

# Constructing Arctic Sovereignty

Rules, Policy & Governance 1494-2013

A thesis submitted for the degree of  
Doctor of Philosophy

By

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## Abstract

*Constructing Arctic Sovereignty: Rules, Policy and Governance 1494-2013* is a meta-narrative of the development of state sovereignty in the Arctic. It investigates the evolution of the rules of the international system over the *longue durée*, in so far as they frame Arctic sovereignty. It examines in particular the increasing importance of the legal dimension of territory and the transitions that have occurred with the introduction of new rules used by states to establish sovereignty. The thesis analyses the policy of the United States, Canada and Russia as they pursue their national interests in the region, with reference to (and at times in contravention of) international rules and codes, and it situates governance within the framework of the international system as a mechanism for states to pursue their interests in the Arctic beyond their sovereign borders. This thesis makes an original contribution to knowledge through its distinctive methodology and theoretical approach, as well as through its analysis of primary materials. Using the pillars of a constructivist research framework -- including rules and interests over the *longue durée* -- to develop a meta-narrative of Arctic sovereignty, it situates contemporary Arctic foreign policy and governance within the evolving framework of the international system, identifying imperialism as a common thread in the relationship between the Arctic states and Arctic territory. It concludes that the expansion of sovereignty over this new territory represents the continuation of imperialism within the international system by states, perpetuating an asymmetric relationship that allows states to absorb this territory for the purposes of resource exploitation in the pursuit of national interests, with international cooperation maintaining the primacy of the Arctic states within the region.

## Introduction

On 2 August 2007, a Russian mini-submarine commanded by Arctic hero Artur Chilingarov descended into the depths of the Arctic Ocean when “for the first time in the history of human civilization man visited the real pole of the North.”<sup>1</sup> As a mark of this expedition, a titanium flag of the Russian Federation was planted on the seabed at the North Pole, repeating the ceremonies of possession initiated by explorers in the Age of Discovery acting on behalf of European empires, an action long considered to be an initial step of territorial acquisition. The symbolic nature of this undertaking was not lost on the rest of the world, eliciting the immediate response from Canadian Foreign Minister Peter McKay, “This isn’t the 15th century. You can’t go around the world and just plant flags and say ‘We’re claiming this territory’,”<sup>2</sup> a statement denying the international acknowledgement necessary for legitimacy to any claims Russia might have been entertaining.

The Arctic is considered the globe’s final frontier in both physical and geopolitical imaginings. It has resisted conquest, armed with perpetual ice and climatic and weather conditions so harsh that many explorers lured by the siren song of Arctic enchantment have been thwarted at the gates or never returned from their expeditions. Through accepted norms of state behaviour during the Age of Discovery, the terra firma of the Arctic has been delineated into the political boundaries of the littoral states. However, with the Arctic maritime and its resources remaining locked in an icy safe, sovereign control of the Arctic maritime was of little import in this period and failed to be resolved. The Arctic is melting with global warming removing its conditional barriers and, combined with the technology of modern world, the treasures

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<sup>1</sup> (Plutenko, 2008)

<sup>2</sup> (Parfitt, 2007)

of the Arctic are now within reach of extraction. The Arctic states are keen to absorb these resources into their sovereign jurisdiction, but the rules of the international system have changed: territory in the maritime is governed by rules different from terrestrial territory and flag planting is no longer an acceptable method for annexation.

In the matter of establishing sovereignty over territory in the Arctic, the states of Canada, Russia and the United States are playing by the rules and have always played by the rules, but the rules organising the international system have changed over four discernible periods. These rules include both tacit norms and those codified within international law and they serve as guidelines instructing on the expected behaviour of states within the international system.<sup>3</sup> Conceived in Europe, the international system has been moulded into its current form through the forces and methods of imperialism, developed through the expansion of the community of states worldwide and through the introduction of rules by states with the greatest influence. These new claims to sovereignty over Arctic territory--and the methods used to acquire it--are framed within the structure of this system and its rules.

The history of Arctic sovereignty and the Arctic foreign policy of the United States, Canada and Russia reflect these transitions within the structure and rules of the international system as their methods for pursuing national interests adjusted to the new expectations in each period. The current foreign policy of these three states is formulated to address their national interests within the contemporary system, and beyond domestic policy, international governance structures are setting precedence for the manner in which the Arctic states desire the region to be situated within the international system going forward. For affairs that

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<sup>3</sup> The use concept of 'rules' is developed in Chapter 1.



extend beyond their areas of legal jurisdiction, the Arctic states are establishing mechanisms of governance to pursue their national interests in areas that lie beyond their sovereign jurisdiction and to mitigate competition from non-Arctic states.

## **Background**

The establishment of Arctic sovereignty amongst the littoral states is a matter of present interest in contemporary international relations. The world has anxiously watched while states make statements on sovereignty in the Arctic, issue Arctic foreign policy documents, implement existing rules of international law and seek to establish new cooperative arrangements within the Arctic region. However, within the bustle of Arctic politics there is confusion about the conflicting messages between the activities of states that seemingly do not align with their official policy statements, especially as states make claims of adhering to existing principles of international law yet meanwhile engaging in publicity stunts that indicate adherence to practices of a bygone age. Why is there so much confusion over what rules apply to the establishment of sovereignty in the Arctic, how have the rules of the international system been applied to date and what implications do this combination of the implementation of these rules with the interest of states have for the future of Arctic international relations?

It is more than five hundred years since the territory of the Arctic was first divided between states and today the Arctic is still undergoing sovereignty transformations. Since this time, the colours of the political map have changed and the boundary lines on maps delimiting the Arctic have moved not only between states but also in their distance from the land to the pole as the region continues to be restructured according to the introduction of new

codes and rules of the international system. The topic of sovereignty over the Arctic has seen a succession of waves of historical debates and analysis in the areas of political, legal and security studies throughout these transformations, each wave of interest in the Arctic appearing to focus only on the national interests and character of the Arctic during the period in which it was generated. Yet between waves, the character of the international system has shifted, as have the national interests and identities of the Arctic states.

The first wave of Arctic literature, produced in the nineteenth century, focused on the travels of individual explorers, many titled along the lines of 'Tales of Arctic Exploration and Discovery'. It included the diaries and accounts of men such as Franklin, Frobisher and Bering, among many others, as they battled the elements of the hostile Arctic in search of the Northwest Passage and the Northern Sea Route—with a shorter passage from Europe to Asia being the holy grail of Arctic encounter. Tangent to this primary interest were the benefits that came through the discovery of virgin territory and previously untapped economic resources: furs, whale oil, fish and minerals, which were grossly exploited to the detriment of these resources. In order to secure these resources, the establishment of sovereignty over new territory became an important by-product of exploration. Encounter with the Arctic by the states of the international system in the Age of Discovery clearly aligned with other similar objectives of exploration throughout the world: gold, glory and the national interest.

As the Age of Discovery ended and the Interwar Years began, the focus of the second wave of Arctic literature shifted accordingly to accommodate the new concerns of the new period when the state system in Europe was consolidating formerly fragmented political

units into larger political entities. Corresponding to this shift in the international system, states sought ways in which to codify existing principles of the law of nations. As new states entered into the state system, they were expected to adhere to these norms. These guidelines on the expected behaviour of states is the focus of Arctic literature in this period, concentrating on the theoretical and legal specifics of state engagement with the Arctic. This included the debates on the validity of the sector principle as a mechanism for establishing sovereignty in the Arctic while superseding the laws of territorial acquisition, the legal status of ice and the rights or limits of the state to exploit and protect resources in the Arctic. Finally, this period saw a focus on the legal designation of sovereignty over areas not adequately claimed under the rules of the earlier period, such as East Greenland and Svalbard.

The third wave of Arctic literature came with the transition of the international system to the Cold War Period with retrospective studies on the policies of the interwar period, and of special interest including the Stalin era development of the Arctic. However, the literature of this era focused predominantly on the issues created by Cold War insecurities and the possibility of the Arctic becoming a theatre of war or a route of attack, and many reports were of material capabilities coupled with analyses of the development of Arctic by states for both security and sovereignty objectives. Near the end of this period, environmental issues were introduced to the discourse, reflecting the move by the Arctic states to cooperate towards environmental concerns, not only because the Arctic environment was under threat, but also as a non-security concern over which these states could agree.

With the dissolution of the Cold War, a turn toward cooperation between the Arctic states began, and most importantly, with the

discovery of vast energy reserves in the region, a new wave of interest surged in the Arctic. This literature can be divided into academic analyses of specific issues and 'pop' or sensational accounts of the 'race for the Arctic'. There has been a mushrooming of literature in this period, especially in the last few years as the Arctic has become an in vogue international affairs topic due to climate change and the discovery of fossil fuels. It includes topics such as analyses of the sovereignty implications of scientific programmes initiated by states to support development policies for the Arctic, legal commentary on the development of a body of polar law and analyses of individual components from the Arctic Council to environmental cooperation. They have also included narratives detailing the sovereignty disputes in the Arctic informing on how they will be determined given present rules and codes of the international system. Yet this final wave of literature fails to analyse the development of Arctic sovereignty as part of a larger process.

This research bridges these individual waves of literature by engaging with the entirety of the development of sovereignty in the Arctic and by marking the transitions within the structure of the international system and the layering of its rules and codes as they channelled state engagement with the Arctic. In addition to this meta-narrative of sovereignty, a comparative analysis is conducted on the Arctic foreign policy of the United States, Canada and Russia as they have acquired territory, established sovereignty and deployed effective occupation and administration in the pursuit of national interests. Finally, this research demonstrates how the Arctic states are using the structure of the international system to develop a governance framework that allows the pursuit of national interests in the international realm.

## **The Problem**

Currently, in 2014, claims to Arctic sovereignty are being established over maritime areas, despite the existence of a long upheld principle of international law that the seas are free and not subject to the sovereign jurisdiction of states. Thus, for these sovereign claims within the Arctic Ocean to be an acceptable policy within international relations, the rules will have to change in order for these claims to legitimately progress. Although the rules defining territorial sovereignty in the Arctic ultimately began with the *Treaty of Tordesillas 1494*, this specific change to generate the new conceptions of territory in the Arctic involved a series of events initiated by the *Truman Proclamation 1945* and culminated in the *United Nations Convention on the Law of the Sea 1982*, all socially constructed rules. States have introduced these latest rules in order to acquire sovereign rights to pursue their national interests within the Arctic territories.

These Arctic maritime claims are being determined based on their contiguity to sovereign *terra firma* that surrounds the Arctic Ocean. This vast territory, historically without political organisation and still sparsely populated, has been absorbed into the sovereign jurisdiction of states by imperialist policies of an earlier period, legitimised according to rules that regulated the acquisition of territory. Sovereignty over these regions has been primarily maintained through the rule of effective occupation through security pursuits. However, with the addition of new rules to the international system, such as the right to self-determination for indigenous people, the sole use of effective occupation results in an uncertain legitimacy of sovereignty over some Arctic territories given the weak political relationship between the core and the outer extremities of these Arctic territories once predominantly used only for defence and economic exploitation.

To diminish the effects of these uncertainties, the United States, Canada and Russia have implemented Arctic policies that maintain international recognition of their Arctic sovereignty while continuing to pursue their resource and security interests in the region in an asymmetric relationship with the inhabitants and with the territory providing the resources.

Although the rule of sovereignty creates stability within the international system, it also constrains the sovereign jurisdiction of states within defined territorial boundaries. Sovereignty is ultimately in the interests of, and indeed defining of, states. It allows them to maintain jurisdictional integrity, but it also restricts their ability to project policy--and thus national interests--beyond those boundaries. With issues germane to national interests, such as environmental security, climate change and control of shipping lanes, lying outside the sovereign boundaries of states, the Arctic states are unable to unilaterally establish policy to pursue these interests. Since the early phase of the international system, states have negotiated with other states to create new rules in order to overcome this constraint, resulting in the entirety of the international system being structured through the layering of socially constructed rules. Arctic sovereignty is both developed and limited through this layering of rules, and to circumvent the constraints of sovereignty, the Arctic states have developed rules of governance to pursue policy and interests beyond their jurisdictional boundaries, an act which ultimately alters the structure of the international system.

In this light, the Arctic policy of the United States, Canada and Russia presents a problem for policy analysis within international relations. The present claims to Arctic sovereignty and the development of Arctic governance cannot be adequately understood when framed only within the rules of contemporary

international relations, for the current policy is the result of long-term engagements with the region and the international system that frames it. The Arctic states, through claims to sovereignty and the establishment of Arctic governance, have long demonstrated an imperialist relationship towards the Arctic in their policy and in the pursuit of their national interests, a relationship that is typical of state engagement with the Arctic since the discovery of the 'New World.' If one analyses and frames contemporary Arctic policy and governance through the long term development of rules in the socially constructed international system, it enables a comprehensive understanding of how Arctic sovereignty came to be developed through the interests of states engaging with the region and how the future of the region is being configured as the these states continue to pursue their national interests.

### **Main arguments**

The issue of sovereignty in the Arctic is an important topic, not only of interest to the policy makers of today, but the development of the Arctic also serves as a case study for demonstrating the way in which states pursue national interests, especially territorial sovereignty and resource sovereignty within the confines of the rules and codes of the international system, how foreign policy is shaped by the pursuit of these national interests constrained by the international system and finally how states circumvent constraints to pursue their interests outside of the traditional bounds of sovereignty. In the *Ilulissat Declaration* of 2008, the five coastal states declared that Arctic sovereignty would be determined by existing principles of international law, both rejecting the potential of creating an Arctic Treaty but also affirming dedication to cooperating with one another to pursue issues unique to the Arctic Region. This introduces the query: Why is Arctic sovereignty still being established and why are the

current structures insufficient to address the contemporary opening of the Arctic?

Underlying this process of the pursuit of sovereignty is the demonstration of imperialism as the *modus operandi* in the way in which states relate to the land, its people and its resources outside of a 'social contract'. In pursuing sovereignty, states are seeking recognition by the international community that they hold the right to administrate a given territory. As one of the duties of the state to its population, this administration traditionally includes pursuing national interests of security. Today, security is not measured only in physical and material capabilities, but security is also measured in the ability to ensure control over a great variety of issues. In a globalised world this security can include a range of measures from the ability to mitigate terrorist attacks, health pandemics, marine pollution or the effects of climate change where often the security of one state in these matters relies on the cooperation of many states, restricting the utility of territorial sovereignty. However, most importantly and often the largest measure of security with which policy makers can seek results, is found in economic terms, which relies on the ability to access raw material resources, develop industry, and engage in international trade because economic security ultimately permits the maintenance of physical security.

This thesis argues that throughout the entire process of establishing Arctic sovereignty from 1494 to 2013, states have been playing by the rules of the international system and abiding by principles of international law in their engagement with the Arctic. However, during this long drawn out process of establishing sovereignty the rules have changed so that new layers of territory over which to establish sovereignty have been created, which is why states still make reference to establishing



sovereignty. These transitions in the international system can be followed throughout the development of the Arctic policies of the United States, Canada and Russia. Meanwhile, as the rules of the international system become more embedded in state practice, the Arctic states are compelled to turn to international governance as a method to pursue national interests outside of their sovereign boundaries, allowing for regulatory frameworks addressing contemporary issues in the *terra nullius* of the Arctic.

This thesis makes its original contribution to knowledge through collating established facts of recorded Arctic history, combining this knowledge together with new facts of Arctic policy and analysing them through methods and a framework not previously employed in studies of Arctic international relations. It analyses issues within international relations at three different levels: the meta-narrative of the international structure, the national interests within the state that are manifest in their Arctic policies and the practices of these states with the structure as they pursue policy and interests outside of territorial boundaries. Policy has memory, and as foreign policy decision-making does not occur within a political vacuum, this model permits the analysis of the processes underlying these decisions. The impact of this research is that this model's approach can be applied to future studies of both historical foreign policy decisions and contemporary international relations. Additionally, the findings of this research will be useful to policymakers in both Arctic and non-Arctic states alike giving insight to the broader issues of Arctic international relations to inform the development of future policy. Finally, it provides similar insight to the Arctic Council, identifying issues relevant to the work of the Arctic Council and making policy recommendations for these issues.

## **Methodology and Theoretical Approach**

Methodologically, this thesis employs several tools available to the social scientist. The first is the development of a meta-narrative of the *longue durée* history of Arctic sovereignty and policy. The use of this approach allows this research to avoid the limitations of an episodic analysis of Arctic policy through only the lens of the present, and permits a reconstruction of the long-term development of Arctic sovereignty. Through this, a discursive historical analytical approach is employed to determine meaning in the sequence of events that shape the interplay between actors and structures in the pursuit of the fulfilment of interests. It focuses on the structures and the rules that form the structures that are generated as the outcome of these interactions, in turn, shaping future events with its own new set of identities, interests and structure.

To develop this meta-narrative, this research has employed both primary and secondary sources, drawing from a range of empirical materials, using process-tracing to identify a lineage of the key events pertinent to the development of Arctic sovereignty. Primary resources have included treaties, policy documents, official government diplomatic reports and releases, maps, congressional and parliamentary archival records, and newspaper archives dating back to the mid-nineteenth century. When the historical narrative lies outside of the scope of primary materials, secondary sources of historical accounts have been consulted. Throughout, a critical relationship has been maintained with the secondary sources to avoid adopting biases present within this literature.

The use of the case study has been employed to test the macro observations of the development of the codes and rules of the

international system which frame the Arctic on a micro level in the individual Arctic policy analyses of the United States, Canada and Russia. This method has provided the opportunity to make epistemological evaluations of the transitions described to develop a valid and reliable understanding of the reality of the development of Arctic sovereignty. The existence of these three case studies has then provided an opportunity to exercise a third method, a comparative analysis of the development of the Arctic policy of these three states in corresponding period of the international system.

Although not actively employed as a research method, this thesis has been informed by the models analysis approach of Graham Allison, introduced in 'The Essence of Decision: The Cuban Missile Crisis.' In this work, Allison proposes a framework for analysing the domestic foreign policy decision-making process. In brief, he asks: Is this decision the result of a state behaving as a rational actor, the result of bureaucratic departmental processes or the result of personality politics? In analysing the policy of the United States, Canada and Russia, it can be seen that at different times each of these analytical approaches can be applied to various points in history. The U.S. decision to decline the sovereignty of the North Pole and the sectoral proclamations of Canada and Russia could be deemed as examples of these states acting as rational actors. The decision by the United States and Canada to form NORAD and the DEW line and the decision of Russia to dedicate research and funding to the development of icebreakers as early as the late twentieth century can be attributed to bureaucratic politics. Finally, Canada giving a passport to Santa Claus and Putin photographed assisting a research team to tag polar bears for environmental studies are likely to be attributed to personality politics.

However, these examples provide a mere snapshot of the story of Arctic policy and the ways in which these states approach the issue. Although responding to a USGS announcement that a significant quantity of the world's fossil fuel resources are found in the Arctic, the contemporary Arctic foreign policy documents of the United States, Canada and Russia do not stand in a vacuum of time and Arctic politics cannot be analysed only against present conditions, as so many recent commentaries have done. Rather, the Arctic policy of these three states must be considered as the long term cumulative result of political development, and also as a result of their engagement with the development of the rules of the international system and within their interaction with each other in the realm of international relations as they act to secure their best interests. Arctic policy is not a singular event-- as was the Cuban Missile Crisis-- but also a response to the development of new rules for territorial acquisition within the international system. The study of Arctic policy is thus a long term and broad subject of engagement with an entire region, and Allison's models, although informative and helpful as a framework for analysis, are insufficient to analyse and comprehend what is the breadth and depth of the past and future of Arctic policy.

Finally, while not subscribing to a specific school of thought, this research has been informed by International Relations Social Constructivist theory. In varying degrees, it has used the four pillars of Constructivist thought-- structure, agents, interests and identity—components on which to focus in the development of the meta-narrative of Arctic sovereignty. To facilitate this development the research design of this thesis asks questions such as: what are the structures, who are the agents and what are their interests and identities? It adopts a Constructivist position on the mutual construction of stable meanings to form new structures, and one of the objectives of this research has been to pinpoint the

'turning points' in the structure of the international system, which has led to the identification of four distinctive periods of the international system: the Age of Discovery, the Interwar Years, the Cold War and the Post-Cold War Periods.

