a resolution to the dispute, although it has not hindered joint efforts to map the seabed in the Beaufort Sea beyond the 200 nautical mile limit. In fact, it is these joint exploratory efforts that have raised the stakes of the dispute. During joint mapping exercises, the Canadian and American scientists discovered that both countries’ seabeds are likely to extend much further north to the North Pole than previously expected, thereby doubling or even tripling the area in contention. Ironically, given the geography of the coast further north, America’s equidistance formula would give a greater share of the seabed to Canada, while Canada’s longitude-line formula for the boundary would give the U.S. more seabed territory in the outer Beaufort.

Michael Byers, a prominent Arctic scholar who was one of the people to bring forward this irony, has argued that the territorial overlap may lead to an easier negotiated settlement between the two states. As Byers argues, “either state could unilaterally recognize the other’s position, on the explicit basis that it applied both within and beyond 200 nautical miles”, which would mean that each state gains or loses in either the EEZ or the continental shelf. The problem with that solution is that there is not a clear win-win delimitation that benefits both states equally. Furthermore, although there has been extensive seabed exploration on the part of both states, Canada did not include that

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227 Baker and Byers, 71-72.
228 Baker and Byers, 86.
information in the partial submission they made to the CLCS in December 2013. Thus, the boundary delimitation dispute continues to simmer, even though the Canadian government’s 2010 Speech to the Throne indicated their desire to “work with other northern countries to settle boundary disagreements.”

The lack of progress on this contentious boundary sits in contrast to the delimitation boundary negotiated by Norway and Russia. Although the circumstances are remarkably similar and a finalized delimitation would be beneficial to both states, there has not been much constructive work on negotiating the boundary (at least in public record.) Part of this lack of movement is due to UNCLOS. Although America recognizes UNCLOS as customary international law, there is no incentive for them to bring the case before a meditative body. The US and Canada had voluntarily brought a maritime boundary case to the ICJ in 1984 due to disagreement over another important natural resource—fish stocks. However, both states were dissatisfied with the ICJ’s decision—which relied on both coastal and political geographical factors to render an equitable decision—so they are unlikely to resort to that type of binding resolution in this case. This is particularly true given the large resource interests at stake. Additionally, considering that America is not party to UNCLOS, they will not be submitting continental shelf claims to the CLCS as Canada did only a few months ago. Even if the CLCS recommends a solution to the boundary dispute when Canada informs them of their full submission, as they did with Norway, America does not have the same legal incentives to fix a boundary dispute as Russia did. Russia believes that having all boundary disputes neatly settled would help their CLCS claim; although America accepts

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UNCLOS as customary international law, they do not have the same pressure to settle their boundary disputes as Russia did with Norway.

**UNCLOS Efficacy Revisited**

Therefore, UNCLOS—in particular the CLCS—has a mixed record in the Arctic. On the overall question of whether UNCLOS as an institution is important to the Arctic, it seems clear that the answer is yes. Even if the binding dispute mechanisms are not highly effective, the fact that states believe that UNCLOS is a helpful mediator in the Arctic strengthens its value. Instead of unilaterally claiming resources, states have shown that they value the recommendations of the CLCS and believe that UNCLOS is integral to future cooperative efforts in the Arctic. UNCLOS, as a pre-existing institution, has also been effective at settling disputes where both states are parties because it has set up focal points for negotiations. However, while it has provided incentives for states to neatly settle their boundary disputes in some cases, other cases are not so easily solved. In particular, disputes where the United States is a party are a challenge to the UNCLOS regime. UNCLOS depends on state adherence to its legal norms, since it lacks clear enforcement mechanisms to mediate disputes against state wishes. For the moment, it appears that relying on state adherence is enough; states rely on international law because there are clear benefits to effectively defining their territory. More contentious disputes in the future, such as the dispute over the North Pole, may test this calculus; while UNCLOS has been effective in the Arctic to this point, the existence of multiple long-standing disputes that have not been solved point to challenges moving forward.
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Conclusions
The Shadow of an Ice Free Future

As we have seen over the course of this paper, continued cooperation in the Arctic is not a foregone conclusion; it is something to be strived for and something that both the hard law institution of UNCLOS and the soft law institution of the Arctic Council have helped shape. Even though both institutions have limitations on their effectiveness—the Arctic Council, by its environmental mandate and UNCLOS by its membership and its lack of genuine enforcement mechanisms—it is true that both types of institutions have been effective at creating a culture of cooperation in the Arctic. The previous analysis has shown that, despite these important limitations, both the hard and soft law institutions in the Arctic are effective because they create norms of behavior. The Arctic Council, since its creation, has supported environmental sustainability and the protection of indigenous groups. In the two decades since its creation, the Arctic Council has also supported and—to some extent—created a norm of cooperation in the Arctic. UNCLOS has similarly created a norm by which states in the Arctic acknowledge and participate in a regime that governs their territorial claims. Thus, both types of institutions in the Arctic have created norms by which states act and interact with each other.