### **Limitations**

The first limitation in considering the long-term development of sovereignty in the Arctic, is that this research focuses on what is quite a large period of time. In the chapter on the genealogy of international law, time begins in the events of 1492 that were catalyst for the Columbian exchange and the rapid expansion of known lands and resources, and at a varying intervals for the studies of the foreign policy of the United States, Canada and Russia depending on when they first encountered the Arctic. This long-term approach has both strengths and weaknesses. Its strength lies in that considering the entirety of the expansion of territorial sovereignty into the Arctic of the selected states, one is able to develop a complete and 'big picture' by describing the broad overarching patterns of engagement with the Arctic and dominant trends that survived or faded with the transitions within the international system. Its weakness lies in that the timeframe coupled with the limitations of a thesis have restricted the amount of detail that has been included and has thus restricted opportunity for the depth of analysis in some chapters.

Another important limitation is that this thesis only considers the foreign policy of the three largest of Arctic littoral states, which again restricts the broader opportunities for analysis. This has occurred in part because the size of the thesis did not permit for all of the littoral Arctic states to be included with the same level of detail as the United States, Canada and Russia. However, Norway and Denmark were also excluded as not only are they the smallest

of the littoral Arctic states, but also because their formal relationship with the Arctic has a much shorter timespan, eliminating them as party to the solidification of codes and rules of the international system in the Age of Discovery. Norway became an Arctic state, largely by coincidence when it gained independence from Sweden in 1905 and Denmark was awarded sovereignty over the entirety of Greenland by the International Court of Justice in 1933. Today, home government rules Greenland with only economic ties keeping them bound to Denmark. (How convenient it would have been for this thesis had the United States successfully purchased Greenland!) Finally, these states were excluded due to language barriers, as I neither understand their language nor had resources to finance translation. As many resources detailing Russia in all four of the phases of the international system that this thesis approaches are available in English, this was deemed only a minor limitation for the chapter on Russia.

## **Chapter Summaries**

### Part One: Rules

#### Chapter One: The Case of the Melting Arctic: Sovereignty, Imperialism and the International System

In the formation of a meta-narrative of the history of sovereignty in the Arctic, it is evident that the history of the Arctic has been developed on a foundation of imperialism. Although the Arctic was 'discovered' long ago, the Arctic first encountered imperialism in the Age of Discovery when the rules of the international system of states were being developed for the intents and purposes of imperial expansion. Transitioning through subsequent eras of the international system: the Interwar, Cold War and Post-Cold War

Periods, it is possible to see the addition of new rules which have resulted in the expanding definitions of territory, which allows for states to continue claiming new layers of sovereignty in the Arctic. This includes rules such as the sector principle, the continental shelf and Arctic governance.

To answer the question ‘Who owns the Arctic?’ this chapter clarifies the function of ownership, or sovereignty, as a rule within the international system. Elaborating on the mechanics of the international system, this chapter introduced a function mechanism, or a rules engine, to demonstrate how new rules and codes cause transition within this system. After presenting a discussion on the methods of imperialism within the international system, this chapter argues that the characteristics of imperialism are evident throughout the development of sovereignty in the Arctic, and the application of this concept is useful in determining the future of Arctic international relations.

## Chapter Two: A Genealogy of the Rules and Codes of Arctic Sovereignty

In their Arctic Policy and their practices in Arctic diplomacy and engagement, Canada, Russia and the United States have declared that in the matter of establishing sovereignty in the Arctic that they are all abiding by principles of international law. International laws are socially constructed rules that have resulted the development of the international system over the space of centuries, and the international law that frames the Arctic is a part of this evolving structure. As this structure has evolved, the laws, or rules, which frame the Arctic and provide guidelines for the behaviour of the Arctic states in their engagement with territory in the Arctic have also changed. The rules that applied in the fifteenth century are not the rules that apply in the twenty-first, although

the Arctic states still refer to these older rules as a method of measuring the condition of their sovereignty in the Arctic and as a way to inform their policy objectives in contemporary Arctic politics.

The chapter investigates the layering of rules and codes that have developed in four different phases of the international system to culminate in the shared system of understanding that guides the behaviour of the United States, Canada and Russia in the establishment of their sovereignty over Arctic territory. It does this by establishing a lineage, or genealogy of codes and laws which have developed in international relations from the 'discovery' of the Americas in 1492, to end in 2013, an era in which the Arctic states are claiming sovereignty over the continental shelf in the Arctic Ocean. The chapter leads to the point where law over territory ends and where governance begins.

The chapter focuses on the agreement, development and implementation of the rules and codes that have informed the behaviour of the United States, Canada and Russia (or their political predecessors) as they engage with the Arctic. It then leads to the division of both terrestrial and maritime territory, including: principles of international law, treaties, customary and codified law as it has developed across the four different phases of the international system that this thesis identifies for its organisational approach. It begins with the 'Age of Discovery' in the 'discovery' of the Americas by Columbus in 1492 and the resulting rules that developed as a consequence of that encounter in an international system dominated by the authority of the Pope. After following territorial transfers that shaped the sovereignty of the territory that would finally become the jurisdiction of the United States, Canada and Russia, the chapter moves through the Interwar and Cold War phases which included new



transformations in the rules of the international system and the way that these states engaged with the Arctic. It ends with the introduction of rule of governance in the Post-Cold War phase of the international system.

## Part Two: Policy

### Chapter Three: United States Arctic Policy 1867-2013

Having acquired their Arctic territory by purchase and treaty, under a policy of imperial expansion, the United States maintains a strong position in their claims to Arctic territorial sovereignty. However, despite being an active participant in Arctic international affairs, the United States occupies a tenuous position in the establishment of their sovereignty in the Arctic maritime. This position is created through the lack of ratification by the United States of the *United Nations Convention on the Law of the Sea 1982*, one of the most recent layers of rules added to the structure of the international system framing the Arctic.

This chapter investigates the Arctic policy of the United States since the purchase of Alaska in 1867. It analyses the development of U.S. policy in the Arctic through four eras of the international system, evaluating the way in which policy has evolved in response to transitions in this structure. Finally, it identifies U.S. national interests in their Arctic policy and practice as they engage with the system and with other Arctic states.

### Chapter Four: Canadian Arctic Policy 1870-2013

Having acquired their Arctic lands and islands through a transfer of authority from Imperial Great Britain who themselves held 'incomplete sovereignty' over some of these territories, Canada's

Arctic policy continues to reflect the uncertainty inherited in this transfer. Although there is very little challenge to Canada's sovereignty over land, and only minor dissent in their claims to maritime sovereignty, Canada appears to be continuously seeking international approval for their sovereignty over their Arctic islands. To demonstrate their sovereignty, Canada uses a variety of methods available to them from the toolkit of rules and codes of the international system, including imperial transfer, the sector principle and different from the other Arctic states, the residency of their native Inuit.

This chapter investigates the development of Canadian Arctic policy combined with the transition in Canadian identity to becoming an Arctic, or a Northern State through four phases of the international system. As a nation germinated in the roots of imperialism, this chapter follows the implementation of Canadian Arctic policy in their pursuit of national interests and their pursuit of Arctic sovereignty from the 1870 transfer, its continuous clinging to the defunct sector theory and finally, application of the *United Nations Convention on the Law of the Sea 1982*. Finally, this chapter notes the ways in which Canadian elevation of the importance of indigenous inhabitants has ebbed into their involvement of Arctic governance mechanisms.

#### Chapter Five: Russian Arctic Policy 1619-2013

Acquiring their Arctic lands through eastward imperial expansion during the Age of Discovery, and their Arctic islands through exploration and application of the sectoral principle, Russia claims sovereignty over the largest percentage of Arctic coastline. Accordingly, Russia is also the greatest beneficiary in the new areas of maritime territory that have been created in the twentieth century law of the sea developments. As the largest landowner in

the Arctic, but also the state with most radical and opaque domestic political history, Russia is the greatest source of uncertainty in Arctic international relations.

When the Cold War ended Russia embarked on a campaign of good relations with its Arctic neighbours, yet there exists reservations over the future direction of Russian Arctic policy, despite their declaration of intent to abide by principles of international law in the determination of Arctic sovereignty. A long-term analysis of Russian Arctic policy demonstrate that there are particular trends in their political identity that have transferred from Imperial Russia to Soviet Russia and then on to the Russian Federation. This chapter argues that although Russia has redefined its relationship with the Arctic in each political transition, there are particular elements of Russian policy and behaviour which demonstrate that Russian national interests supersede the rules and codes of the international system.

### Part 3: Governance

#### Chapter Six: Arctic Governance: Transformation, Rules and Doctrine

When the Cold War ended, the Arctic states seized upon the opportunity to cooperate in the Arctic on issues not related to military security. As a result, the Arctic Environmental Protection Strategy in 1991 was developed, initiating a genesis of governance specific to the Arctic. The Arctic Council was informally created in 1996 in the Ottawa Declaration to cooperate and coordinate on matters of mutual interest, especially environmental protection of the Arctic but specifically excluding matters of security. Membership in the Arctic Council is restricted to the eight Arctic

states, with permanent membership of indigenous groups and observer status for choice non-Arctic states. The Arctic Council became a formal body in 2012 with the establishment of a permanent secretariat.

In both historical policy positions and in the *Ilulissat Declaration of 2008*, the littoral Arctic states have determined that an overarching Arctic Treaty is unnecessary to manage the contemporary issues of the circumpolar region. This chapter discusses the development of the Arctic Council as a method for states to achieve national interests outside of the traditional areas of sovereign jurisdiction. It argues that the creation of the Arctic Council with both insiders and outsiders has had the effect of restricting the activities of non-Arctic states as the Arctic states develop policy and law for the Arctic. And although Canada uses their indigenous populations to claim sovereignty of their Arctic islands, this has not had the effect of elevating indigenous groups to the same status of states within the international system. Finally, it determines that the Arctic Council and the agreements and policies made under its auspices in effect form an Arctic Doctrine.

#### Chapter Seven: The Arctic Search and Rescue Agreement: Text, Framing and Logics

The Arctic Council, which has been formed to address issues of governance which lie outside the traditional areas of jurisdiction of states, has produced its first act of hard law in the *Agreement on Aeronautical and Maritime Search and Rescue in the Arctic 2011*. Although the Arctic states are already individually party to existing international treaties establishing search and rescue obligations, the Arctic SAR was deemed necessary to address gaps in the coordination and responsibility for SAR in the Arctic region.

The issue of SAR in the Arctic has been made exigent by the increasing activity in resource extraction, tourism and commercial shipping as climatic barriers decrease and technological capability increases.

This chapter investigates the legal, political and cultural contexts in which this agreement can be framed. As a legal document, the Arctic SAR is indicative of evolving Arctic international relations, demonstrating the advancement of an identity of Arctic states, complete with its own set of geopolitical logics. Although the Arctic SAR was presented as an easy opportunity for the Arctic states to cooperate with one another outside of security concerns and sovereignty disputes, it is also a method for states to demonstrate their obligations within their Arctic territory. The agreement is not entirely free of political intrigue that the discourse of the Arctic states appears to deliver.

#### Chapter Eight: A Pending Governance Issue: The Legal Status of Ice

When Peary acquired the North Pole on the surface of sea ice in 1909, U.S. President Taft made a decision affecting the future of claims to sovereignty in the Arctic: the United States would not claim sovereignty over the sea ice, as it was part of the sea and thus not subject to claims of state acquisition. However, since this time, the rules of the international system have changed so that sovereignty over some water can be established, but which water? In an era faced by the acceleration of climate change, not only is water an increasingly scarce resource and one necessary for human survival, but the laws over freshwater have remained ambiguous, including the rules for sovereignty over freshwater ice.

This lack of a legal status for freshwater ice poses problems in terms of the future of water security and the avoidance of conflict and environmental degradation in the Arctic as awareness, need and economic potentials of freshwater ice attract the focus of would be harvesters of this resource. Regarding the sovereignty of ice, a longstanding academic debate occurred during the last century over the sovereignty of sea ice but through a lack of action by states, the legal status of sea ice has remained ambiguous and has been eliminated as a necessary rule due to the advancement in maritime territory definitions created by the law of the sea. However, due to its origination from land and the introduction of the principle of permanent sovereignty over resources, the legal status of freshwater ice introduces a new problem for the Arctic states.

This chapter provides an overview of this long-term debate over the legal status of ice, including arguments for the different types of sea ice that exist, the different ways in which they have been used by states and the principles of international law that could apply in determining sovereignty over this mineral. Although lacking the same dedicated academic debate, this chapter then discusses the principles of international law that could be applied to sovereignty over freshwater ice as a sovereign resource and the problems that these principles present given the fugacious nature of freshwater ice, giving examples in the current uses of freshwater ice as it is being requisitioned for water security and economic gain. It then discusses the overlapping legal regimes in the Arctic, identifying the ways in which these regimes fail to provide a mechanism for designating a legal status for freshwater ice. Finally, this chapter provides a solution for determining the legal status of ice through the creation of a specialised regime managed under the auspices of the Arctic Council, a governance mechanism created by the Arctic states to address Arctic issues

that lay outside of the normal jurisdictional boundaries of sovereign states.

## **Conclusions**

The research and presentation of the findings for *Constructing Arctic Sovereignty: Rules, Policy and Governance 1494-2013* has been a project that has attempted to combine empirical data, political intrigue and rules with conceptual abstractions to identify processes and patterns in the development of the issue of Arctic sovereignty. As a result, although this research acknowledges that states do pursue physical and economic security in their engagement with the Arctic and that institutions have been created to peacefully develop the region, the findings are atypical in that they identify different underlying processes at work, rather than face-value realpolitik or the emphasis on liberal institutionalism that is prevalent in the surge of Arctic commentaries that have been produced since 2008. It is hoped that this big-picture analysis has developed a logical explanation for the on-going development of Arctic sovereignty, providing policymakers with an understanding of how to engage with this region, and has advanced an approach suitable for analysis of other regions in a state of political flux.

# Part One: Rules

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## **Chapter I**

### **The Case of the Melting Arctic: Sovereignty, Imperialism and the International System**

‘Who Owns the Arctic?’ is a query that this researcher has been continuously asked throughout the duration of this research project. The answer is of interest not only to the general public who are presented with information on climate change, resources conflicts and territorial scrambles on a regular basis by the media, but in growing numbers-- as demonstrated by the sudden worldwide surfeit of Arctic forums-- of policy makers, commercial entities and academics. The response to this query does not have a straight answer, because who ‘owns’ the Arctic is not a simple question; the answer ultimately requires a detailed response on the layers of sovereignty found within the law of the sea, imperialism and the structure of the international system that frames the Arctic.

Following a basic answer to the query of ‘Who owns the Arctic [Ocean]?’ referencing the Arctic littoral states, the following logical progression is to question why and/or how do they own the Arctic? In short, they own it because the international law that frames the Arctic says that they do. To the layman, this is a sufficient conclusion: The states littoral to the Arctic own it because this has been determined by international law, but to the curious, questions of who made the law and how is it enforced arise. As one learns of the international law that determines Arctic sovereignty, one wonders further at the development of the differentiation of sovereignty in terrestrial and maritime territory.

Like any good mystery, the case of the melting Arctic requires a methodical process to review the facts and evidence of the

situation. The method used to understand how the Arctic came to be thus situated within contemporary international relations is to employ process-tracing. Through this, one can “trace backward the causal process that produces the case outcome, at each stage inferring from the context what caused each cause...lead[ing] the investigator back to a prime cause.”<sup>4</sup> Beginning with the question of who owns the Arctic today, one can trace back through history’s *longue durée* to establish who, when, where, why and how the Arctic came to be owned by the littoral states. Although presented in a standard forward progressing linear chronology, the events identified in this research have been determined by tracing backwards through time.

In the process of tracing back through the case of the melting Arctic, this chapter asks the following questions:

- What does it mean to own the Arctic?
- How is the structure that frames the Arctic developed?
- What are the different phases of development of this structure?

### **Defining Ownership: Sovereignty**

When ‘Who owns the Arctic?’ is asked, what is really meant is ‘Who holds the legitimate authority over decision-making for this territory?’ or, sovereignty. What is additionally being asked is who holds the property rights to the Arctic and thus the benefits of the resources that lay within this territory. Although within international relations, sovereignty is ordinarily conceived of as authority rather than as property rights, it is yet true that governments of states also own the property rights to land as well as being states that hold sovereignty. Within Alaska, the U.S.

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<sup>4</sup> (Van Evera, 1997, p. 70)

Government is the largest landowner<sup>5</sup>, and although Canada has recently settled many land claims agreements along its northern borders with indigenous groups, the borders for those land claims extend only to the territorial seas and do not include the continental shelf.<sup>6</sup> Under Soviet administration, land in Russia was amalgamated through the policy of collectivisation and placed under state control, and in the post-Cold War Period private land ownership continues to be a murky area under Russian law. Here, then, are three states with vested interests in the sovereignty of the Arctic due to the implications for their national interests, each as landowners and each being sovereign and holding sovereignty.

Sovereignty, although with a basic definition of “supreme power or authority,”<sup>7</sup> is a multi-faceted term and has a much deliberated meaning and usage within International Relations with varying theoretical and conceptual dimensions, including contradictions within its usage.<sup>8</sup> It is a word that often appears in the discourse of Arctic international relations, referring to both domestic and international aspects of the policy of the Arctic states, inducing the need to differentiate what these states mean when they refer to Arctic sovereignty. There are two dimensions to the state of being sovereign, where a state holds both internal and external sovereignty<sup>9</sup>, although some diminutive political units have the ability to hold the former without the latter as will be noted below in the discussion on tribal sovereignty.

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<sup>5</sup> The Federal Government owns 62% of land in Alaska.

<sup>6</sup> For example, see the Nunavut Land Claims Agreement 1993.

<sup>7</sup> (Oxford University Press, 2014)

<sup>8</sup> Krasner lists some of these contradictions such as non-intervention while simultaneously promoting democracy. See (Krasner, 1999, p. 3). It is beyond the scope of this research to address these anomalies and contradictions.

<sup>9</sup> Stephen Krasner has identified four types of sovereignty: international legal sovereignty, Westphalian sovereignty, domestic sovereignty and interdependence sovereignty. See (Krasner, 1999, p. 3). This research divides sovereignty into two broader types, encompassing the divisions listed by Krasner into external and internal sovereignty.

Internal sovereignty, according to Machiavelli is when within a state “there are none who acknowledge any other sovereign”<sup>10</sup> and is acquired by either “the good will of the people or of the nobles.”<sup>11</sup> Writing in medieval Europe, Machiavelli’s conception of sovereignty becomes *raison d’État*, where the “acquisition, maintenance and expansion of sovereign power”<sup>12</sup> is closely linked with, not only the ability to wage war, but also to the morality of the sovereign. For Machiavelli, sovereignty arises from the ability of the prince to maintain his own power through various means, but writing before the existence of the modern state, this sovereignty is attributed only to the individual and not to the political unit of the state. Machiavelli produced his treatise in an age when the Pope wielded significant political and religious authority, and as the messenger of God, served as arbitrator between monarchs. Machiavelli said of Alexander VI who issued the Papal Bull of 1493 that would be later redrafted into the *Treaty of Tordesillas 1494* that “none of those who preceded or followed him, have shewn like him what a pontiff can do with men and money.”<sup>13</sup> The decline of the individual as sovereign, the power of the Pope and the consolidation of principalities occurring in this period signalled a change for the fledgling international system.

About a century later, Bodin further developed the concept of sovereignty, defining it as the “absolute and perpetual power of a commonwealth”<sup>14</sup> which “is not limited in power, or in function, or in length of time.”<sup>15</sup> Like Machiavelli, for Bodin it is the sovereign ruler who is absolute and a ruler who is sovereign cannot be subject to the laws of those who have preceded them. While this approach to sovereignty was compatible with monarchical systems of the period, it is not so conducive to the transfer of

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<sup>10</sup> (Machiavelli, 1810, p. 23)

<sup>11</sup> (Machiavelli, 1810, p. 55)

<sup>12</sup> (Maiolo, 2007, p. 109)

<sup>13</sup> (Machiavelli, 1810, p. 67)

<sup>14</sup> (Bodin, 1992, p. 1)

<sup>15</sup> (Bodin, 1992, p. 3)

power in government within the modern state. Writing in the Age of Discovery, when European empires were annexing territories abroad and the Iberian empires were being challenged for the territory designated through the *Treaty of Tordesillas 1494*, for Bodin, the realm of sovereignty did not end with populations and land. Like the Romans, he included sovereignty over the sea. "Rights of the sea belong solely to the sovereign prince" up to ninety nautical miles from his coast "unless there is a sovereign prince nearer by to prevent him."<sup>16</sup> This approach to the limitations of sovereignty over territory would soon become relevant in the debates over *mare liberum* and *mare clausum*.

The consolidation of the sovereignty of the monarch with the internal sovereignty of the state emerges in the social contract theories of Hobbes, Locke and Rousseau, who for varying reasons, including fear and security of property, determine that individuals choose to surrender the freedoms accorded them by the laws of nature in the hypothetical state of nature to an authority figure--a sovereign. In exchange for this surrender of freedoms, individuals are accorded rights and duties upon becoming members of civil society overseen by the state; collectively giving up their individual sovereignty to create a consolidated sovereignty in the monarch, or government. Whereas Hobbes and Rousseau both believe this transaction to be absolute--for Hobbes sovereignty remains perpetually with the monarch but for Rousseau it rests in the people. For Locke, duty of the government to the citizens is created in this transfer and can be dissolved if found ineffectual. This theoretical rationalisation of the sources of internal sovereignty and the emerging conceptualisation of 'the state' is set against the backdrop of revolution in Europe, while intra-state conflict was developing the concept of external sovereignty within the international system.

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<sup>16</sup> (Bodin, 1992, p. 83)

The sovereignty established in the *Peace of Westphalia 1648*, often considered to be the starting point of the modern international system, represents the introduction of the rule of external sovereignty in international relations. Westphalia is “seen as marking the symbolic origin of the modern European international society in the sense that it crystallised and gave legal weight to developments that had been taking place in a random and unfocused way over many years.”<sup>17</sup> In Westphalia, this process of deference to the notion sovereignty emerged and ultimately culminated when the *Treaty of Utrecht 1713* “confirmed that the balance of power and national interests would prevail over dynastic rights in international affairs.”<sup>18</sup> The form of sovereignty established here eliminates the religious authority of the pope within state borders, establishes the right of monarchs to legislate for all matters within their borders and finally, it introduces the legal equality of states, although it would take some centuries to for this concept to consolidate in the *Montevideo Convention 1933*.<sup>19</sup>

This phase in the development of the state system also provided empires with legitimacy to purloin newly discovered lands overseas. An early justification of the Iberian empires, granted their entitlements by the pope, was provided based on ecclesiastical obligation, and they were charged with the duty of bringing Christianity to the heathens of the New World. However, as the sovereignty of states and the notion of territorial integrity entered into the fledgling international system, new forms of justification were required, especially with the decline of papal authority. These justifications were found in Locke’s labour theory of property, which determined that New World lands were underutilised by the inhabitants and were available for

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<sup>17</sup> (David Armstrong, 2012, pp. 60-1)

<sup>18</sup> (Jackson, 2007, p. 51)

<sup>19</sup> (Pemberton, 2009)

requisitioning, by other powers, but more importantly, that any forms of existing political organisation were inferior to the European conception of the state and were thus ineligible for claims to sovereign status. While this is not expressly defined within Kant's conception of sovereignty, he validates imperial practices of territorial annexation, so long as agreed through treaty arrangements, but held that indigenous tribes "do not constitute states."<sup>20</sup> Although the ability to engage in treaties should indicate external sovereignty, indigenous peoples of the Arctic were instead absorbed into the jurisdiction of European empires due to their lack of acceptable political organisation.

This sovereign inequality between the states that came to own the territory of the Arctic in contemporary international relations continues to exist in the relationship between the Arctic states and indigenous inhabitants in both the domestic and in international realms. While significant quantities of territories around the world were annexed during the Age of Discovery, many were released and decolonised during the twentieth century to form states and join the international system in their own right, whereas the territories in the Arctic, which are sparsely populated, have been absorbed by states that are derivations of European empires. In domestic legislation, these states have continued this asymmetric relationship through the creation of tribal sovereignty, which permits only internal sovereignty to indigenous peoples living within their ancestral lands, while the states maintain external sovereignty, including acting as arbitrators in the international domain.<sup>21</sup> This is a relationship that historically has been more

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<sup>20</sup> (Kant, 1970, p. 164)

<sup>21</sup> Following the United Nations Declaration on the Rights of Indigenous Peoples in 2007, the Inuit Circumpolar Council made a declaration on the sovereignty of the Arctic, elaborating on the point of 'overlapping sovereignties', their right to self-determination and the need for the Arctic states to accept them as partners in international relations, (Inuit Circumpolar Council, 2009). While the UNDRIP acknowledges the indigenous right to self-determination, the declaration is not to be "construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the

beneficial for the state than for the indigenous peoples, although with land claims agreements, there have been minor rectifications of this historical injustice, however, these land claims do nothing to change the inequality of their internal versus external sovereign status within the international system.

Within the current international system it would now be difficult, if not impossible, to eliminate inequalities of sovereignty that are based on the status of states as the primary unit within the system without a radical shakeup of the structure of this system. While there are many nations, such as indigenous tribes with internal sovereignty and thus the authority to make internal decisions for the benefit of the community, it is only states that hold external sovereignty, in part determining their status as states. There are four characteristics that must be in place in order to hold statehood and, therefore, external sovereignty: territory, a people, a government and international recognition. To hold internal sovereignty, a monarch or a government must exist in a symbiotic relationship with a people group, ideally within a clearly delimited territory. However, to achieve external sovereignty, and the quality of statehood, a political unit must also hold recognition from the community of states that it has achieved equal status within the international system. This complete package of the features of sovereign states fail to apply to the national groups within the Arctic, leaving them without the benefits of external sovereignty.

It was the recognition of external sovereignty that led to the rapid expansion of the modern international system following the Interwar Years as empires retreated, surrendering authority and control over territory and people to fledgling governments, using infrastructure which was incubated during the course of imperial

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territorial integrity or political unity of sovereign and independent States, (United Nations, 2007).



rule. Yet the motives that compelled empires to expand into new territory, including economic and resource benefits, was a reason for “sovereignty [to be] invoked as a source of authority for the acquisition of territories and as a means of asserting a continuing legal title to peoples and lands as against the aspirations or claims of others.”<sup>22</sup> These reasons did not disappear with decolonisation and thus these empires, while maintaining *de jure* claims to the internal and external sovereignty of all states, were compelled to find alternative methods to achieve their interests. These methods included using not only mechanisms of the international system<sup>23</sup> to permit *de facto* infringements of the sovereignty of new states which allowed continued access to trade and resources, but also to change the limitations of sovereignty within international law to enable sovereign expansion over the maritime resources.

Along with the expansion of the state system and the evolution of the elaborate network of infrastructure that exists between developed and developing states, the integrity of sovereignty as a coherent concept begins to fray. Although internal and external sovereignty both continue to exist, they exist with caveat, and the exceptions to the ‘rule of sovereignty’ are many. To delve into these discrepancies is beyond the scope of this discussion on sovereignty as this research focuses on the sovereignty of resource control, holding that despite these anomalies, “the conditions and social practice of sovereignty demarcate national realms of sovereign authority”<sup>24</sup> and that “political ‘sovereignty’ represents claims of rights, specifically the right to rule and the right of authority. As a property right, ‘sovereignty’ is the highest, most complete right of ownership.”<sup>25</sup> This research holds to a combination of Realist and Constructivist conceptualisations of state sovereignty: the state is the dominant unit of analysis within

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<sup>22</sup> (Jackson, 1999, p. 442) in (Pemberton, 2009, p. 90)

<sup>23</sup> Such as the World Bank, the IMF or the UN.

<sup>24</sup> (Burch, 2002, p. 76)

<sup>25</sup> (Burch, 2002, p. 75)

international relations, but as socially constructed concepts, both the state and sovereignty are rules that are susceptible to reinterpretation. Therefore, “States’ claims to sovereignty construct a social environment in which they can interact as an international society of states, while at the same time the mutual recognition of claims to sovereignty is an important element in the construction of states themselves.”<sup>26</sup> Sovereignty is thus a rule providing order, without the use of force, in the anarchical condition of the international system.

### **The Structure of International Relations: The International System**

The development of Arctic sovereignty since 1494 has occurred in a social structure identified as the international system, in which states are the dominant agents of action following the rules of expected behaviour. This structure framing Arctic international relations is a conceptual, rather than a physical formation, constructed through rules that have been introduced by these agents. Rules, both social and legal (codes), are intersubjective understandings and “a rule is a statement that tells people *what we should do*.”<sup>27</sup> As is seen in the next chapter, by process-tracing the *longue durée* of Arctic sovereignty from contemporary Arctic international relations back to the discovery of the Americas, it is demonstrated through the genealogical development of the rules and codes that frame Arctic sovereignty that the rules of this system have been formed by the interests of the dominant states within several different periods of this system. While the Arctic is merely a single case study of international relations, this research provides opportunity to demonstrate the character of the international system and how the interests of dominant states compels change.

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<sup>26</sup> (Biersteker & Weber, 1996, pp. 1-2)

<sup>27</sup> (Onuf, 1998, p. 59)

Because the international system is a social construction it is another one of those terms subject to varied definitions, and like many other terms, there is some difficulty of defining this core term in International Relations. Jay Goodman has identified several conceptions of the use of the term 'international system', including "an arrangement of the actors of international politics in which interactions are patterned and identifiable" and "a particular arrangement in which the nature of the arrangement makes it the major variable to be considered in explaining the behaviour of the actors in the international arena."<sup>28</sup> In depicting the nature of systems, Stephen Krasner says that all international systems have been "characterized by organized hypocrisy" and that they are "conventions, contracts, coercion, and impositions have all been patterns of behaviour in the international system."<sup>29</sup> For the purposes of this research, the international system is defined as a changeable set of rules and institutions determining the normative behaviour of states within international relations.

As the international system exists in anarchy without a global sovereign, the international system is an informal structure, a social construction created through the repeated patterns of these shared understandings and the social organisation that follows the development of rules. The system exists only because states, as the primary agents of this system tacitly agree that it does exist and continue to follow the rules of the system. The repetition of states following these rules results in predictable patterns of state behaviour, thus producing stability in the relationships between states. This stability then culminates in a form of security that allows for states to continue making additional linkages between one another, until the point where the international system of today is a complex network of financial, material and legal relationships. When the rules are 'broken', it causes insecurity and

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<sup>28</sup> (Goodman, 1965, p. 258)

<sup>29</sup> (Krasner, 2001, p. 18)

instability in the relations between states. Despite the anarchy of the international system, international relations are not entirely a Hobbesian free-for-all, and most states operate within the boundaries of an implied social contract created through the rules introduced to the structure. As powers rise and fall, it allows for the introduction of rules by different actors, again introducing the possibility for change within the structure of the international system.

The international system has turning points of development where new rules are introduced and when this happens, the rules of the expected behaviour of states within the international system change. Within social relations, rules are malleable and normative ideas have the ability to change. As the rules change, so can the structure that is shaped by those rules, and this is how the international system has been created, shaped, formed and reformed to constrain the behaviour of states within international society. As the interests of states change, so also change the rules to allow the pursuit of these interests within a stable environment, however, this a reciprocal process because actors also “define who they are and what they want with reference to the dominant rules and ideologies of the time.”<sup>30</sup> This process can be seen within the development the rules that states have followed in the long-term establishment of Arctic sovereignty.

For example, while it was acceptable for Columbus to place a flag in the New World claiming it for Spain because ‘ceremonies of possession’ were part of the process of territorial acquisition and were an accepted rule of the fifteen century; it was no longer an accepted rule when Russia placed their tricolour on the seabed of the Arctic Ocean in 2007. In addition to the insecurity, albeit minor insecurity, that this caused within Arctic international relations—

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<sup>30</sup> (Klotz & Lynch, 2007 p. 11)

more importantly it demonstrated that the rules for determining Arctic sovereignty have changed with shifts in the structure of the international system. To illustrate the ability of the international system to evolve due to the introduction of a new rule, there is a variety of examples from which to draw. Consider the introduction of the *Geneva Conventions* and the guidelines agreed upon by actors in the international community on the treatment of civilians and wounded or captured servicemen during war. This has caused war to become more discriminant, lest the violator be railed upon with international scorn. In the twentieth century, military action to prevent the spread of totalitarianism and fascism was considered acceptable, yet during the Cold War, the proxy wars used to prevent the spread of Communism were of dubious credibility and finally, the same technique used to prevent the spread of terrorism receives even less acceptance by members in the contemporary international community.

It is possible to perceive the international system does evolve and change through a simple review of history, the larger the sample cross section of history the easier it is to trace the turning points of the construction of the international system. The process of change is this: "If the thoughts and ideas that enter into the existence of international relations change, then the system itself will change as well, because the system consists in thoughts and ideas."<sup>31</sup> If you add a new rule to the existing international system, such as 'war is not to be used as an instrument of policy'--it changes the nature of relations between states. This can be illustrated in international relations by borrowing the mathematical concept of functions, where a rule is applied to an input, resulting in a permissible output, (See Figure 1). Because the international system "exists only as an intersubjective

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<sup>31</sup> (Jackson & Sorenson, p. 162)

awareness among people”<sup>32</sup>, it is possible to cause the system to transform by introducing new rules into the structure. As the structure of international system is the ideational creation of agents who have introduced rules with self-interested objectives in mind—the international system exemplifies that “Anarchy is what states make of it.”<sup>33</sup>

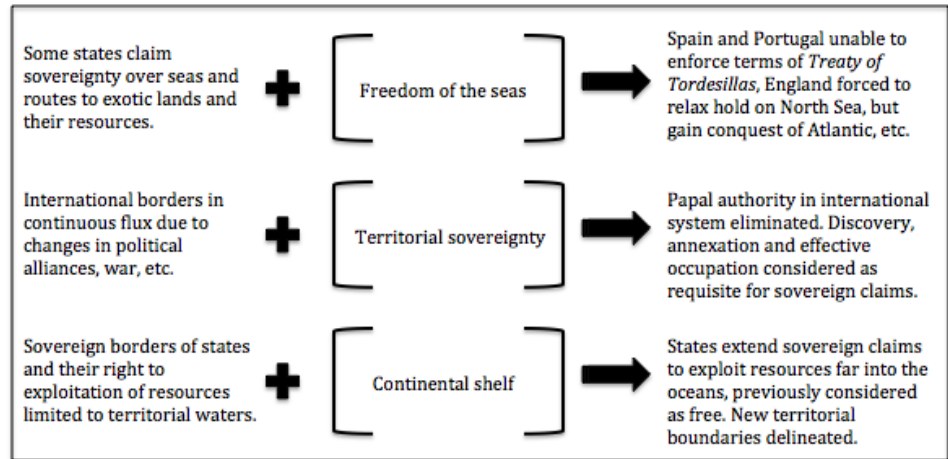


Figure 1: Addition of Rules in the Function Machine of the International System

The reason that the international system has changed is due to the introduction of ideas by states with the power to influence the system to change, in order to achieve a desired beneficial result. Just as when the “sovereignty doctrine expel[ed] the non-European world from its realm, and then proceed[ed] to legitimise the imperialism that resulted in the incorporation of the non-European world into the system of international law.”<sup>34</sup> For centuries, the anarchic international system operated in a survival of the fittest mode, as states expanded and contracted with the fortunes of material forces and social alliances<sup>35</sup> and as markets

<sup>32</sup> (Jackson & Sorenson, p. 162)

<sup>33</sup> (Wendt, 1999, p. 42)

<sup>34</sup> (Anghie, 2006, p. 741)

<sup>35</sup> See (Wendt 1995, p. 73) where he notes “Neorealists think it [structure] is made only of a distribution of material capabilities, whereas constructivists think it is also made of social relationships.”

grew, new resources were needed for economic expansion.

The European empires acquired land and resources from native populations and then from each other, and sometimes exchanged through treaty or purchase, all considered as acceptable behaviour in the international system. However, in the Arctic, the first indication that a shift had occurred in international system was when following race for the North Pole between Scott and Peary was achieved, U.S. President Taft posited that the North Pole could not be absorbed into sovereign jurisdiction of the United States due to the rule of *mare liberum*. It was this rule of the freedom of the seas that had changed the international system centuries before. If the United States at this time had declared sovereignty over the North Pole, it is likely that the sector principles and sovereignty over ice would have entered into customary international law. This claim by the United States would have been reinforced through the process of repetition by the actions of Canada and Russia who later made sectoral declarations. If this had happened—the sector principle would have included—not only the lands, but also the ice. Instead, the rule of the freedom of the seas reigned supreme—and the international system would not need to see another rule added to maritime territory until the resources of the continental shelf could be accessed. If the sector principle had not failed to become an actual rule for territorial delineation, the codified rules of the *United Nations Convention on the Law of the Sea 1982* would have been unnecessary for the determination of Arctic sovereignty.

So the international system and the Arctic situated within it are products of imperialism due to the ability of certain states to achieve desired outcomes in the structures and rules of the system. Those with more persuasive clout added the rule 'freedom of the seas' and when the international community accepted this, it became the *modus operandi* and the seas could no longer be

annexed into sovereign jurisdiction. Later, the rule 'exclusive economic zone' was added and a certain part of the seas could be annexed into sovereign jurisdiction for exploitation of marine resources. This was followed by the addition of the rule 'continental shelf' and from this, the land underneath the seas becomes sovereign territory for the purposes of exploitation by a handful of actors with the privilege of coastal boundaries. Through this, the Arctic, which would have once fallen under the juridical notion of *mare liberum*, has undergone a transformation from '*mare nullius*' to again return to a form of *mare clausum*, a principle so carefully circumvented in an earlier era. Through the cumulative layering of these rules, the Arctic and its resources (shipping routes, marine resources, oil and other minerals) are divided up into the sovereign realm of the five littoral states, with the rules carefully constructed to exclude non-Arctic states.

### **The Arctic, Imperialism and the International System**

Although the rules governing the international system have changed since European empires began absorbing territory in the New World through imperial practices, the engagement of states with the Arctic has historically been and continues to be a relationship of imperialism. The Arctic has been absorbed into the sovereign jurisdiction of the Arctic states through the processes of imperialism in four phases of the international system: the Age of Discovery, the Interwar Years, the Cold War and Post-Cold War Periods. In each of these periods, it is possible to analyse Arctic policy against the interests of the Arctic states and the rules of the international system that applied to their policy. The turning points for Arctic policy occur when there is a corresponding shift within the rules of the international system, but through each of these periods, it is possible to see the results of imperialist relationships between the Arctic states and the establishment of



sovereignty over territory framed by the rules of the international system.

The Arctic and empire are not two terms often seen together outside the histories of British exploration in the nineteenth century, but their connection extends much beyond this early period of European engagement in the high north. Empire and imperialism are connected by their etymological origins in *imperium*, the Latin for “an order, a command; the right to order, power, mastery, command, esp[ecially] political power, authority, sovereignty,”<sup>36</sup> which was commonly incorporated into the English language in the eighteenth century<sup>37</sup> just before what Hobsbawm called the ‘Age of Empire’. For Hobsbawm, the imperialism of the Age of Empire was not in the style of ‘traditional’ empire, such as the classical or European colonial empires, which introduced the enchantment of the Arctic to the wider world. Nor was it in the style which warranted the introduction of *imperium* to the common vernacular and filled bookshelves with histories of heroic explorers and grand military exploits. Rather, it was marked by the extension of “political and cultural institution bourgeois liberalism.”<sup>38</sup> This shows that empire and imperialism have held multiple incarnations, not in form only, but also in juridical and theoretical approaches that have changed along with the transitions in the international system.

The reality of the variations in conceptions on the definition of empire has led Colas to concluded that the concept of empire “carries considerable historical baggage; it is constantly contested and reaffirmed in the present with reference to the past.”<sup>39</sup> Empire and imperialism are now often considered as dirty words and it is no longer socially acceptable to wear the badge of the proud

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<sup>36</sup> (University of Notre Dame, 2013)

<sup>37</sup> (Harper, 2010)

<sup>38</sup> (Hobsbawm, 1987, p. 10)

<sup>39</sup> (Colas, 2007, p. 3)

imperialist that was conjured in *Land of Hope and Glory's* lyric “wider still and wider shall thy bounds be set.”<sup>40</sup> Instead, associations with imperialism conjure endless histories of immorality, suppression and oppression.<sup>41</sup> It is impossible, even within the space of a thesis, to survey the breadth of the entirety of empire and imperialism. Accordingly, this research, like Colas, adopts the premise that “not only does the meaning of empire vary throughout time and space, but its deployment as an explanatory concept requires being especially sensitive to the historical particularity of different imperial experiences.”<sup>42</sup> Nor is there space within this work to consider the morality of empire and imperialism.