These norms—as well as the good interstate relations that characterize the Arctic—are dependent on each state accepting that the institution in question provides a beneficial structure for their future goals. For example, the compromise struck between Norway and Russia over the Barents Sea makes sense from an institutionalist perspective because both states could expect to interact with each other in the Arctic in the future. President Medvedev made this anticipated cooperation clear when he spoke of his

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expectation that “this will open the way for many joint projects, especially in the area of energy” between Norway and Russia.\textsuperscript{231} Similarly, it is likely that Russia agreed to the border treaty as part of the belief that UNCLOS would be beneficial for them moving forward. Aril Moe, a prominent research on Russian energy development, believes that “the delimitation treaty came as a broader Russian strategy to secure resource rights and stability in the Arctic. It is important for Russia to support the United Nations Convention on the Law of the Sea.”\textsuperscript{232} This expectation that UNCLOS would be beneficial for Russia appears to have been confirmed; as this thesis was being written, the CLCS awarded Russia the rights to the Sea of Okhotsk in the Arctic, an area which is commonly described as an “Ali Baba’s cave” of natural resources.\textsuperscript{233}

The “shadow of the future” argument helps to explain why both the Arctic Council and UNCLOS have helped promote cooperation in the Arctic. Since the Arctic states are in constant interaction with each other—not only in the Arctic, but also in other institutions—there is incentive to “play nicely” with each other. Hard law institutions like UNCLOS can reduce transaction costs and strengthen the credibility of a state’s commitments, while soft law institutions like the Arctic Council provide a way for states to deal with uncertainty while not being bound by hard rules.\textsuperscript{234} However, as circumstances change in the Arctic and around the world, these incentives towards cooperation could be changed.

\textsuperscript{233} Ben Hoyle, "Russia's dress rehearsal for vast Arctic claim," \textit{The Australian} 13 May 2014, sec. News.
\textsuperscript{234} Abbott and Snidal.
By design, this thesis has focused on state actors and the institutions that facilitate state-to-state cooperation in the Arctic. Thus, while there are a number of theoretically interesting questions about the Arctic, my conclusions will focus on three immediately relevant problems of state interaction in the Arctic that may have ramifications for future cooperation. These three problems are as follows: America’s continued refusal to ratify the Law of the Seas Treaty, the problem of integrating non-Arctic state actors, and the problem of Russian disregard for international law in Ukraine and the international backlash from those actions.

**On the Outside Looking In: America and UNCLOS**

Other authors have admirably covered the multiple issues presented by America’s continued refusal to ratify UNCLOS so I will not cover those arguments here.\(^{235}\) The fundamental problem with America’s continued refusal to sign UNCLOS is that institutions function most effectively when there is broad support for them, particularly among powerful states. Although America recognizes UNCLOS as customary international law, UNCLOS is limited in its efficacy when faced with a state actor that cannot participate in its institutional mediation. Since American interests are served through broad adherence to customary legal norms encoded in UNCLOS, there has not been a large incentive to ratify UNCLOS up till today. However, as we saw in the Beaufort Sea case, America can only take advantage of UNCLOS up to a point. America is excluded from submitting claims through the CLCS for an extended continental shelf beyond the 200-mile EEZ, which limits the amount of territory it can claim in the Arctic.

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The question moving forward is what will happen if the United States decides, as Canada, Norway and Russia have, that it is in their interest to claim additional territory in the Arctic. The first possibility is that American policymakers decide to abide by the cooperative tone in the Arctic and ratify UNCLOS before submitting a territorial claim to the CLCS. This is possible, since UNCLOS generally enjoys widespread bipartisan support.\(^{236}\) However, the political intransigence that has stymied efforts at ratification in the past has not gone away, particularly in this polarized political time. While it is likely that the clear harms of continued non-ratification of UNCLOS would outweigh these political concerns, it is not a guarantee.