Empire and imperialism are difficult to define and it has been said that, “Imperialism resembles Darwinism, in that many use the term but few can say what it really means.”<sup>43</sup> Doyle has described empire as both a “relationship, formal or informal, which one state controls the effective political sovereignty of another political society” and as “system of interaction between two political entities, one of which, the dominant metropole, exerts political control over the internal and external policy—the effective sovereignty—of the other, the subordinate periphery.”<sup>44</sup> Others, such as Mattingly, have described imperialism as “the geopolitical manifestation of relationships of control imposed by a state on the sovereignty of others,”<sup>45</sup> and Howe concludes that, “a kind of basic, consensus definition would be that an empire is a large political body which rules over territories outside its original borders.”<sup>46</sup> This relationship, or system of empire, can be achieved through

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<sup>40</sup> (Courtauld, 2010)

<sup>41</sup> (Howe, 2002)

<sup>42</sup> (Colas, 2007, p. 3)

<sup>43</sup> (Wolfe, 1997, p. 388)

<sup>44</sup> (Doyle, 1986, p. 12)

<sup>45</sup> (Mattingly, 2010, p. 6)

<sup>46</sup> (Howe, 2002, p. 14)

many methods, including “by force, by political collaboration, by economic, social or cultural dependence.”<sup>47</sup>

In another approach on imperialism, Miéville notes that many textbooks on international law merely “explain how to ‘do’ international law [but] these writings cannot get to grips with its categories or processes”<sup>48</sup> and that they fail to adequately develop a theoretical position on the of origin of international law. He determines that the common definitions of international law-- as laws which “governs the relations between states”<sup>49</sup> in actuality “tells us almost nothing of the underlying nature of international law.”<sup>50</sup> Miéville eventually concludes, as does this research though from a different methodology, that imperialism includes the “means by which international law is made actual in the modern international system.”<sup>51</sup> Meanwhile this research also holds that in the state of anarchy that exists within the international system, imperialism is also the method used to create the international system and the structures of international law which frame the behaviour of states within this system.

From these definitions emerge some of the key features of empire: territory, sovereignty, distinction between a core and periphery and finally, the control of international affairs, including diplomatic and economic affairs. Colas has determined that there are three hallmarks of empire: “imperial organization of political space, the role of markets in sustaining imperial rule, and the contradictory expressions of imperial rule,”<sup>52</sup> while Howe describes empire as “a central power or core territory—whose inhabitants usually continue to form the dominant ethnic or national group in the entire system—and an extensive periphery

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<sup>47</sup> (Doyle, 1986, p. 12)

<sup>48</sup> (Miéville, 2005, p. 2)

<sup>49</sup> (Miéville, 2005, p. 12)

<sup>50</sup> (Miéville, 2005, p. 11)

<sup>51</sup> (Miéville, 2005, p. 8)

<sup>52</sup> (Colas, 2007, p. 5)

of dominated areas”<sup>53</sup> with Mattingly contributing that “Empires generally combine a core, often metropolitan-controlled territory, with peripheral territories and have multi-ethnic or multinational dimensions.”<sup>54</sup> Imperialism is thus characterised as a relationship of political control by a state over the sovereignty and territory of another people, assumed without the benefit of the social contract.

Using these features of empire, and it is not difficult to colour the Arctic map as having historically been part of the empires of Russia, Great Britain, and even as part of a brief imperial project of the United States that followed the doctrine of Manifest Destiny. This was also true of the Arctic during the Cold War, although the map would have been coloured along ideological lines of polarity. Still today, the littoral states of the Arctic demonstrate the key features of empire, although some to greater extent than others. This includes that they have demonstrated their territorial sovereignty over *terra firma*, that there are marked differences maintaining Arctic territory as a periphery, with the core legislating, creating policy—and more importantly, financing their respective territories and finally, the core maintains control of the international affairs concerning these territories and their indigenous inhabitants.

How the Arctic has come to symbolise the project of empire can be traced through the establishment of sovereignty and authority in the region. With imperialism also being defined as “the process or policy of establishing or maintain an empire,”<sup>55</sup> it requires action by agents, not only with power, but also with interests, with asymmetry as a key feature in the relationship between agents. Agents, or states, act to fulfil these interests, guided by their identities to develop structures and through reinforcement of

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<sup>53</sup> (Howe, 2002, p. 14)

<sup>54</sup> (Mattingly, 2010, p. 6)

<sup>55</sup> (Doyle, 1986, p. 45)

rules, similar to electronic interaction of neuron dendrite synapses in the brain: a path travelled often reinforces the likelihood that rules will be remembered and establishes expected norms of behaviour. However, imperialism is not just another word for states acting to fulfil their interests, as interest seeking is not only a naturally inherent impulse, but is also an essential duty of the state. Rather, imperialism is acting to achieve these interests by having the persuasive power to manipulate the rules of the structure, through convincing other actors to reproduce a shared understanding and through an asymmetric relationship with territory.

Thus, imperialism is also responsible for the process of changing the shared understandings that form the rules of the international system and this is how the Arctic has come to be presently situated in international relations. The Arctic has been absorbed through imperialism into the sovereign jurisdiction of a small number of states in four stages of the international system. In these stages, there has been a transformation in the way that 'territory' is defined within international law, making it possible to absorb increasing quantities of resources into the sovereign control of states. Through these changes it has been made acceptable to bypass a historic rule of the international system, the 'freedom of the seas', while at the same time appearing to respect and even retain this rule in effect, yet still finding a way to create legitimate claims over resources beyond the old limits of territorial sovereignty. The changes within the understood limits of territory have evolved in the different phases of Arctic empire. In phase one, the Arctic was an empire of conquest when the rules of territory indicated that discovery and annexation were sufficient demonstration of right. In phase two, imperialism was demonstrated in the creation of the myth of Arctic heroes demonstrating mastery over the elements and through the use of

science to improve claims to sovereignty. In phase three, the Arctic was an empire of ideology and for reasons of security some of the sovereign boundaries of territory were blurred or overlooked. In phase four, imperialism in the Arctic has been administered through a legal conquest—the manipulation of the structures of international law that has allowing additional territory and resources of the Arctic to be absorbed for the purposes of national interest.

Although having different grammatical functions, empire and imperialism are in essence the same because they represent forms of power, control, suppression, extraction, a gravitational pull to the central core and the financial maintenance of empire. They are different because of the forms of their manifestation. “If an empire is a kind of object, usually a political entity, then imperialism is a process—or in some understandings an attitude, an ideology, even a philosophy of life.”<sup>56</sup> Empire is visible, tangible. Empire can be seen in maps, territory, products and commerce. Imperialism can only be perceived and the ability to exert hegemony mental/philosophical/ideological hegemony over the development of the rules of the international system. Imperialism is the ability to create the rules of the game during a state of play to secure a win, permitting the continuation of asymmetric relationships between people and territory.

Even though they feature heavily within the annals of history, empire and imperialism are often ignored within International Relations.<sup>57</sup> Perhaps it is the relative youth of International Relations that there has not been opportunity to return to the analysis of an era that predates its own existence when there is so much analysis of current affairs to undertake. Yet one does not have to look very hard to find relations between states are far

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<sup>56</sup> (Howe, 2002, p. 22)

<sup>57</sup> (Zielonka, 2012,)

from the condition of equality emphasised in the *Montevideo Convention 1933*<sup>58</sup> or to find examples of the violations of the supposed sovereignty of states in the Westphalian System. Rather, the pursuit of national interests without respect for human dignity or the concern for the well being of the environment introduces questions regarding concepts that are currently used to evaluate the appropriateness of policy within contemporary international relations and although not a popular concept, the use of imperialism may present a more pragmatic analysis of international relations.

The Arctic is a suitable topic for analysis under the lens of imperialism for a variety of reasons, including: expansion of territory, extraction of resources, control by a distant core over the administrative features of government, i.e. domestic policy, treaties, foreign policy and finally, influence/control of international legal mechanisms to the sometimes exclusion of indigenous populations. This research follows the idea that “the study of empire demands a focus on the scope and structure of governance, the nature of borders, centre-periphery relations and respective civilising missions...studies of empires, on the other hand, show that interdependence between periphery and centre often works to the former’s advantage...Besides, empires often try to “civilise” and “institutionalise” their peripheries, rather than simply attempting to conquer or exploit them, as is sometimes assumed by scholars of hegemony.”<sup>59</sup> These features are evident in the relationship of the dominant core to the outlying territories of the Arctic empire, with the people who live there and with the resources that this territory holds. This research will show that for the Arctic, “imperial control involves not only a process but also

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<sup>58</sup> Article 4 states: “States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law,” (Convention on the Rights and Duties of States, 1933).

<sup>59</sup> (Zielonka, 2012, p. 506)

outputs or outcomes...empire is as imperialism does.”<sup>60</sup> For the Arctic, empire and imperialism are not only the story of its past, but they are also the story of its future.

### **The Phases of Arctic Imperialism**

The recorded history of the Arctic is a history of empire.<sup>61</sup> Phase one of empire, or the Age of Discovery begins in the epoch of European expansion, with explorers crossing the seas as representatives of the state to claim territory to add to their spheres of influence, (See Figure 2). During this period, Alaska became the territory of the Imperial Russia, Rupert’s Land was chartered to the commercial entity of the Hudson Bay Company and various other lands and islands were claimed for Russia, France, Great Britain and eventually Norway, Denmark and the United States. Explorers came for gold, glory and the national interests, or for the vast resources of the Arctic, personal acclaim and especially, in pursuit of the illusive Northwest Passage, the route that would give Europe access to the lucrative markets of East Asia. The early focus of this period was the acquisition of new territories for European empires for both prestige and resources, and the hope of shipping routes through the Arctic. Toward the end of this period, states focused on the solidification of land borders and the implications of the borders for their overall national interests.

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<sup>60</sup> (Doyle, 1986, p. 39)

<sup>61</sup> As this paper focuses on ‘Western’ history of empire in the Arctic, due to constraints of space, it excludes the traditional/oral history of the Arctic indigenous peoples.



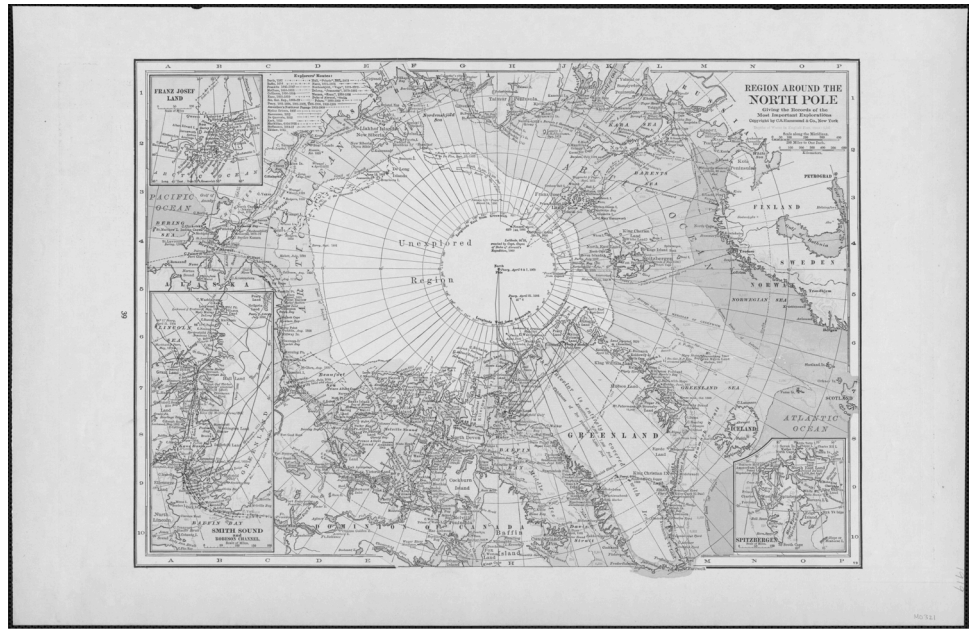


Figure 2: Exploration of the Arctic<sup>62</sup>

This earliest phase is the era in which European powers ‘discovered’ the Arctic in what Orwell described as “imperialism in its expansionist phase”<sup>63</sup> and created the legal mechanisms whereby it was acceptable for this already inhabited land to be absorbed within the sovereign jurisdiction of its new owners. These legal mechanisms were not codified, but were rather tacitly accepted within the international community as the status quo and included the process of discovery, annexation, proclamation, and effective administration<sup>64</sup>, rules introduced through repeated practice and accepted as normative guidelines for imperialist states. As indigenous populations were clearly not demonstrating effective administration and utilisation of their territory and nor were they politically organised into recognised sovereign states within the international system, their land was considered as available for European annexation.

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<sup>62</sup> (C.S. Hammond & Company 1900)

<sup>63</sup> (Orwell, 1981, p. 118)

<sup>64</sup> (Burghardt, 1973, p. 229)

It is the states within this early form of the international system that created the rules of the structure, and those outside of the system had no alternative but to accept the results due to their limited power. It has been noted “the very structure of ‘international law’ was created in the colonial era, by the colonial powers. It is based on a mixture of Napoleonic, Anglo-Saxon, and before that Roman legal codes, owing nothing much to any non-European idea of legality. But then the legal systems of most ex-colonies, too, are based on those of their former masters.”<sup>65</sup> The social patterns accepted as rules within the international system in this period of empire were themselves the products of earlier eras of imperialism, reinforcing patterns of uneven relationships between a stronger core and the inferior periphery. These social patterns were also transferred to expansion into the Arctic, affecting the future of the people living there and the integrity of the environment.

The Arctic was explored by representatives of European states, including adventurers such as Vitus Bering, a Dane sailing for Russia, Martin Frobisher, John Franklin, John and James Ross for Great Britain, Fridtjof Nansen and Otto Sverdrup for Norway, later followed by Knud Rasmussen for Denmark, Robert Peary for the United States and Vilhjalmur Stefansson for Canada. While some of these explorers were for seeking glory and adventure for themselves, they were also part of a larger narrative that “[e]very measure, which could extend the boundaries of domestic prosperity, enlarge the shores of scientific discovery or increase the benign influence and empire of Christianity and with it the sum of happiness and hope to man, was eagerly adopted, and vigorously pursued.”<sup>66</sup> The main objectives of early Arctic exploration included developing the sea-lanes of the Northwest Passage and the Northern Sea Route and to discover regions from

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<sup>65</sup> (Howe, 2002, p. 3)

<sup>66</sup> (Franklin, 1824, p. 2)

where resources, such as whale oil could be extracted for the economic benefit of the motherland, (See Figure 3). Expansion ended when all territory had been claimed and exploration declined as the demand for the known resources dwindled.

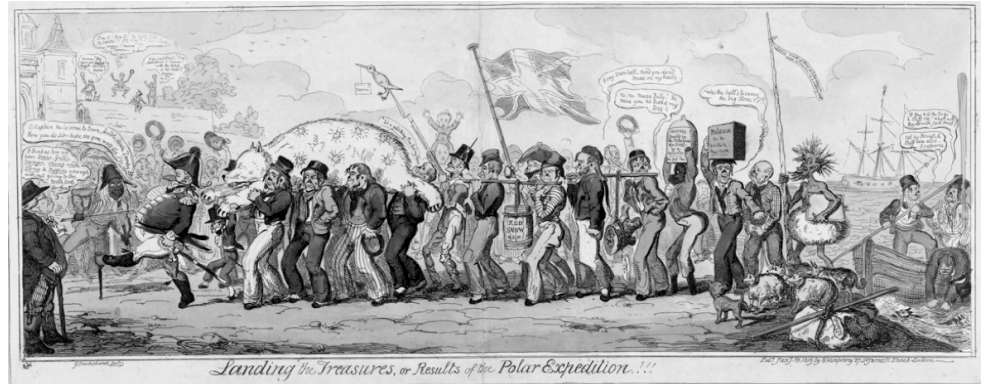


Figure 3: Landing of the Treasures, or Results of the Polar Expedition, 1819<sup>67</sup>

Interest in the Arctic for purposes of territorial expansion waned in the early part of the 20<sup>th</sup> century, following the transition to the Interwar Years due to several factors. The primary factor was that all known land was claimed by the littoral states through either discovery or through the declarations made via the sector principle. A second factor is that most economic interest in the Arctic had revolved around the fur trade and the acquisition of seal/whale oil. As demand for these resources declined, so did the interests of commercial enterprises. Thirdly, a major focus of Arctic exploration had been the opening of the Northwest Passage and the Northern Sea Routes as major shipping routes, objectives that were abandoned due to climatic conditions. The climate also deterred other resource-based interests from growing as commodity demand shifted away from furs and whale oil to fossil fuels, such as coal, gas and oil.<sup>68</sup> Thus, intrepid explorers and treasure-seekers abandoned pursuit of the Arctic for territorial

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<sup>67</sup> (Cruikshank, 1819)

<sup>68</sup> Although much coal was extracted from the Arctic, this is a land-based activity that fell clearly within established territorial boundaries, including on Svalbard.

expansion and in stages the empires in the Arctic began transition to a new focus: effective occupation of northern territories, and a focus on the use of scientific research to achieve nation interests.

With transition into the Interwar Years, the Age of Discovery drew to a close; however, this did not result in the end of imperial practices in the Arctic. Instead the rules of the international system were subject to a series of changes in subjective understandings causing the processes of imperialism to be applied through new rules and for new state interests. The most dominant of these rule changes included the limits to territorial expansion permitted by states. These limits resulted in the failure to establish sovereignty over sea ice in the Arctic and the reinforcement of the principle of the freedom of the seas in international arbitration when *mare clausum* was used in an attempt to protect maritime resources. The securing of territorial boundaries to protect resources needed for physical security is typical of this period when “almost all European nations and the United States were highly protectionist.”<sup>69</sup> And although the embryonic liberal institutionalism that began developing in this period was not explicitly present in Arctic policy, the involvement of the Arctic states in these institutions that became part of the fabric of the international system would ultimately impact the development of Arctic sovereignty.

The sector principle was applied as the Arctic became more accessible due to flying machines, so in a move fulfil their legal obligations through effective occupation of their territories, some of the Arctic states began to implement domestic development policies. This included the Soviet Union moving Russian populations northward, as “the best claim to any territory, legally speaking, is effective occupation.”<sup>70</sup> This was to combat the loss of

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<sup>69</sup> (Frieden & Lake, 2000, p. 6)

<sup>70</sup> (Horensma, 1991, p. 18)

territory to states with aviation capabilities because at the time, flying was considered as good as effective occupation in a territory in which it was impossible to physically occupy.<sup>71</sup> Although this occupation of the Arctic was initiated under Imperial Russia, a fate Joseph Stalin was to experience as a political exile in the years just prior to the Russian Revolution, it was continued under Soviet policy. It was likely this experience influenced Stalin to “impos[e] on the Arctic his own vision of the future—as a source of wealth, power and strategic advantage for the Soviet Union”<sup>72</sup> and gives additional rationale for the position of the Arctic within Soviet mythology. Although the usefulness of the settlers that Stalin moved to the North “extended barely beyond the fact that they helped to occupy the territory for the sovereign power,”<sup>73</sup> Soviet administration of the region was reinforced through infrastructural projects, such as the unfinished Trans-Polar Mainline, which would help to move resources extracted from the Arctic.

Within Canada, the need to maintain effective occupation is administered through domestic policy that interfered with the traditional lifestyles of the indigenous populations. This implementation of imperialism in the Arctic sees a Kiplingesque application of the civilising processes of the ‘white man’s burden’ in the engagement by imperial governments with the peoples of the Arctic and the process of “imperialism as forcible evangelizing.”<sup>74</sup> From a pragmatic perspective, indigenous inhabitants are perhaps an unfortunate factor in the acquisition of territory. Often considered as a feature of imperialism, colonialism as administrative project has not been a dominant feature of Arctic imperialism within Canada, although it has featured in both the American and the Russian Arctic. However, there is another, more

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<sup>71</sup> (Horensma, 1991, p. 20)

<sup>72</sup> (Emmerson, 2011, p. 34)

<sup>73</sup> (Armstrong, 1965, p. 86)

<sup>74</sup> (Orwell, 1981, p. 119)

dominate feature of imperialism of import obvious within the Arctic, and this is the asymmetric relationship of the core administration with the peripheral populations.

An apt example of this process includes the dismemberment of traditional Inuit communities by the Canadian government, sending children to long term residential schools and moving communities further North as enforcement of their effective occupation of the Arctic, described as “imposition of Canadian sovereignty.”<sup>75</sup> Within Canada, these actions have received a formal apology from the Arctic focussed Harper government, saying, “the policy of assimilation was wrong”<sup>76</sup> but did not apologise for the “non-indigenous settlement and resource exploitation [that] followed.”<sup>77</sup> The Canadian government is not alone in employing this method with indigenous communities as this civilizing tactic was also used by the U.S. government with native American tribes around the turn of the twentieth century, both states intending that the schools would “elevate the Indian from his condition of savagery.”<sup>78</sup> The policy of aggressive assimilation was continued by the Canadian government until as late as 1996 and shortly after the policy’s termination, the Canadian government began a crusade of establishing a ‘northern identity’, claiming that “The North is a fundamental part of our heritage and our national identity, and it is vital to our future” when for so long the attempt had been to give The North and its inhabitants a Canadian identity.<sup>79</sup>

Not all features of imperialism in this second phase were different from the expansionist phase of Arctic imperialism during the Age of Discovery, as this second phase also included some emphasis on

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<sup>75</sup> (Metcalf & Bubela, 2012, p. 278)

<sup>76</sup> (Government of Canada, 2008)

<sup>77</sup> (Metcalf & Bubela, 2012, p. 278)

<sup>78</sup> (Johansen, 2000, p. 12)

<sup>79</sup> (Government of Canada, 2009)

the symbolic or exhibitionist aspects of imperialism in the form of hero worship, although in this period it was marketed as glory for the state rather than for the individual. This is especially seen the spectacles produced for the public imaginary in the persistent use of visual propaganda to keep the idea of imperialism of the Arctic alive. While hero worship of Arctic explorers was prevalent in nineteenth century Britain, it also continued within the United States and Canada where “magazines and newspapers...got caught up in the star power of the Arctic heroes, offering payments in return for exclusive rights to publish their stories.”<sup>80</sup> But prevalence of hero worship was more obvious in the Soviet Union, who promoted the sector principle as a method for determining Arctic sovereignty. As this practice began to wane and the principle of effective occupation became more dominant in international relations, it became important to emphasise the greatness of Arctic expeditions to the North Pole and in the Soviet sector. Thus, polar literature “offered an excellent opportunity to convey all sorts of political propaganda because [it] was not fiction, but the truth.”<sup>81</sup> Additionally, Arctic explorers were showcased to Soviet audiences, increasing public support for Arctic policy and strategy by providing “a continuum of heroic episodes which allowed the Soviets to underpin their entire history with a framework built wholly out of grand adventures and cosmic struggles,”<sup>82</sup> (See Figure 4).

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<sup>80</sup> (Revkin, 2006, p. 47)

<sup>81</sup> (Horensma, 1991, p. 59)

<sup>82</sup> (McCannon, 1997, p 365)



Figure 4: U.S.S.R. Publicity Poster Stalin and the Arctic, 1939<sup>83</sup>

The Cold War years, the third phase of imperialism in the Arctic, begins after another transition in the international system from a multi-polar system with many imperial powers, to a bi-polar system, one of two well understood transformations in the distributional structure of the international system following the World Wars.<sup>84</sup> This happened in part because relations between states had forcibly undergone major changes due to advancement in several areas including technology and science, which changed the nature of communication, war and medicine. However, more important are the changes seen in growing body of international treaty law regulating the behaviour between states and the insecurity that developed as a result of the introduction of competing political ideologies into the international system. For the Arctic, this change toward power polarity transformed focus in the region into a testing ground for the games of the Cold War.

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<sup>83</sup> (McCannon, 1998, p. 58)

<sup>84</sup> (Buzan & Little, 1994, p. 253)



During the Cold War, the primary focus of states in the Arctic was no longer on territorial claims and effective sovereignty, although these policies did continue. Instead, a new layer of engagement with the Arctic was added as the littoral states focused on the Arctic as a potential route of attack on the core territory of the Arctic states and began to utilise the expansive territory of the Arctic to create a buffer zone against such an attack. This use of the vast expanses of the Arctic as a buffer zone emphasises the spatial strategies of imperialism by the littoral states as “great powers are not only about material power capabilities, but also about spatial and ideational aspects,” making great powers “better conceived of as empires” through the combination of material, spatial and ideational strategies.<sup>85</sup> Thus, the spatial exploitation of territory in the Arctic was used to reinforce the material core power of the dominant states, while the expansionist policies of ideological imperialism between Communism and democracy were being pursued.

In addition to the focus on physical security, the dismantling of formal empire that was typical of this period and the increasing reliance of states within the international system on forms of collective security was also evident in the Arctic. Affected by this transition, the Dominion of Canada began forging a distinct identity, separate from merely being a colony of Great Britain, including developing an Arctic relationship with the United States and forming an identity as an Arctic State. Meanwhile, Russia dominated most of the Arctic periphery in Europe and Asia while Norway and Denmark relied on their relationships in NATO as their best defence for the prevention of Soviet incursions into their territories.<sup>86</sup> In this phase, territorial boundaries within the Arctic are relatively static, while political alliances create opportunity for

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<sup>85</sup> (Zielonka, 2012, p. 520)

<sup>86</sup> (Buteux, 1989, p. 87-99)

both military and economic exchanges, forming relationships that would eventually enable the creation of governance mechanisms.

In this period, imperialism sees development into two new methods as imperialism through territorial expansion declined. This includes the manipulation of international legal mechanisms, many developed through the institutions created at the end of the Interwar Years. These mechanisms created the conditions for a future phase of imperialism in the Arctic. The second method has its origins in the outcome of balance of power at the end of the Great Wars and is essentially imperialism implemented through the method of development. This has been explored by Harvey who sees imperialism as a combination of the “political project on the part of actors whose power is based in command of a territory...and the molecular processes of capital accumulation in space and time.”<sup>87</sup> It is imperialism where the politicians who “operate in territorialized space” merge with the capitalists who “operate in continuous space and time,” creating the opportunity for imperialism that is not confined to economic activity within their own territorial borders.<sup>88</sup>

An interesting feature of imperialism in this stage is seen in the application of the principle of effective administration of territory in order to reinforce sovereignty by the United States, different to the methods of effective administration implemented by Canada and Russia beginning in the Interwar Years. In the United States, Alaska transitioned from its condition as a federal territory to a full-fledge member of the union with all the civil rights and responsibilities arising from this status in 1959. Yet much of the land in Alaska remained federally owned and colonists in the territory have been heavily reliant on government subsidies, including those from the militarisation of Alaska in the Cold War,

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<sup>87</sup> (Harvey, 2003, p. 26)

<sup>88</sup> (Harvey, 2003, p. 27)

as “federal spending was the principal base of the Alaska economy.”<sup>89</sup> This remains true though some of this now occurs through the Alaska Permanent Fund, which pays revenues on oil profits to all Alaskan residents and so, at the end of the twentieth century, federal dependency remains a colonial feature of Alaska which “continues to function as a colony for corporate investors and federal managers.”<sup>90</sup> This colonial dependency serves to confirm the sovereignty the continental United States over its Arctic territory, far removed from the rest of the continental core.

American imperialism in the Arctic was also exhibited by occupation in both Canada and Greenland, made possible by diplomatic agreement and material superiority. Although there are claims that the sovereignty of Greenland was vulnerable from “countries friendly with Denmark,”<sup>91</sup> a defence agreement between the United States and Denmark states that the U.S. “reiterates its recognition of and respect for the sovereignty”<sup>92</sup> of Denmark over Greenland. During this time, the U.S. military developed the system of radar stations that included the Distant Early Warning line spanning from Alaska to Greenland, and established the joint military operation of the North American Aerospace Defence Command with Canada, and maintained military operations, including nuclear sites, in Greenland. The need for the incursions by the U.S. into the sovereign territory of Canada and Denmark diminished as technology, such as Intercontinental Ballistic Missiles and nuclear submarines capable of operating under ice were developed as it meant that the USA could defend its borders from great distances, guaranteeing their ability to deliver mutually assured destruction in the event of Cold War escalation.

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<sup>89</sup> (Haycox, 2002, p. 168)

<sup>90</sup> (Haycox, 2002, p. 168)

<sup>91</sup> (Rytter et al., 2010, p. 19)

<sup>92</sup> (American Society of International Law, 1941, p. 29)

Finally, during this third phase of international system, the legal structures of the international system underwent significant development with the transformation of the Law of the Sea, which for centuries was dominated by the principles of the 'freedom of the sea' for navigation and the 'cannon shot' rule establishing the outer limits of the territorial seas of coastal states. This transformation was made possible by the United States, the dominant state in the international system, releasing the *Truman Proclamation 1945*, which announced the exploitative rights of the United States to the resources in the continental shelf appurtenant to its coast. Within the time of space equivalent to the blink of an eye, the law of the sea evolved and no longer were the oceans restricted from absorption into the territory of states when this declaration was rapidly accepted as customary international law through repetition by other states within the international system.

The end of the Cold War, coupled with the introduction of new rules introduced to the international system, made way for the institutions, expectations and insecurities introduced during the earlier periods of Arctic imperialism to reach a new stage of development, initiating the contemporary phase of imperialism in the Arctic. In many ways, this phase is merely the maturation of the processes begun during the Cold War Period, but unencumbered by the political hostilities of the Cold War. This phase has seen a reframing of priorities and a major shift in the political alliances of some states from being Cold War enemies to being Arctic allies, making this period of imperialism an actionable process. Most of the Arctic states have moved beyond the policies of effective occupation and rather are unintentionally demonstrating how imperialism can be implemented at a foreign policy level by continuing protectionist policies which result in the control of the Arctic states over resources of the region.

In the Post Cold War Period, territorial expansion has once again become a feature of Arctic imperialism, though it has not been the “unlimited expansion of national area” associated with the classical imperialism in the Age of Discovery.<sup>93</sup> Often inappropriately labelled as the ‘scramble for the Arctic’ in contemporary discourses by casual observers of Arctic affairs, this expansion has not been over *terra firma*, as all ‘real land’ in the Arctic was absorbed into the sovereign jurisdiction of the Arctic states in the first phase of empire. Then during the Interwar Years, any undiscovered land<sup>94</sup> was claimed through the sector principle until ice-covered ocean was all that remained unclaimed in the far North. The ice in the North received some attention as a potential recipient of sovereign jurisdiction, but ultimately the sea ice and the ocean spaces in the maritime North were recognised under *mare liberum* until a new rule introduced to the international system made additional territorial expansion permissible.

Rather than an outright imperial land grab employing military force and power, territorial expansion in the final phase of Arctic imperialism has been through the application of legal structures developed in the middle of the twentieth century. These legal structures were used to create a new conception of territory, the continental shelf, which is defined as “the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea.”<sup>95</sup> The continental shelf is a part of the earth that was previously inaccessible to man and was conceptually beyond the scope of the intellectual legal debate between Grotius and Selden over *mare liberum* versus *mare clausum*. While those who developed the structures of international law introduced to the international system following the Great Wars did not likely

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<sup>93</sup> (Hobson, 2005, p. 175)

<sup>94</sup> It was believed that more land existed in the far North due to the presence of geological features found on ice. These features were later found to be rocks that had been deposited on the ice through glacial flows and carried out to sea.

<sup>95</sup> (United Nations, 1958)

consider the political organisation of the Arctic, the advancements in the law of the sea and the turn to international governance created tools whereby the Arctic states could absorb the region into sovereign control.

In an earlier period, the notion of *mare liberum* became the *modus operandi* in an earlier phase of the international system because it suited the needs and interests of the imperial powers of the period by those desiring to weaken the hold of earlier powers on maritime control for commercial and economic interests in the far flung places of the globe. From this point, the freedom of the seas continued as a dominant rule within the international system until an additional rule could be added to the system, which maintained the integrity of *mare liberum*, while creating the opportunity for states to continue territorial expansion without creating insecurity within the international system. The cumulative effect of this rule layering has transformed the Arctic into what is essentially an enclosed sea, or a *mare clausum*, with the Arctic states controlling the territory and resources of the region.

In his treatise *Of the Dominion, or, Ownership of the Seas*, Selden identified three arguments often summoned to counter any claims of dominion or sovereignty over the seas, including those relating to commerce and passage, the nature of the sea and from the writings of 'learned men', specifically Grotius' *mare liberum*.<sup>96</sup> In the Arctic, the respect for the principle of the freedom of the seas continues to be reaffirmed by the states littoral to the Arctic Ocean, albeit with caveat. One of these provisions includes the mandatory Polar Code developed by the International Maritime Organization, which will likely stipulate what types of vessels are allowed within Arctic waters. Thus, while there is *de facto* continuation of the freedom of the seas, in practice, navigation is

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<sup>96</sup> (Selden, 2004, p. 3)

permitted for those with acceptable equipment. Although such provisions will undoubtedly reduce the risk of human and environmental disaster in the Arctic, they also act as an exclusion mechanism and hence in reality, reduce the condition of 'free seas', adding another dimension of *mare clausum* to the Arctic.

A final exclusionary technique being employed by the Arctic States, including those without continental shelf claims in the Arctic Ocean is the 'members only' nature of the Arctic Council. The council was established to promote "cooperation, coordination and interaction among the Arctic States"<sup>97</sup> and the founding charter stipulates that non-Arctic States are only permitted as observers to the Council *if* they "recognize Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic."<sup>98</sup> As interest in the Arctic region escalated with the discovery of economic resources and increasing opportunities for access, the choice of excluding outsiders from Arctic decision making-processes is indicative of imperialist strategies, which are being deployed through a sort of collective imperialism via a cartel of the Arctic States. The legal institutions that have been established for the Arctic determine who has right and ability to profit from its abundance, and these mechanisms direct the flow of resources to the core of the Arctic States.

With empires having historically extracted economic benefit in either the form of tribute, taxes or raw materials from their conquered territories, it is customary to think of the extraction of resources from the dominated periphery for the economic gain of the core as a method of imperialism. It is no secret that "interest in the economic potential of the natural resources...is considered by some to have always been the main force behind imperialism."<sup>99</sup>

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<sup>97</sup> (Arctic Council, 1996)

<sup>98</sup> (Arctic Council, 2011 d)

<sup>99</sup> (Worboys, 1990, p. 164)

This feature of imperialism is demonstrated in the Arctic, for example, by the Canadian *Land Claims Agreement 1993* between the Her Majesty, Queen Elizabeth II and the formerly unincorporated territory of Nunavut. Not only has the agreement been conducted via the monarch of an imperial nation between the indigenous population of a territory, itself an act of imperialism, the agreement gives rights to the resources found in the land to the Inuit, yet the federal government retains the rights over the resources in the continental shelf in an area Canada claims sovereignty over via the Inuit having historically utilised the region “since time immemorial.”<sup>100</sup> Similarly, the U.S. Federal government owns 64% of the territory within Alaska and manages these holdings for energy and resources exploitation.<sup>101</sup> Thus, it appears that exploitable Arctic resources, both on land and at sea, are being utilised by the states holding sovereignty in a transfer from the periphery to the core.

This contemporary phase of Arctic imperialism continues the asymmetric relationship between the state and the indigenous peoples of the Arctic, in both domestic and international arenas through reinvented civilizing missions, economic paternalism and inequality in participation in Arctic governance. Civilising missions have not disappeared, but rather they have reached a maturation and have become incorporated as part of the policy of the Arctic states in forming their Arctic worldview. It is said that “civilising missions are not merely rhetorical exercises: they help empires to define their vision of the world and their own role in this world.”<sup>102</sup> This is clearly evident in the case of Russia, who failed to introduce Soviet-style socialism to the indigenous Northerners in an earlier civilising mission, and now promotes “traditional activities [which] symbolize a special, harmonic and intense

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<sup>100</sup> Interview with anonymous member of Canadian Diplomatic Staff.

<sup>101</sup> (State of Alaska, 2007)

<sup>102</sup> (Zielonka, 2012, p. 515)



interaction with the natural environment” referring to them as ‘Children of Nature.’<sup>103</sup> Similarly, although Canada promotes itself as being a ‘Northern Nation’ and claims sovereignty over the Arctic by virtue of the ‘Canadian’ Inuit having lived there since ‘time immemorial’, this is a people over whom they once tried to civilise in residential schools and now maintain through welfare, pacified through devolution of government.

The relationship with the indigenous people has assumed a form of economic paternalism “where the welfare state has consisted of an onslaught of government programmes to achieve [indigenous] social integration, which have resulted in a situation of imposed and ghettoized dependency.”<sup>104</sup> These paternalistic policies, which no longer use the approach that indigenous people *are* a problem, but rather that they *have* problems, have resulted in “government policies [which] have encouraged large scale Aboriginal unemployment and welfare dependency.”<sup>105</sup> In the Arctic, this has occurred through historical policies combined with the forces of climate change resulting in the deterioration of traditional ways of life, leaving little recourse for indigenous populations other than to rely on the welfare state until alternative methods for survival can be developed. At present, the ability to decrease reliance on the core political unit by the peripheral populations is focused on the development of the resources in the Arctic, something that in time could produce a major shift in political boundaries if the peripheral peoples achieve economic and political dependence from their imperial caretakers. This situation could feasibly develop in Greenland, who has already negotiated terms of independence with Denmark in the *Act on Greenland Self-Government 2009*.<sup>106</sup>

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<sup>103</sup> (Fondahl, 1997, p. 73)

<sup>104</sup> (Shewell & Spagnut, 1995, p. 25)

<sup>105</sup> (Furniss, 1999, p. 201)

<sup>106</sup> (Kleist, 2010, p. 171)

The asymmetric relationship between the states of the Arctic and the indigenous populations (who provide the human element over which sovereign claims to the Arctic are being held through incorporation of indigenous historical titles to territory into the federal systems of the Arctic states) is also demonstrated in their interaction in Arctic governance institutions. Although the Arctic Council “is one of the few international forums in the world where indigenous people are consulted at such a high and consistent level,”<sup>107</sup> it fails to eliminate political and legal inequality. Despite their calls to be treated as equals, indigenous groups are considered only as ‘permanent observers’ rather than as ‘members’; this is representative of continued imperial “relationships of political control”<sup>108</sup> in the Arctic. Additionally, the development of the Arctic Council into structural form where States prevent non-state groups from acting as equal participants is a continuation of the “attempt to permanently order the world of states and markets according to its national interests,”<sup>109</sup> and perpetuates relationships of inequality within the international system.

## **Conclusions**

In the case of the melting Arctic, the objective has been to demonstrate who owns the Arctic and how that ownership has been determined. Sovereignty of territory in the Arctic has been established through accepted rules of the international system in several given eras. As a socially constructed rule, sovereignty is a concept that has been established by both tacit and codified agreement between states and has been reinforced through patterns of behaviour. The condition of the internal sovereignty of states designates jurisdictional authority to legislate within

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<sup>107</sup> (Bennet, 2013)

<sup>108</sup> (Doyle, 1986, p. 19)

<sup>109</sup> (Ignatieff, 2003, p. 2)

territory on behalf of its citizens through a social contract, while external sovereignty is international recognition validating not only a state's internal sovereignty, but is also an endorsement of a state's right to engage equally with other states in the international system. Together, these dimensions of sovereignty also determine the state as having the ultimate authority, and thus property rights, over resources within a delineated territory and as a remote and largely uninhabited territory, the sovereignty in the Arctic has been established through imperialist methods. It the condition of sovereignty over maritime territory in the Arctic that states are attempting to achieve through the currently rules of the international in order to pursue their national interests.

The Arctic with its hostile climatic conditions is considered one of the final frontiers on earth while at the same time it is presenting the international system with new opportunities for imperialism as the Arctic States are employing both old and new legal institutions to establish their sovereignty within the region. In the Arctic, the hallmarks of imperialism are evident not only in its 'discovery' by actors in the international system and the methods by which it has been coloured on the map, but also in the way that the Arctic is handled in contemporary international relations, specifically in the way that international legal mechanisms have been developed to make legitimate its exploitation by the Arctic States. Through this, a sort of 'Arctic Mediterranean', or a *mare clausum* has been created, where participation in the decision-making processes is a members only club of Arctic States. Imperialism in the Arctic is still represented through control over territory, but it is also a control of the legal systems that regulate the region, a control of the ideas that form the norms of conduct in the international system, a control of the resources, and finally it includes domestic control of the indigenous populations and separation from state actors in international governance.

The international system, which is also a social construction, has been created through the layering of rules and codes, which in the condition of anarchy guide the behaviour of states resulting in security in the relationships between states. When new rules are added to the international system it evolves, with some rules adding turning points in the overall character of the system. This layering of rules can be seen through a long term development of Arctic sovereignty, demonstrating four different periods of the international system in which states have followed the rules of the structure in their engagement with territory in the Arctic.