Why would America want to extend their territorial claims in the Arctic? Preliminary studies indicate that America’s extended continental shelf totals close to one million square kilometers (an area twice the size of California) and much of it lies north of Alaska; thus, there is a clear economic incentive for America to ratify UNCLOS in order to stake a claim.\(^ {237}\) If America decided that this territory was extremely important to them for economic or security reasons, it is theoretically possible that they could unilaterally claim the area. It is not beyond the realm of reason that a state could act in a unilateral way in the Arctic; states do it all the time in other areas.\(^ {238}\) While this outcome is less likely than a decision to ratify UNCLOS and play by its rules, it is an important consideration. The future of the Arctic, as we have seen throughout this thesis, is not set.

\(^{236}\) Captain Gail Harris, “U.S. Must Remove UNCLOS Handcuffs,” The Diplomat 23 March 2012.
Economic shocks to the system can provide incentives towards both conflict and cooperation; thus, both situations need to be considered.

Beyond domestic national interests, the ratification of UNCLOS by America would be beneficial because it would support the UNCLOS regime not only in the Arctic, but also around the world. In the Arctic, the existence of a major player outside of the UNCLOS institution sends the signal that playing by the strict rules of UNCLOS is not of paramount importance. This signal is only strengthened due to America’s full participation in other Arctic institutions, like the Arctic Council. Alternatively, if American government leaders came together to ratify the treaty, it would show America’s commitment to the rule of law in the Arctic, particularly at a time when the Arctic is attracting increased international attention.

On a broader scale, America’s ratification of the Law of the Seas Treaty would also send a message outside of the Arctic. Since UNCLOS is a global regime, it is frequently cited in discussions over other contentious maritime areas, such as the South China Sea. UNCLOS has already provided some leverage in the dispute, since the Philippines has lodged a case against China’s expansive territorial claims in the South China Sea under UNCLOS. 239 Although both states are signatories of UNCLOS, all states in the area except China have based their claims on customary provisions of UNCLOS while China’s claims are based on the historical nine-dash line, which has no basis in UNCLOS. 240 In this tense area, America’s ratification of UNCLOS would send a strong sign that America prefers the peaceful settlement of this dispute through adherence to the

global norms of the sea. In particular, the norm of free passage in a state’s EEZ is important to America and other actors in the region. China’s requirement that foreign militaries seek permission in advance to use its EEZ thus constitutes a problem for these countries; however, global adherence to the principles contained within UNCLOS would give a stronger basis for ensuring free passage through these areas. Without ratifying UNCLOS, it is difficult for America to argue that China should adhere more closely to the global norms embodied within the treaty. Thus, America’s ratification of UNCLOS would be a benefit to national security interests both in the Arctic and in other contentious areas such as the South China Sea. The continued refusal to do so is a problem for the UNCLOS regime in the Arctic; fortunately, the solution is readily available.

**Incorporating New Actors into the Arctic Sphere**

A second issue that may present issues for Arctic cooperation moving forward is the need to incorporate other actors into the “Arctic club.” The problem is one of institutional design: how can the Council effectively incorporate new actors into its work? The Council responded to this problem by creating the position of “observer state” in its charter. Before May of last year, all of these states were European and had close economic connections with the permanent participants. As briefly discussed in the

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243 Observers, 27 May 2013 Arctic Council.
Arctic Council chapter, six nations were accepted as observer states in May 2013, reflecting the need to bring other interested parties to the table. The countries accepted as observers—China, India, Singapore, Japan, South Korea and Italy—are similar in that none of them have close geographic proximity to the Arctic. These states also have genuine interests in the Arctic; upcoming issues surrounding shipping, fishing and natural resource development are of importance to many states that do not directly border the region.\textsuperscript{244} While there was debate over whether more observer nations should be included, supporters of the decision believe that the inclusion of new state observers into the Arctic Council would help demystify its work and would help promote a wider base of knowledge about Arctic issues.\textsuperscript{245}

This question of whether more observer nations should be included was settled at the Arctic Council ministerial in May 2013. Now that the countries have been accepted into the Arctic Council, the question is not whether they should have been accepted but how the Council will react to their presence. In 2011, the Arctic Council updated the rules that govern what observer nations can do in the Arctic Council.\textsuperscript{246} These rules are deliberately constrained; in order to be an observer state, the nation must recognize the Arctic state’s sovereign rights in the Arctic as well as recognize the legal framework that governs the Arctic (namely UNCLOS). Once accepted, states are allowed to attend Council meetings and participate in the working groups, although they do not have voting or consultation rights.\textsuperscript{247}