However, despite the seeming approach to the end of sovereignty claims in the Arctic, new horizons of Arctic sovereignty are rising. Already being considered in discourses on sovereignty are the legal implications for the international system in the purchase of territory from one sovereign state by another. In earlier phases of empire, this exchange included the transfer of land *and* the exchange of sovereignty over the territory—and indeed this is how some Arctic territory has been acquired by current Arctic states. This type of exchange has been absent from the international system for some time, and thus has faded from practice. However, should China be permitted to buy territory from Greenland or Iceland, and should the rule be added ‘sovereign purchase indicates transfer of sovereignty’, the shape of the international system, and indeed the Arctic stands to face a mighty transformation.

With the international system in its state of anarchy, the changes in the Arctic reflect changes in the international system perpetuating the methods of imperialism. The methods of imperialism are those that implement and pursue policies of imperialism. The hallmarks of imperialism include asymmetric relationships with both the people and resources of a territory. These asymmetric relationships occur when a state assumes

authority over a people without the advantages of a social contract and with a territory when the resources of the periphery are exploited for the benefit of the national interests of the core state. In the imperialist practices of the Arctic states, their national interests are being pursued through the layering of rules in the international system, securing the sovereignty of the Arctic states over the governance, territory, people, and most importantly, the resources of the Arctic and thus ultimately determining who owns the Arctic.

## Chapter II

### A Genealogy of the Rules and Codes of Arctic Sovereignty

Within view of an international audience, Canada and Russia are waging diplomatic campaigns over ownership of the North Pole. Just before Christmas 2013, the Canadian government issued Santa Claus with a passport, an act that specifically implied that because Father Christmas is resident at the pole, it lies within Canadian territory. The Russian government upped the ante by calling for an increase of military presence in the Arctic in order to be able to defend their claim to the pole via the Lomonosov Ridge, a claim formally submitted to the UN Commission on the Continental Shelf. These acts demonstrate that the North Pole has become a territorial focal point in a region already the centre of a geopolitical contest over maritime territory, which can be claimed through procedures only recently developed within international law. These states are both communicating to a domestic audience, but also to the international community, that this imaginary and socially constructed geographical point is a part of *their* delineated political territorial borders. Their assertions to following international law to determine their Arctic maritime territorial claims while making these melodramatic claims to the North Pole causes some consternation among observers of Arctic international relations as this diplomatic duel appears to be accelerating, although these two states have been including the North Pole in maps and other political imagery for nearly a century. Whether or not Canada and Russian are permitted within international law to incorporate the North Pole as recognised legitimate territory introduces questions on how the Arctic came to be situated within the international legal order: What are the

rules for establishing sovereignty over territory in the Arctic, who made these rules and how have the rules changed?

The discourse surrounding this diplomatic row focuses on the role of international law in the form of the *United Nations Convention on the Law of the Sea 1982* as the method for determining potential ownership of the North Pole. Can the geographic North Pole, a socially constructed concept, be included in the sovereign territory of the Arctic littoral states? What the discourse fails to identify, is that like the North Pole, the rules ordering the behaviour between states, both tacit and codified within international law, are also a social construct based upon solutions for political problems of a given period. International law is a collection of codified rules, or guidelines for organising the behaviour between states in the international system. They are not hard and fast, but are malleable when either a powerful state initiates a rule change or a group of states agree in practice or in codified law that a rule change is necessary; furthermore, these rules apply only to states as the dominant actors in international relations. There are two stipulations regarding the function of law in the international system: that the rules are not concrete and they apply only to states, as illustrated by the cinematic quote “You must be a pirate for the pirate’s code to apply.... [And] the code is more what you’d call ‘guidelines’ than actual rules.”<sup>110</sup>

A condition of anarchy has characterised the international system since the decline of Papal authority as a political leader in Europe, causing the international system to be a system of self-help. Thus, in order to create stability and protection for national interests without the building of walls--and more importantly to ensure the ability to engage in trade and commerce without a global free-for-all, the framework of the international system has developed as

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<sup>110</sup> (Pirates of the Caribbean: The Curse of the Black Pearl, 2003)

states agreed upon rules of interaction,<sup>111</sup> including the annexation of territory, passage in the seas, sovereignty, piracy and exploitation of maritime resources, amongst others. The territorial division of the Arctic, including the determination of who can own the North Pole is the result of the long-term development of this self-help system that states have established to protect their interests.

In current Arctic geopolitics there are specific notions on what behaviour is allowed by states within the international relations of the Arctic; however, there is an inherent incomprehension regarding how these expectations have been developed. This development has been moulded by states addressing their national interests since the discovery of the Arctic by European empires, although many of these expectations were not formed in direct relation to the Arctic, but were developed in response to the national interests of states regarding territory and resources in other parts of the world. Their application to the Arctic is often a residual outcome of this development. This chapter on international law has two objectives. Firstly, it traces the introduction of new rules to the international system that result in the current expectations on the behaviour of states within contemporary international relations of the Arctic. Secondly, it shows the codified developments of Arctic international relations resulting in the division of territory in the Arctic. As the development of international law over the last few centuries is an enormous collection of material, this chapter focuses only on the lineage of rules and codes that frame the Arctic in contemporary international relations.

The objectives of this chapter are illustrated in the graph below (Figure 1), which shows in a timeline both the estimated

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<sup>111</sup> The conceptual approach to rules is developed in Chapter 1.



introduction of rules to the international system applicable to Arctic international relations and also the international legal agreements or 'codes' as they are codified international law, which delineate both terrestrial and maritime boundaries for the circumpolar Arctic, although the text of this chapter focuses specifically on the lineage of territorial sovereignty for the United States, Canada and Russia. This lineage has been situated within the context of the four divisions of the international system that this thesis uses as its organisational framework, the Age of Discovery, the Interwar Years, the Cold War and post Cold War Periods. The graph also illustrates the approximate decline of Papal authority and the rise of the principle of the sovereignty of states emanating from the Peace of Westphalia. The constraint of this graph, is that due to limitations of software, the exact date boundaries corresponding with the introduction of codes and rules is not precisely measured and thus the reading of this graph requires some discretional interpretation.

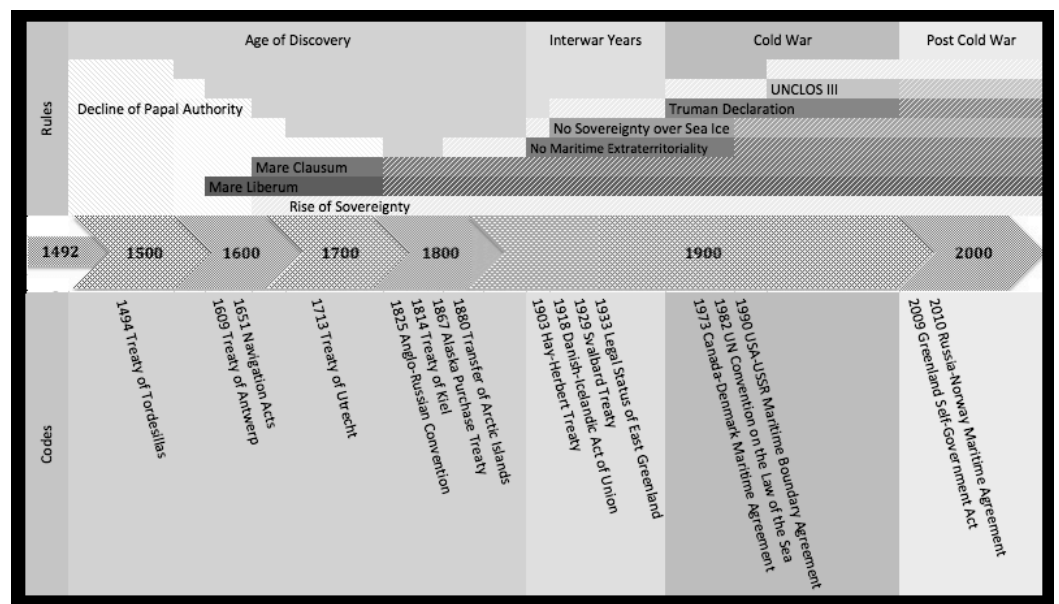


Figure 1: Timeline of Rules and Codes in Arctic International Law

## Research Questions

- How have actors, and which actors, legitimised particular practices in the development of Arctic polar law?
- How have the addition of new rules to the international system contributed to the fundamental legal order that places the Arctic in its present geopolitical context and what are those rules?
- What is the genealogy of the codification of international law that places the Arctic within the sovereignty of the littoral states and what are those codes?

## Rules and Codes in the Age of Discovery

An idea never acknowledged in the discourse of Arctic international relations is that in 1494, as *terra nullius* and otherwise lacking the complete formal incorporation of territory within the political boundaries of states (as few states existed at this point in time), the Arctic belonged to Spain and Portugal with the line of territorial demarcation placed along the division of the eastern from the western hemispheres. Clearly, the Iberian empires never discovered the Arctic as the Grecian Pytheas had earlier referred to the ‘congealed’ polar seas in his accounts of European exploration in the third century BCE. Nor had Spain and Portugal ever placed their flag upon territory within the Arctic or exploited its resources for the benefit of the motherland, as had the Vikings, who during the tenth century CE first utilised the margins of the Arctic. Nor did they submit claims the territory within the sea to the UN Commission on the Continental Shelf, as have all the states littoral to the Arctic, bar the United States. Spain and Portugal failed to fulfil any of these accepted rules of territorial conquest because they had yet to be developed and were not included as the expected behaviour of states. Instead, the territory of the Arctic was initially bequeathed through a different

form of legitimacy in a different phase of the international system and was followed by a bilateral agreement between these two fledgling states. Here follows the genealogy of the development of Arctic sovereignty within international law as the international system developed into its current form.

The year 1492 is arguably one of the most important moments in both the development of the Arctic and of the international system, as it is the year that sparked a rapid acceleration of the expansion of European knowledge. It was in 1492 that Christopher Columbus sailed the ocean blue 'discovering' the New World, when the processes of the Columbian exchange began with the expansion of European empires culminating in an irreversible global transformation. While one does not usually associate the adventures of Christopher Columbus with the Arctic, his actions and the political events of his time provide the seed from which germinates the development of the international legal order relating to maritime and territorial law. School children learning the modern history of Western civilization are given this date as a starting point of history, and for the purpose of this study, it is also the starting point for the development of Arctic international maritime law.

While Europe had long since moved beyond the idea of a flat earth, maps used by navigators of the fifteenth century still depicted a world of unknowns. This includes a map drawn by Columbus circa 1490, (See Figure 2), which shows the known discoveries of Portugal in Africa,<sup>112</sup> but nothing beyond the Atlantic Ocean. Before Columbus was commissioned by the Spanish monarchs Ferdinand II and Isabel I to sail west in search of new lands for resources, Portugal had already been claiming ownership of lands

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<sup>112</sup> Columbus had some personal knowledge of the Portuguese possessions off the west coast of Africa as he had lived for several years on the island of Porto Santo, near Madeira.

beyond Europe for a number of years, secured through the approval of the Vatican, the *de facto* authority of the international system. The Portuguese discoveries provided the impetus for Spain to also secure new resources, without challenging Portugal or risking the wrath of Rome. Spain knew that “Portuguese expansion along the coasts of Africa had established a sequence for gaining possession of these lands: first, discovery; second, construction of a fort and establishment of a garrison; third, a papal bull granting possession to Portugal; fourth, by negotiation or by war, a treaty in which Spain accepted the situation.”<sup>113</sup> And then Columbus discovered the New World for Spain.<sup>114</sup>

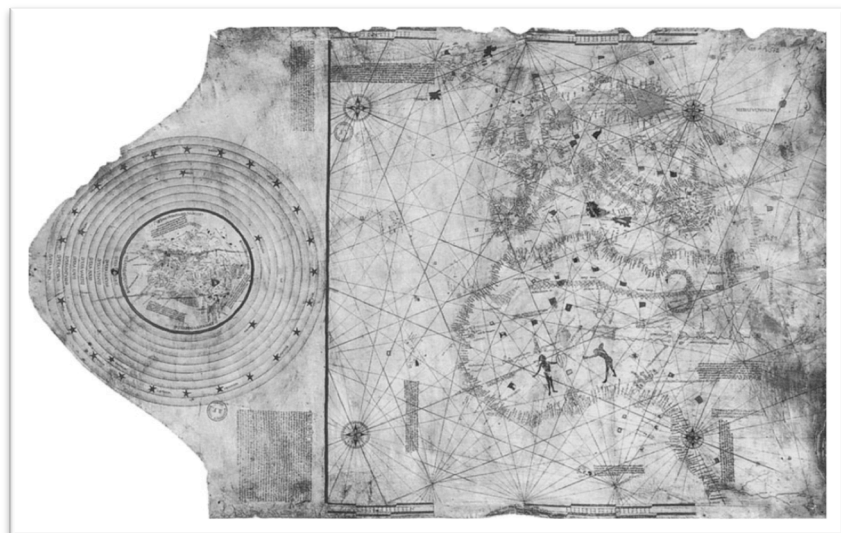


Figure 2: Map by Columbus<sup>115</sup>

Spain quickly followed the precedents established by Portugal to establish jurisdiction over their new discoveries.<sup>116</sup> The year 1492 was followed by two more eventful years of discovering new

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<sup>113</sup> (Davies, 1967, p. 339)

<sup>114</sup> Perhaps 'rediscovered' is a better term as when Columbus arrived in the New World, there already existed established civilizations. There is also evidence that Benedictine Irish Monks, the Vikings and perhaps even the Chinese Muslim explorer Xheng He all found North America before Columbus. See (Menzies, 2002).

<sup>115</sup> (Columb, 1490)

<sup>116</sup> (Prescott, 1838, p. 259)

territory and claims for the Iberian empires, which led to confusion and conflict over which power owned what territory. So, through the issuing of a series of Papal Bulls, including Bull *Inter Cetera*, based upon recommendations from Columbus,<sup>117</sup> the Pope divided the Western hemisphere between Spain and Portugal “in virtue of his territorial supremacy over the whole world.”<sup>118</sup> Spain received the territory to the West of the division line and Portugal received the territory to the East. Even though this meant a diminished role in the New World, Portugal accepted the jurisdiction of the Pope, the *de facto* head of the international system, as this was also the source of their supremacy in Africa and they subsequently focused their efforts to the East.<sup>119</sup>

By 1494, the crowns of Spain and Portugal had determined that the terms of delimitation provided in the Papal Bulls was inconvenient—not only was the line of delimitation in an unsuitable place, but it also only established a line through the Western hemisphere and it was deemed necessary to also have a boundary in the Eastern hemisphere. So in the now seemingly insignificant village of Tordesillas, Spain, representatives authorised by Spain and Portugal met to negotiate a bilateral treaty, “possibly the most pregnant treaty in world history.”<sup>120</sup> Here, they bypassed Papal authority and changed the placement of the line of demarcation between Portuguese and Spanish possession in the New World to a more favourable position for Portugal, demonstrating the strength of Portuguese diplomacy of the period.<sup>121</sup>

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<sup>117</sup> Columbus is given credit for being the Father of the Treaty of Tordesillas in (Davies, 1967)

<sup>118</sup> (Phillimore, 1854, p. vii)

<sup>119</sup> (Davies, 1967, p. 339)

<sup>120</sup> (Davies, 1967, p. 338)

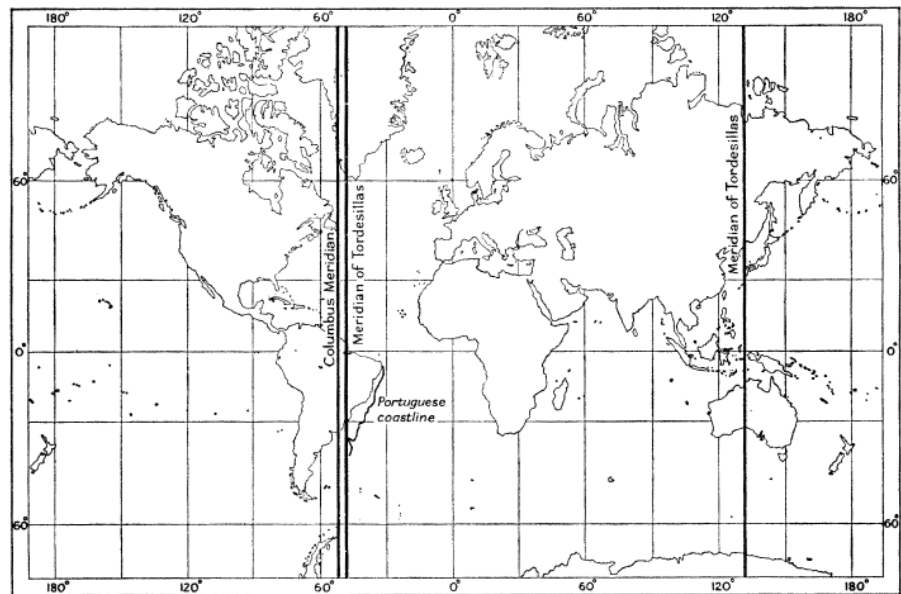
<sup>121</sup> (Reeves, 1944, p. 541)

The treaty states that in order to settle the controversy, preserve the peace and the relationship between the monarchs that they agree:

“that a boundary or straight line be determined and drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic pole,”<sup>122</sup> (See Figure 3).

And,

“inasmuch as the said ships of [Spain] sailing... from their kingdoms and seigniories to their said possessions on the other side of the said line, must cross the seas on this side of the line, pertaining to [Portugal], it is therefore concerted and agreed that the said ships of [Spain] shall, at any time and without any hindrance, sail in either direction, freely, securely, and peacefully, over the said seas of [Portugal]... ”<sup>123</sup>



*Division of the world according to the Treaty of Tordesillas*

Figure 3: Treaty of Tordesillas<sup>124</sup>

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<sup>122</sup> (Davenport, 1917, p. 95)

<sup>123</sup> (Davenport, 1917, p. 97)

<sup>124</sup> (Davies, 1967, p. 338)

There are at least four implications for international relations and international law that can be taken from the political events that culminated in the legal agreement of the *Treaty of Tordesillas* 1494. The first is that by agreeing to the terms of the treaty, contrary to the decision of Pope Alexander VI in his series of Bulls, the monarchs of Spain and Portugal were signalling the decline of the authority of the Papacy in matters of state affairs. However, it would be several centuries before this would be established as a permanent feature of the international system. The decline of Papal authority would ultimately make way for other rising imperial powers to expropriate the territory given to Spain and Portugal.

Second, although ultimately connected to Arctic international relations through extrapolation, the line of demarcation established first by the Bulls and then by the *Treaty of Tordesillas* has had a lasting effect on the shape of geopolitical boundaries familiar to us today. By consulting Figure 2, it is at once apparent that the division of South America created “the interesting historical result that the people of the largest single political unit in South America [Brazil] speak Portuguese.”<sup>125</sup> Looking further north along that line, imagine if Portugal had spent any time exploring its northern possessions—Grøenlanders today might also be speaking Portuguese rather than being incorporated as a sovereign territory of the Kingdom of Denmark. As the Iberian empires ignored the Arctic, it was instead explored by the British, Danish and Norwegians, which is reflected in contemporary Arctic affairs.

Another implication is that, even if only selectively, the *Treaty of Tordesillas* also introduced the application of the notion of the

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<sup>125</sup> (Reeves, 1944, p. 541)

freedom of the seas to the entirety of the global seas.<sup>126</sup> The treaty specifically gave provision for Spain to be allowed to sail through the Portuguese half of the world to reach their possessions abroad. This provision shows the need for right of innocent passage, even if in practice these two powers deemed the whole planet already 'carved up' and provided for the codification of idea of innocent passage in a legal document.

And finally, the treaty established for Spain and Portugal-- not a line of explicit territorial division--as it would be impossible to maintain control over such vast areas of the globe, but rather "spheres of influence."<sup>127</sup> Near the line dividing the Western hemisphere, it is clear that Spain and Portugal adhered to the provisions of the treaty, given the geopolitical boundaries earlier mentioned. Portugal largely lost out on the riches of the New World, but "fortunately the accomplishment of the passage round the Cape of Good Hope, which occurred soon afterwards, led the Portuguese in an opposite direction to their Spanish rivals; their Brazilian possessions having too little attractions, at first, to turn them from the splendid path of discovery thrown open in the East."<sup>128</sup> This eventually leads to another event with future impact on the development of international maritime law, discussed later in this chapter.