\textsuperscript{245} The European Union has still not been accepted as an observer, due to tensions between Canada and the EU over seal products.
\textsuperscript{246} Graczyk and Koivurova.
\textsuperscript{247} Arctic Council.
This limited observer status aligns poorly with the fact that countries—particularly the Asian observer countries—are substantially involved in Arctic affairs outside of the Council. China, in particular, has been stepping up its Arctic presence over the last year. China’s National Offshore Oil Cooperation has partnered with Iceland’s Eykon Energy on oil exploration projects, while other Chinese companies looking to Greenland for opportunities to extract uranium and other rare earths. In addition, China has growing interest in polar research with plans to launch three polar research expeditions—in partnership with Arctic countries like Iceland—in 2015.\(^{248}\) India has also shown interest in Arctic oil and gas after being accepted as an observer nation. In October 2013, India announced that their state-owned Oil and Natural Gas Corporation will conduct studies with Russia for oil and gas exploration in the Arctic, with the aim to study the feasibility piping in hydrocarbons or sending Russian LNG to India.\(^{249}\) Consequently, observer nations are already taking part in the broader world of Arctic affairs. While observer status may be enough for right now, the Arctic Council should think about integrating the observer states more closely. The issues that the Arctic Council focuses most heavily on—particularly scientific research and maintaining the Arctic environment—would be helped through the acknowledgment and support of interested parties.

Thus, the largest potential problem with accepting new, powerful states to the Arctic Council is that their influence outside of the Council (seen above) will not accord well with their status within the Council. All the observer nations that were accepted in


2013 have two common characteristics: they import a large proportion of their energy but are also big trading countries.²⁵⁰ Their interest in the Arctic is thus two-fold; countries like China believe that the Arctic is a global commons in need of environmental protection, but they also see the economic benefit to be gained.²⁵¹ As we saw before, the Arctic Council has been particularly effective at helping coordinate environmental efforts, but they have not adapted well in dealing with new economic interest. Thus, there is an open question about whether the increased economic interest in the Arctic will deemphasize the Arctic Council as the preeminent intergovernmental institution in the Arctic, perhaps in favor of an institution focused on economic affairs.

Russia, Ukraine and the Arctic: Testing International Norms

The third issue that may affect Arctic cooperation is the developing Ukrainian crisis. Given the culture of cooperation in the Arctic, the fact that Russia is not cooperating in other areas of international law is of some concern. As this thesis is being written, events in Ukraine are shifting rapidly. What is clear is that after Russia annexed Crimea in March 2014, tensions in Eastern Ukraine have been rising. The four-party Geneva Accord on Ukraine, signed in mid-April, has already been violated by Russia.²⁵² The accord was meant to deescalate tensions, with provisions to disarm illegally armed groups and return illegally occupied buildings to their rightful owners.²⁵³ However, Russia has refused to condemn pro-Russian takeovers in Ukraine, while threatening to intervene militarily if the Ukrainian government crushes the rebellion in the eastern part

²⁵¹ Ibid, 3.
of the country. In response, the United States and the EU have levied sanctions against Russia. 254

The question of whether Russia’s actions in Ukraine will affect relations in the Arctic is an open one, but early evidence fall into one of two camps. Broadly, there are two theories of whether disparate issues are linked to each other. One camp believes that issues are compartmentalized; a state’s reputation may be harmed by its actions in another issue area or another part of the world, but it does not fundamentally change the calculus of the states that are engaged in cooperation with that state. As George Downs writes, “While states have reason to revise their estimates of a state’s reputation following a defection or pattern of defections, they have reason to do so only in connection with those agreements that they believe are (1) affected by the same or similar sources of fluctuating compliance costs and (2) valued the same or less by the defecting state. 255 When applied to the Arctic situation, this theory would suggest that the problems in Ukraine would have little impact on the Arctic. As long as Russia continued to respect international law in the Arctic sphere, their actions should not derail cooperative efforts either in the Arctic Council or through UNCLOS.

The second camp believes that, while issue linkage can be helpful in bargaining and creating cooperative coalitions, issue linkage can also be problematic. This camp asserts that issues can be linked across differing spheres, with a defection in one sphere causing problems with cooperation in another. Andrew Guzman, a prominent theorist of international law, is part of this camp and believes that issues are linked through

reputation. Guzman argues that only states with good reputations receive the benefits of international cooperation, and international law is the means by which states gain reputational collateral.\(^{256}\) Keohane reinforces this argument while focusing on the importance of regimes (or institutions). Specifically, Keohane argues “regimes incorporating the norm of reciprocity delegitimize defection and thereby make it more costly...[regimes] make it easier to establish a reputation for practicing reciprocity consistently. Such reputations may become important assets, precisely because others will be more willing to make agreements with governments that can be expected to respond to cooperation with cooperation.”\(^{257}\)

This view that reputation and issue linkage present a challenge across spheres of interaction would suggest that Russia’s actions in Ukraine would indeed have an impact on cooperative efforts in the Arctic. Since reputational costs transfer across issue areas, Russia’s reputation as a state that challenges territorial integrity norms would have an impact in the Arctic, particularly when considered in light of Russia’s expansive territorial claims under UNCLOS.