It is also evident that many other European nations eventually chose to ignore the Papal Bulls and the *Treaty of Tordesillas* as they

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<sup>126</sup> There are two additional differing opinions on this matter. Steinberg claims "Spain's and Portugal's claims to exclusive rights should not be viewed as claims to possession of the sea" (Steinberg, 1999, p. 257) while Baird claims "State practice suggests both Spain and Portugal believed they possessed exclusive navigation rights and trade privileges over an enormous expanse of the earth's oceans," (Baird, 1996, p. 278).

<sup>127</sup> Reeves comments that "The line which was set up was not in all respects a line dividing territory according to our modern thought so much as it was a line setting forth what in our modern parlance would be called a sphere of influence, or a sphere of interest," (Reeves, 1944, p. 539) while Steinberg says "the two countries' claims implied that the sea had been divided into "spheres of influence" in which Spain and Portugal were granted rights of stewardship," (Steinberg, 1999, p. 257).

<sup>128</sup> (Prescott, 1838, p. 269)



explored and claimed possession of many North American, African and even some Asian territory. This may be in a large part due to the overwhelming size of the spheres of influence that Spain and Portugal claimed, having little ability to prevent others from pursuing economic exploitation and commercial interests in these new territories. But this race to secure the riches of the New World “led both nations to over-extend themselves. It proved a major factor in the weakening of the Portuguese empire, which collapsed to the Dutch in one naval battle in 1604.”<sup>129</sup> A little over a century later finds the Iberian kingdoms of Spain and Portugal a united empire. The Spanish had been rather successfully plundering the New World, turning it into one of the wealthiest countries in Europe. Additionally, the Iberian power had convinced other European nations that they owned a monopoly on the East Indian spice trade, although this temporary control can also be contributed to a lack of any real competition.<sup>130</sup> Yet with expansionist agendas and policies of extracting tribute to finance their expanding empire, Spain created an empire with detrimental flaws.

During the middle of the 16<sup>th</sup> century, Spain’s ‘ownership’ over the territories designated by Papal decree had been challenged by other European nations. This resulted in the “arrangement of ‘the lines of amity’ and the principle of ‘no peace beyond the line’, which had sought to block the advance of other European powers into the new oceans and continents,”<sup>131</sup> (See Figure 4). This agreement eventually resulted in the weakening of the Spanish empire for several reasons, including that while their empire consisted of exacting resources from their overseas empires, other

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<sup>129</sup> (Davies, 1967, pp. 342-3)

<sup>130</sup> Monteiro says, “During this time, England and France were still recovering from the Hundred Years’ War. Faced with Portuguese sea power, the European countries were forced to accept the doctrine of the *mare clausum* and to abdicate the right to navigate their ships south of the Canary Islands,” (Monteiro, 2001, p. 9).

<sup>131</sup> (Grewe, 2000, p. 157)

European nations turned to mercantilist strategies of income accumulation. It also had the effect of creating a black market for the spice trade from “high prices resulting from the suppression of competition in Portugal and the Indies” encouraging smuggling and privateering by the Dutch and English, and not surprisingly, also by Portuguese captains.<sup>132</sup> The high volume of illicit trade created financial woes for the Spanish treasury.<sup>133</sup>

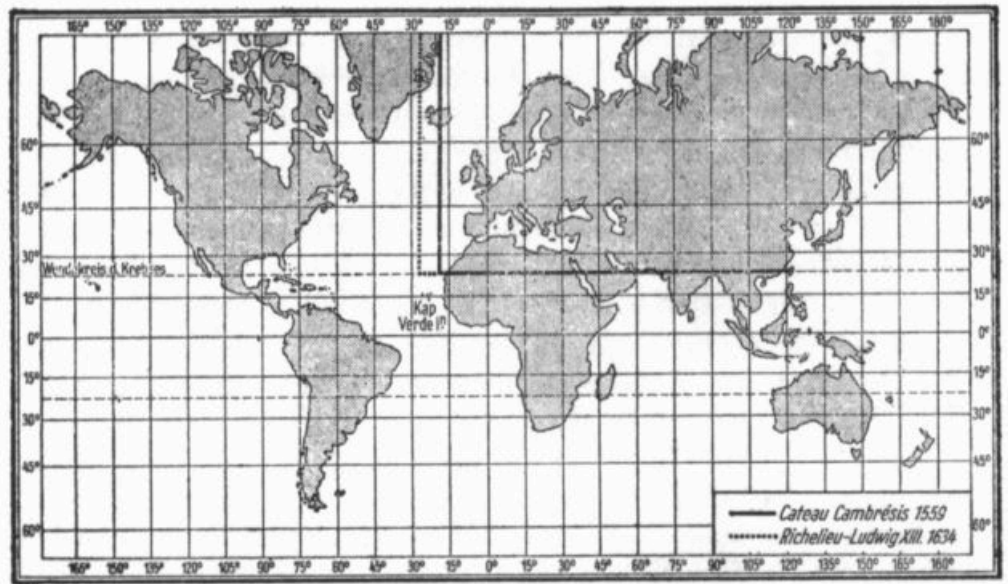


Figure 4: Lines of Amity<sup>134</sup>

As a result of the course of complicated European history, during this time the Netherlands were also subjects of the Spanish empire and in mid-sixteenth century launched a revolt in a bid for independence. For some time, Spain allowed Dutch merchants to continue trading in Spanish ports<sup>135</sup> but eventually Philip II, the Spanish monarch, banned the Dutch from their ports, including those in Portugal—and so “the enterprising [Dutch] traders began

<sup>132</sup> (Hamilton, 1948, p. 38)

<sup>133</sup> (Sluiter, 1948, p. 181)

<sup>134</sup> (Grewe, 2000, p. 158)

<sup>135</sup> (Sluiter, 1948, p. 167)

to sail directly to the East Indies.”<sup>136</sup> Meanwhile England, France and the Netherlands agreed to a collective security alliance. Spain realised that “the rebellion in the Netherlands had to be suppressed. Chances of a Spanish victory there grew slimmer the more England intervened,”<sup>137</sup> leading to the creation and defeat of the infamous Spanish Armada, a venture that would nearly bankrupt Spain.<sup>138</sup>

Challenging the monopoly of the Portuguese empire to the trade routes of the East Indies, both England and the Netherlands granted charters to venture trading companies, the East India Trading Company (1600) and the Vereenigde Oost-Indische Compagnie, or the VOC (1602), respectively. By now, England had negotiated its own treaty with Spain, “effectively abandoning the Netherlands.”<sup>139</sup> As a result of the Spanish-English negotiations, England refused to continue accepting the once agreed lines of amity and agreed only to be excluded from expanding and trading where Spaniards had already established settlements and trade.<sup>140</sup> Eventually, the Netherlands attempted to negotiate a similar treaty in 1608, but as the subjects of Spanish rule they had more obstacles to overcome and the first attempt at a peace treaty was abandoned because the Netherlands would not give up on the exercise of religion or trade in the East Indies.<sup>141</sup> This defiance by the Netherlands combined with the growing power of England, contributed to the approaching turning point in the international system.

Despite the setback, the Dutch were not prepared to completely surrender to the demands of Spain as they “believed the trade

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<sup>136</sup> (Hamilton, 1948, p. 43)

<sup>137</sup> (Jenson, 1988, p. 639)

<sup>138</sup> (Grattan, 1830, p. 221)

<sup>139</sup> (Davenport, 1917, p. 258)

<sup>140</sup> (Grewe, 2000, p. 158)

<sup>141</sup> (Grattan, 1830, pp. 225-6)

necessary to their existence”<sup>142</sup> for a variety of reasons. Trade created a source of revenue from outside the state, paid for ships and crew while increasing sea power, all the while decreasing Spain’s relative strength and making friends and allies.<sup>143</sup>

Meanwhile Hugo Grotius, working for the VOC, attempted to convince Europe of the rights of the Dutch to the wealth of the world trade that Spain and Portugal had been selfishly hoarding. Grotius had earlier written a defence for the VOC in *De Jure Prædae* (1605), arguing that the capture and sale of a Portuguese vessel and cargo was justified on account of the Portuguese having “wrongfully tried to exclude the Dutch (and others) from [trade with eastern countries].”<sup>144</sup> Finally, on the eve of 1609 as a peace treaty was negotiated between the Netherlands and Spain, Grotius was persuaded to publish a chapter of his next defence for the VOC, *Mare Liberum* or *The Right which belongs to the Dutch to take part in the East Indian Trade* (1609).<sup>145</sup>

In *Mare Liberum*, Grotius makes several points regarding the inequality of Spanish monopolisation of trade routes. He says: “Indeed can anything more unjust be conceived than for the Spaniards to hold the entire world tributary, so that it is not permissible to buy or to sell except at their good pleasure?”<sup>146</sup> Grotius professes to understand the intent of the Iberian claims to a monopoly of trade in the Indies, but contends that the Spanish and Portuguese assertion that the entirety of the territory being firmly with their control is “far fetched and unjust.”<sup>147</sup> He understands that it is in the nature of competition for any business

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<sup>142</sup> (Davenport, 1917, p. 260)

<sup>143</sup> (Davenport, 1917, p. 260)

<sup>144</sup> (Anand, 1982, p. 442)

<sup>145</sup> (Anand, 1982, p. 442). *Mare Liberum* (1609) was initially published anonymously. Armitage also claims “The publication of Hugo Grotius’s *Mare Liberum* in 1609 coincided with James’s policy of restricting Dutch fishing in British waters,” (Armitage, 1997, p. 52).

<sup>146</sup> (Grotius, 1916, p. 70)

<sup>147</sup> (Grotius, 1916, p. 69)

venturer to make attempts to retain all profit for their own gain—but the techniques being used could not constitute rivalry or even fair competition, rather they were simply sordid tactics. With the Netherlands having been under Spanish rule, they felt particularly victimised by Spanish policies, which had seen some concessions in agreements with other powers.

Grotius says:

“Is the same thing then which is considered grievous and pernicious in the smaller community of a state to be put up with all in that great community of the human race?  
...Therefore the Portuguese may cry as loud and as long as they shall please: ‘You are cutting down our profits!’ The Dutch will answer: ‘Nay! We are but looking out for our own interests!’.”<sup>148</sup>

Grotius made evident that the purpose of his argument was to defend the interests of the VOC, the Netherlands and the whole of the human race. Defending their right to the traffic the globe as “in many parts where they traded the King of Spain exercised no authority, or was hated by the natives, or was unable to defend himself.”<sup>149</sup> Following, Grotius attempted to prove through legal argument the “Portuguese claims of dominium over the seas on grounds of first discovery, papal donation, rights of conquest or title of occupation.”<sup>150</sup> By invoking the law of nature and the laws of territorial possession previously established as procedure by Portugal before its pact with Spain—Grotius systematically argues why on every point Spain and Portugal have no right to prohibit the Dutch from expanding their trade network, demonstrating they have failed in effective occupation.

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<sup>148</sup> (Grotius, 1916, p. 71)

<sup>149</sup> (Davenport, 1917, p. 260)

<sup>150</sup> (Armitage, 1997, p. 53)

By 1608 the Spanish empire was facing significant decline from the challenges of maintaining the high cost of war on several fronts, but also the cost of defending its overseas territories and trade routes. Thus, when the Netherlands again broached a peace treaty, they were in a unique position to negotiate for the return of their sovereignty and additionally caused Spain to make concessions regarding the East Indian trade routes. After decades of fighting, a Twelve Years Truce or the *Treaty of Antwerp 1609* was agreed, containing a number of key provisions with implications for the future of international relations. The first is that the states of the Netherlands received the return of their sovereignty following the years of domination by Spain. This unprecedented event elicited surprise within international relations, with historian John Motley remarking that, “Mankind were amazed at this result—an event hitherto unknown in history. When before had a sovereign acknowledged the independence of his rebellious subjects and signed a treaty with them as equals?”<sup>151</sup> But for the Netherlands, this was only one element of their victory.

In another provision of the treaty, the Netherlands also received the right to trade in the East Indies. However, the Spanish commissioners were “forbidden, by express order from Spain, to name the Indies in writing”<sup>152</sup> as this would set a legal precedent for Spain’s acknowledgement that they were not entitled to dominion of the whole earth granted through Papal authority. Instead they agreed to a second ‘secret treaty’ that “pledged the faith of the king and of his successors that his Majesty would cause no impediment, whether by sea or land, to the states.”<sup>153</sup> This agreement was only intended to be for the duration of the truce,

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<sup>151</sup> (Motley, 1860, p. 341)

<sup>152</sup> (Motley, 1860, p. 336)

<sup>153</sup> (Motley, 1860, p. 336)

but as the Spanish empire had lost its power, it was never able to reclaim its former dominion.

Finally, while the provisions of the *Treaty of Antwerp* signalled a victory on the part of Grotius, the VOC and the Netherlands, it opened up a new era of conflict over the freedom of the seas. Other European nations intent on expanding their trade networks and sovereignty seaward saw the Dutch victory as an attack on their efforts. This includes King James who felt that “*Mare Liberum*, as if aimed at mortifying the Spaniards' usurpation in the W. and E. Indies, but aimed indeed at England.”<sup>154</sup> Soon, there would be another struggle to determine whether the seas truly were the common property of all and the private property of none.

Following the *Treaty of Antwerp*, the Dutch built a commercial empire in trading the goods from the Far East, operating on the doctrine of the ‘freedom of the seas’ as a guiding principle of state practice. “Dutch power was based on the command of the seas...these trading companies, together with the massive Dutch fishing fleet, constituted the backbone of Dutch world power.”<sup>155</sup> But this power would also lead to their vulnerability in that while they maintained great power in commerce, they did not maintain a navy to protect this as “they operated under conditions of limited military power.”<sup>156</sup> The Dutch empire expanded rapidly and “enjoyed a short-lived international ascendancy.”<sup>157</sup> However, this was quickly curtailed as the rivalry between the nations of Western Europe created many of the developments in international law and international commerce that would shape international relations for next several centuries “witness[ing] the establishment of a new and qualitatively different type of

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<sup>154</sup> (Armitage, 1997, p. 53)

<sup>155</sup> (Cafruny, 1995, p. 291)

<sup>156</sup> (Cafruny, 1995, p. 291)

<sup>157</sup> (Cafruny, 1995, p. 290)

international system, based not only on military prowess, but also on industrial strength and commercial superiority, especially in banking, shipping and shipbuilding.”<sup>158</sup>

During the years in which Spain and Portugal had dominated the global trade, England and the Netherlands had been in an alliance against the Iberian powers, and so for some time England had supported Dutch arguments against the Papal decrees appointing the unexplored world to Spain and Portugal. Both England and the Netherlands “plundered the Caribbean waters to their mutual profit, and both prosecuted colonial strategies at the expense of the Iberian powers in South America. Both sought easy profits in the south, while pursuing more elusive empires in the north.”<sup>159</sup> But by the time of the *Treaty of Antwerp*, the relationship had grown cold and when the Dutch commercial empire gained dominance, “the English government began to chip away at the legal foundations of the Dutch maritime power. In 1609 it declared that fishing in English waters should be reserved for English vessels.”<sup>160</sup> This had the effect severely limiting the fish stocks available to Dutch fisherman nearer to home, allowing English fishermen better access to fish stocks and trading. As England had the superior navy, the Dutch were forced to concede.

In defence of the English policy restricting foreign activity within ‘English’ seas, and as a response to Grotius’ *Mare Liberum*, John Selden penned *Mare Clausum*<sup>161</sup> defending of the English position on the dominion of the seas. He says:

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<sup>158</sup> (Cafruny, 1995, p. 290)

<sup>159</sup> (Schmidt, 1997, p. 549)

<sup>160</sup> (Cafruny, 1995, p. 292 )

<sup>161</sup> Selden’s *Mare Clausum*, though written in 1618 at the request of James I, was not published until 1635 by order of Charles I. James I had worried that the work might “displease the King of Denmark” (Johnson, 1962, p. 418), while Charles I “was so much impressed by it that he instructed in 1619 his ambassador in the Netherlands to complain of the audacity of Grotius and to request that the author of *Mare Liberum* should be punished,” (Oppenheim, 1912, p. 319).



“Dominion, which is the Right of Using, Enjoying, Alienating and free Disposing, is either Common to all men as Possessors without Distinction, or Private and peculiar only to some; that is to say, distributed and set apart by any particular States, Princes, or persons whatsoever, in such a manner that others are excluded, or at least in some form barred from a Libertie of Use and Enjoyment.”<sup>162</sup>

It is often thought that Selden’s position was advocating the complete antithesis of Grotius’ position on the freedom of the seas, which was an attempt to end Iberian dominance and also to gain access to English fisheries.<sup>163</sup> However, Selden was arguing “that the sea could be appropriated through law and custom [and that] English sovereignty in territorial waters was based on long and continuous possession.”<sup>164</sup> England predominately wanted to protect the interests of its fishermen in the waters surrounding the British isles,<sup>165</sup> which coincidentally also happened to be some of the most convenient fishing waters for Dutch fishermen (see Figure 5) and “England had never pushed her claims so far as to attempt the prohibition of free navigation on the so-called British Seas.”<sup>166</sup> By making this claim, England was establishing the principle for territorial waters and rights of exploitation within these waters by claiming all the sea to the adjacent coastlines, as yet “a definite yardstick for measuring the extent of territorial waters had not been found.”<sup>167</sup>

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<sup>162</sup> (Selden, 1652, p. 16)

<sup>163</sup> (Scott, 2008, p.136)

<sup>164</sup> (Scott, 2008, p.136)

<sup>165</sup> “Although the English doctrine of the regime of the High Seas has witnessed some fluctuations and contradictions, from Queen Elizabeth I who made herself champion of the “open seas” to the Mare Clausum of Selden (1635) under the high patronage of James I, it must be conceded that once the principle of the freedom of the High Seas was affirmed and British naval supremacy assured, Great Britain became the standard bearer for the regulation of the sea by the international community,” (Okere, 1981, pp. 515-16).

<sup>166</sup> (Oppenheim, 1912, p. 319)

<sup>167</sup> (Columbia Law Review Association, 1939, p. 320)



Figure 5: Selden's Mare Clausum<sup>168</sup>

From the *Treaty of Antwerp* and during the next half a century “the most violent animosity subsisted between the two nations [England and Holland]” in their competition for trade and fisheries.<sup>169</sup> Yet this disagreement remained predominately diplomatic in nature. However, in 1651, the English Rump Parliament passed the *Navigation Acts*,<sup>170</sup> which were “deliberately designed to challenge Dutch shipping”<sup>171</sup> and generated more animosity by limiting markets for Dutch traders.

The *Navigation Act* stipulated that:

“no goods or commodities whatsoever of the growth, production or manufacture of Asia, Africa or America, or of any part thereof; or of any islands belonging to them, or which are described or laid down in the usual maps or

<sup>168</sup> (Selden, 1652, p. 185)

<sup>169</sup> (Smith, 1957, p. 407-8)

<sup>170</sup> The *Navigation Act* 1651 was passed under Cromwell's Rump Parliament but the Act was passed again in 1660 after the Restoration.