Although it is too early to definitively tell whether Russia’s actions in Ukraine will have any affect on Russia’s cooperative attitude towards the Arctic in general or their support for international law in particular, these two theories of issue and reputational linkage allow us to frame what evidence has already arisen in an interesting way. For example, on the very basic question of whether institutional cooperation—specifically through the Arctic Council—has been affected, the results have been mixed. On March 25\(^{th}\)—four days after President Putin signed a law formalizing Crimea’s annexation—


senior Arctic officials met in Yellowknife, Canada for a regularly planned Arctic Council meeting. Prime Minister Harper of Canada remarked the day before the meeting that Russia continued to be cooperative in the Arctic and that “to this point, they [Russia] have been working with the international community on the continental shelf delineation process and they have been adhering to that and they have been playing according to those rules so far.” Russia’s Arctic Council representative, along with other senior officials, agreed to a framework for establishing a forum to aid sustainable northern businesses, as well as approving a safety culture report dealing with potential ramifications from oil and gas drilling on the environment. Thus, in the relatively early stages of the Ukraine crisis, business as usual was prevailing in the Arctic Council.

However, this business as usual approach hit a roadblock on April 16th, when Canada announced that they would be boycotting an upcoming Arctic Council meeting in Moscow due to Russian occupation of the Crimean peninsula. Canada’s minister for the Arctic Council, Leona Aglukkaq, said that while Canada still supported the work of the Arctic Council, Canada would be boycotting as part of Canada’s “tough stance” towards Russia. Earlier that week, Prime Minister Harper had condemned Russia’s annexation of Crimea as “aggressive, militaristic and imperialistic,” words that come as the Ukraine crisis continues to fester. Furthermore, an important meeting set to take place in Canada in June 2014 of Arctic Council senior officials was cancelled in May. In addition, other areas of Arctic cooperation have been affected. President Putin announced at the

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261 Irene Quaile, "Ukraine's Shadow on Arctic Cooperation," Alaska Dispatch 21 May 2014, .
beginning of the Ukraine crisis that building a new naval base, purchasing new military hardware and creating a state agency to co-ordinate Arctic policy would be key components of Russia’s Arctic strategy. Indeed, Russian forces have been permanently stationed in the Arctic since 2013.262 The Ukraine crisis also spurred the cancellation of joint exercises in the Arctic, another casualty of cooperation.263 Overall, the Ukraine crisis—and more broadly, the breach in trust that Russia’s actions have prompted—has created ripple effects in the Arctic. Whether those ripple effects will continue, or will grow in size remains to be seen.

The Arctic at a Crossroads

The overarching purpose of my thesis was to show that Arctic cooperation should not be taken for granted. As the environment changes and economic interest grows, the Arctic and its institutions will be subjected to greater scrutiny. As we have seen, Arctic institutions have been valuable in creating a culture of cooperation in the Arctic. Whether that cooperation was shown through environmental protection strategies advocated by the Arctic Council or a legal process for submitting claims to new territory, the far north has been an important example of institutional cooperation for the past two and a half decades. But the Arctic of tomorrow will not be the same Arctic that fostered this spirit of cooperation. As new states come into the Arctic and resources begin to be shipped, the Arctic will take its place on the world stage. Both the Arctic Council and the United Nations Law of the Sea Treaty, constrained by their mandates and their ability to adapt, are likely to have issues sustaining the level of cooperation that we have seen in the

Arctic over the past two decades. While it is still unlikely that the Arctic will become a zone of conflict, policymakers should not assume that the Arctic will continue to be fully cooperative. The Arctic region faces large institutional issues, all of which demand an attention that governments—particularly in the United States—do not typically accord to the Arctic. If policymakers do not address these issues, then they neglect the Arctic at their own risk. In the case that the statement “if humanity cannot cooperate in the Arctic, it cannot cooperate anywhere” is true, than it is time we looked north. It is only then that Santa’s homeland will be peacefully determined once and for all.

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