<sup>171</sup> (Schmidt, 1997, p. 550)

cards of those places, as well of the English plantations as others, shall be imported or brought into this Commonwealth of England, or into Ireland, or any other lands, islands, plantations, or territories to this Commonwealth belonging, or in their possession, in any other ship or ships, vessel or vessels whatsoever, but only in such as do truly and without fraud belong only to the people of this Commonwealth, or the plantations thereof, as the proprietors or right owners thereof; and whereof the master and mariners are also for the most part of them of the people of this Commonwealth.”<sup>172</sup>

With the passage of this law, the English effectively eliminated competition for English merchants and shipping companies within any realm of the Commonwealth by “substitut[ing] English shipping for Dutch.”<sup>173</sup> This was highly successful by taking “the colonial trade from the Dutch, ...depriv[ing] them of being the carriers of Europe, and oblig[ing] [English] merchants to become themselves the carriers for those nations who had no shipping belonging to them”<sup>174</sup> and at the same time, the Act provided some element of job security for English mariners. The *Navigation Act* was deemed not only a commercial disadvantage, but also a political slight to their former Dutch allies.<sup>175</sup>

In the half century before the passage of the *Navigation Act*, the Dutch had acquired their freedom from Spain, gained the right to trade in the East Indies through establishing the freedom of the

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<sup>172</sup> (Scobell, 1651, p. 176)

<sup>173</sup> (Farnell, 1964, p. 447)

<sup>174</sup> (Holt, 1824, p. 79)

<sup>175</sup> (Holt, 1824, p. 74) (Farnell, 1964, p. 449) There is a “dispute among historians about the relationship which exists between the passage of that law and the commencement of the First Dutch War. The standard textbook accounts assume a causal connexion between the Act and the war and that the issues were mercantile in character. Samuel R. Gardiner, however, held that the cause of the Dutch War was not directly related to trade but to national pride and the old power dispute revolving around the issue of *Mare Clausum*,” (Farnell, 1964, pp. 439-40).

seas and the notion of effective occupation in order to claim territorial supremacy only to be faced with their former ally whittling away at the fisheries it used and its other commercial and shipping opportunities. “The *Navigation Act* of 1651, in conjunction with related acts, constituted a grave provocation to the Dutch, showing that England was determined to curb the Netherlands as an economic and military rival.”<sup>176</sup> As a result, the Dutch declared war against England in 1652. The first Anglo-Dutch war was fought entirely at sea which resulted in victory for England as the dominant naval power, and then “two additional wars (1665-7; 1672-4), both won by England, hastened the decline of Dutch power as England then further tightened the restrictions on open seas.”<sup>177</sup> Each of these developments contributed to the predominance of England as a dominant imperial power, and the Anglo-Dutch rivalry formally ended ten days after the marriage of William and Mary of Orange in 1677, when terms of a peace treaty were revealed and the Netherlands became the peripheral power.<sup>178</sup>

The effects of the *Navigation Act* and its subsequent versions reached far wider than ending commercial rivalry between the English and the Dutch. In 1607, the Virginia Trading Company was chartered and England began establishing colonies in the Americas. The early *Navigation Acts* were probably advantageous to the colonies as they eliminated competition for the fledgling economy, but in time, they “represented a noticeable burden on the colonial economy.”<sup>179</sup> In time, some of the British North American colonies would secede as the *Navigation Acts*, along with a plethora of additional taxation vehicles “imposed substantial burdens on key actors in the revolutionary struggle, and that these

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<sup>176</sup> (Cafruny, 1995, p. 293)

<sup>177</sup> (Cafruny, 1995, p. 293)

<sup>178</sup> (Grose, 1924, p. 350)

<sup>179</sup> (Ransom, 1968, p. 434)

burdens played an important role in motivating them to rebel.”<sup>180</sup> But in spite of the eventual loss of these North American colonies, England still considered the policies as advantageous to their commercial prosperity and were “universally regarded as among the chief causes and most important bulwarks of their prosperity”<sup>181</sup> through “discriminate[ing] equally, with slight exception, against the merchant marine of every foreign power.”<sup>182</sup> The Acts continued as a protectionist policy for English trade and commerce until they were repealed in 1854.

The *Navigation Act* of 1651 can be considered as an early attempt to codify the principle of territorial waters, an area understood in the contemporary law of the sea to have rights of exploitation of resources of the coastal state and the rights of territorial defence. However, England’s domination of the whole of the North Sea would become untenable in international law. Coastal states have equal rights along any body of water and for several centuries, the accepted breadth of territorial waters was limited to the three mile range of cannons, which is the distance a military could reasonably expect to defend.

Representing the ideas of the age of mercantilism, the Act held that “gains from international trade arose solely from exporting and that the nature of these gains made international trade equivalent to a zero-sum game”<sup>183</sup> and that “extensive government regulation of international trade to ensure that these gains accrued to one’s own country.”<sup>184</sup> Though the protectionist policies of the English government would continue for several centuries, in an era of absolute globalised commercial networks, protectionist policies are now discouraged as a means of protecting a local market. The

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<sup>180</sup> (Sawers, 1992, p. 262)

<sup>181</sup> (Hodges, 1892, p. 217)

<sup>182</sup> (McGovney, 1904, p. 725)

<sup>183</sup> (Irwin, 1991, p. 1296-7)

<sup>184</sup> (Irwin, 1991, p. 1296-7)

destruction that the *Navigation Acts* had on the economies of neighbouring European countries is demonstrative of the damaging effects protectionist policies can have on expanding economies in a global marketplace.

### The Rules of Territorial Expansion

The movement of European explorers searching for a new route to Asia and the Indies by sailing West set in motion the development of laws regulating the processes of territorial expansion. Columbus never truly discovered the New World, as “actually millions of human beings were already living full and imaginative lives on the continent in 1492. That was simply the year in which the sea pirates began to cheat and rob and kill them.”<sup>185</sup> The implication of discovery was in actuality to determine which European was first to sight a new territory, the first step in the developing rules of procedure for the annexation of new and formerly ‘undiscovered’ territory by European empires. The traditions established during this period that developed into customary international law have provided the still existing standards for the acquisition of territory, though now all lands, discovered or undiscovered are in some way claimed by contemporary states.

New land was often claimed by explorers on official missions for European sovereigns charged with expanding state territory in order to acquire resources or access sea routes. To establish claims and to leave a trace for those who might eventually find the same territory, symbolic mementos, such as national flags or plaques were left to inform others the land was no longer available for appropriation. Symbolic acts “may be interpreted also as a device to show to the world that an inchoate title to the discovered

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<sup>185</sup> (Vonnegut, 1973, p. 10)

region was acquired which rendered it *terra prohibita* as far as other States were concerned.”<sup>186</sup> It is the use of these symbolic acts into contemporary Arctic international relations that has often caused great consternation, even though they currently have no standing within international law.

Symbolic acts varied greatly in practice from state to state. The Spanish were fond of unfurling flags while Russian practice included the burial of copper plates with the inscription *Russia Imperial Territory* over which a cross was erected. Peary understood the necessity of symbolic acts accompanying claim to discovery, and upon his arrival at the North Pole in 1909 also executed symbolic acts to indicate that he was first to acquire the pole. Peary says “my flag was displayed, and photographs taken of it and the party,” even though he admitted that “careful examination of the horizon in every direction with a telescope showed no indication of land.”<sup>187</sup> The importance of symbolic acts in claiming territory and its universal recognition as the first step to sovereign control of an area is significant when considering the Russian act in 2007 to place a titanium Russian flag on the seabed at the North Pole, symbolically claiming the territory beneath the surface of the sea.

Initially, claim to territory through symbolic annexation was sufficient to maintain title without expiration. Queen Elizabeth I verified this fact through admission of error after she attempted to take possession of Florida, with Spain notifying her that it had been possessed for some time. Even though the Queen may have conceded for political reasons “the legal force of this admission cannot be vitiated by the consideration that it was probably

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<sup>186</sup> (Heydte, 1935, p. 454)

<sup>187</sup> (Peary & Harris, 1910, p. 138)

dictated by political motives; the question was a legal one.”<sup>188</sup> In the case of Alaska, Behring “left a number of articles, consisting of beads, an iron kettle, and some coins, as evidence of his presence there,” and this was sufficient evidence of Russian ownership when Cook explored the region in 1778.<sup>189</sup> However, the rules of the international system developed so that it was necessary for symbolic annexation to be followed by effective occupation. Discovery and symbolic acts granted only initial rights and a rudimentary, albeit worthless title and “the inchoate title finally perishes unless it is followed and perfected by effective possession in a reasonable time.”<sup>190</sup> Symbolic declaration had to eventually be followed by use of the territory and extension of government administration.

Discovery and symbolic acts were established in international custom as the first two elements of claiming sovereignty over new lands, but this had to be followed by effective control “imply[ing] continuous administration and effective occupying of the land; ideally, the territory should be settled throughout and the natural resources of the area should be developed and used.”<sup>191</sup> Historically this was demonstrated in the New World through the establishment of trading companies, colonies and the administration of governors with authority granted through charters issued by European monarchs. However, effectiveness has variable definitions as “the nature of the territory affects the degree of sovereign activity needed to establish effective control.”<sup>192</sup> In the Arctic there are limited indigenous populations to which government administration can be applied and the rest of the land is a frozen and empty expanse. The remainder of the Arctic region is assorted ocean spaces, which currently fall under

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<sup>188</sup> (Keller et al., 1938, p. 47)

<sup>189</sup> (Keller et al., 1938, p. 144)

<sup>190</sup> (Heydte, 1935, p. 454)

<sup>191</sup> (Burghardt, 1973, p.229)

<sup>192</sup> (Burghardt, 1973, p.228)



the jurisdictional areas of territorial waters, exclusive economic zones, and the freedom of the seas regime. Even though the entire world is claimed under the sovereign control of states, demonstration of effective control and occupation still finds its way into contemporary policy documents.

As the Iberian claims to ownership of the entire New World disintegrated, the laws of territorial acquisition became standard practice for states seeking to expand their territory outside of Europe. Thus, when Henry Hudson was attempting to find the Northwest Passage and a route to China for England in 1611, he discovered and claimed the bay in contemporary Canada that still bears his name (and the place where he is ultimately suspected to have died following a mutiny and then being set adrift in a small boat with some meagre supplies).<sup>193</sup> The discovery of Hudson Bay was followed by further expeditions sponsored by England to explore the region and then to fulfil the expectations of effective occupation, “his majesty for the better promoting their endeavours for the good of his people, was pleased to confer on them exclusively all the lands and territories in Hudson’s Bay, together with all the trade thereof... .”<sup>194</sup>

The charter of the Hudson’s Bay Company, established in 1670 by Charles II reads:

“AND WHEREAS the said undertakers for their further encouragement in the said designe have humbly besought us to Incorporate them and grant unto them and their successors the sole Trade and Commerce of all those Seas Streights Bayes Rivers Lakes Creekes and Soundes in whatsoever Latitude they shall bee that lye within the

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<sup>193</sup> (Asher, 1860)

<sup>194</sup> (Light, 1836, p. 63)

entrance of the Streights commonly called Hudsons Streights together with all the Landes Countryes and Territoryes upon the Coastes and Confynes of the Seas Streights Bayes Lakes Rivers Creekes and Soundes aforesaid which are not now actually possessed by any of our Subjectes or by the Subjectes of any other Christian Prince or State...the Governor and Company of Adventurers of England tradeing into Hudsons Bay one Body Corporate and Politique in deede and in name really and fully forever for us our heirs and successors,”<sup>195</sup> (See Figure 6).



Figure 6: Hudson's Bay circa 1700<sup>196</sup>

While the language of the old English charter is at first opaque, this charter contains a number of significant points. First, the transfer of title from Charles II to Prince Rupert and his partners demonstrates the belief that European sovereigns assumed the right to acquire new territory, even though it was already inhabited. Second, the charter indicates that the Hudson's Bay

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<sup>195</sup> (Hudson's Bay Company, 1949)

<sup>196</sup> (Thornton, 1700)

Company would pass to the heirs and descendants of the original recipients for purposes of exploitation, indicating perpetual use of the land and thus exemption by other states for appropriation. The charter also established the Hudson's Bay Company as a 'body corporate and politic forever', giving the Company powers normally associated with the state as also seen in the charters of the East India Companies of both England and the Netherlands.<sup>197</sup> Finally, the charter gives to the Hudson's Bay Company all lands, regardless of their latitude or longitude, in the entire watershed of all waters that terminated in the Hudson Bay. With this transfer of Rupert's Land, the company became the largest private landowner on earth, owning an estimated 15% of land in North America.<sup>198</sup>

The Hudson's Bay Company began capitalising on the resources of the territory by trapping and trading in furs in this remote region of the world, which were ultimately bound for European markets until the conflicts of Europe found their way into the New World. These conflicts migrated due to a fundamental change in European interests transitioning away from exploration to "a new wave of self-conscious settlement overseas" due to the ideas of mercantilism accelerating colonial rivalries.<sup>199</sup> France dominated the political affairs of Europe with "unbounded French ambitions for territory and for glory."<sup>200</sup> This interest extended to Canada, which was extremely economically successful due the positive nature of the relationship French tradesmen and fur trappers maintained with Native Americans. So "by the end of the 17<sup>th</sup> century, French 'lands' virtually encircled the English" jeopardising English possession of Rupert's Land and the Hudson Bay.<sup>201</sup>

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<sup>197</sup> (Hudson's Bay Company, 1949)

<sup>198</sup> (Feldman & Golberg, 1987, p. 37)

<sup>199</sup> (Rosner & Theibault, 2000, pp. 189-90)

<sup>200</sup> (Pennington, 1989, p. 509)

<sup>201</sup> (Rosner & Theibault, 2000, p. 199)

Following a temporary loss of territory, the Hudson's Bay Company, through the leverage of the British crown, managed to reclaim their possession of Rupert's Land in a treaty between France and England in the *Peace of Utrecht 1713* which states:

“The said Most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possess'd in full Right for ever, the Bay and Streights of Hudson, together with all Lands, Seas, Sea-Coasts, Rivers and Places situate in the said Bay and Streights, and which belong thereto, no Tracts of Land or Sea being excepted, which are a present possess'd by the Subjects of France.”<sup>202</sup>

The *Peace of Utrecht 1713* formally ends the era of France's predominance in both the New World and in the Old, securing British claims in North America. Yet despite the Hudson's Bay being discovered by England and utilised by the Hudson's Bay Company, history tends to imply the results of the treaty simply as territorial gains for Britain with the “Hudson's Bay in North America... [being] taken from France.”<sup>203</sup> However, the treaty actually reaffirms the customs of international law regarding the acquisition of territory as Britain succeeded in placing the word “restore” in the terms of the treaty, causing France to acknowledge that it had overstepped its bounds in allowing its traders and trappers to encroach into Rupert's Land.

Despite the decline of French prowess in the New World, this was not the final conflict over access to resources in the New World between the two states. In 1754 hostilities would begin in the ‘French and Indian War’, which finally culminated in the complete surrender of French territories to Great Britain under terms of the

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<sup>202</sup> (Tyrrell, 1931, p. 409)

<sup>203</sup> (Sturdy, 2002, p.363)

*Treaty of Paris 1763*, leaving only Great Britain, Spain and Russia with territorial claims in North America.<sup>204</sup>

Yet Britain's possessions in the New World would see further fluctuations. In 1776, the War for Independence by Britain's thirteen original colonies began, eventually culminating in the *Treaty of Paris 1783*, where the British Crown acknowledged the sovereignty of these colonies "to be free sovereign and independent states... [and] relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof."<sup>205</sup> Great Britain was effectively left only with the possession of the territories it received from France and Rupert's Land.

The actual extent of British territories in North America would remain largely unchanged for almost all of the next century, with exception of the boundary between the United States and Canada being established by treaty at the 49<sup>th</sup> parallel in *Convention of 1818* and the delimitation line between Russian Alaska and the British Canadian territories also being determined by the *Treaty of St. Petersburg* in 1825. From lessons learned in the tenuous relationship with the American colonies, Great Britain's relationship with the British subjects in Canada was significantly more convivial, though this has also been regarded as appreciation for their devotedness of these early Canadians to the British Crown as they "resisted with fidelity every attempt to seduce them from their new allegiance."<sup>206</sup> Over the next century, the British Crown would establish a representative government in Canada and created of the Dominion of Canada as political entity in 1867,

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<sup>204</sup> In the *Treaty of Paris 1763* Great Britain returned to France the tiny archipelago islands of Saint Pierre and Miquelon, located off the coast of Newfoundland as to shelter French fisherman, over which France retains sovereignty to this day.

<sup>205</sup> (*Treaty of Paris 1783*, 1783)

<sup>206</sup> (Bouchette, 1831, p. vi) (Sumner, 1867) The reference to 'new allegiance' is to remind that possession of a significant portion of Canadian territory had passed from France to Britain as a result of the *Treaty of Paris 1763*.

though Canada remained without sovereignty until the twentieth century.

The year of 1867 was a pivotal date for the future of Arctic international relations. Firstly, Russia sold its North American possession in Alaska to the United States and secondly, the creation of the Dominion of Canada established one of the main political entities currently holding sovereignty over Arctic territory in North America. From this point, the Dominion of Canada would incrementally acquire additional British territories, slowly changing the shape of future Arctic sovereignty, as the Arctic was transferred from British control to Canadian control in the 1870 transfer of the land of the Northwest Territories, Rupert's Land and the 1880 the transfer of British Arctic islands, (See Figure 7). However, not all 'Canadian Arctic' territories included in this transfer belonged to Great Britain and this would create a legacy of uncertainty for Canadian Arctic sovereignty in future international affairs.

While European powers were discovering, exploring and occupying the Western hemisphere around the Atlantic, Imperial Russia was annexing Siberia and the Russian Czar Peter the Great was "curious to know if Asia and America were separated by the sea, or if they constituted one undivided body with different names."<sup>207</sup> So on behalf of the Russian government, in 1728 Vitus Behring discovered St. Lawrence Island and in 1730 reached the Bering Strait, which connects the Pacific Ocean with the Arctic Ocean. This expedition, followed by several others, gave "the title of Russia to all these possessions...derived from prior discovery which is the admitted title by which all European Powers have held in North and South America... ." <sup>208</sup> And so the story of

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<sup>207</sup> (Sumner, 1867, p. 4)

<sup>208</sup> (Sumner, 1867, p. 4)

sovereignty of Alaska follows in a parallel development through imperial practices to that of the British Arctic territories throughout North America.

In order to maintain effective occupation of their North American possessions, the Russian-American Company received a charter from the Russian government to carry out this duty by proxy. "By this instrument it was recited that the Emperor, in view of the 'benefits and advantages' resulting to his Empire from the 'hunting and trading' carried on by Russian subjects 'in the northeastern seas and along the coasts of America', had taken the company, which was 'organized for the above-named purpose of carrying on hunting and trading', under his immediate and 'highest' protection."<sup>209</sup> To the Russian American company was granted all rights and duties associated with sovereignty in a territory under the laws of territorial acquisition: exclusive privileges of economic exploitation, the authority to claim new territories in the name of the motherland, to establish and defend settlements and to instigate the development of trading networks with neighbouring countries.

But just as the Hudson Bay Company had experienced infringement of its exclusive rights and privileges in the British Arctic by French traders and trappers, the Russian-American Company suffered encroachment and damages upon its operations from citizens of the bordering countries, primarily the United States and Great Britain. In order to remove the offending mote wreaking havoc on the profits of the Russian-American Company, the Russian government issued the Imperial Ukase of 1821, which prohibited:

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<sup>209</sup> (Moore, 1898, p. 755)

“to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above...but also to approach them within less than one hundred miles,”<sup>210</sup>

The response of the United States to the edict, in a letter by U.S. Secretary of State John Quincy Adams, held that “It was expected that any act which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by treaty between the parties.”<sup>211</sup> In his letter, Adams makes reference to common standards of the limits of the territorial sea and to the laws and usages of nations. However, despite their protests to Russian methods, the United States would soon issue an imperialist declaration of their own in the Monroe Doctrine.

The protestation by the United States and Great Britain to the Ukase of 1821 as discussed by many scholars,<sup>212</sup> resulted in two conventions which determined that south of the 55° boundary the freedom of the seas would be protected (including the rights of nations to access fisheries on the high seas), that there would be no illicit trade of guns and alcohol with the native inhabitants and that there would be no permanent settlement by citizens of other nations.<sup>213</sup> In the *US-Russia Convention 1824* the “dividing line between the territorial claims or ‘spheres of influence’ of the United States and Russia on the northwest coast of America should be the parallel of 54° 40’ north latitude”<sup>214</sup> and in the *Russo-British Convention 1825*, the dividing line started from the same point of latitude, continuing northward to establish the land boundary between British Columbia and Alaska and then following “the said

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<sup>210</sup> (Higginson, 1910, p. 37)

<sup>211</sup> Adams, John Quincy in (Moore, 1898, p. 757)

<sup>212</sup> Including: (Baty, 1928) (Miller, 1925) (Lakhtine, 1930)

<sup>213</sup> (Malloy, 1909, p. 1513)

<sup>214</sup> (Moore, 1898, p. 761)



meridian line of the 141<sup>st</sup> degree, in its prolongation as far as the frozen ocean.”<sup>215</sup>

Despite the accords in North America, relations between Russia and Great Britain would soon sour on a different continent in a struggle for yet another sphere of influence in the struggle of the Crimean War. This conflict created insecurity on the method of Russian administration of the Alaskan territory, making it become a territorial liability for the central government. As “Russia had regarded Alaska as an investment rather than a colony and consequently had vested all her interests in the Russian American Company”<sup>216</sup> and consequently without infrastructure of permanent defence or well established colonies, “on the eve of the Crimean War, in 1854, Russia, fearing that Great Britain might seize her American possessions, intimated a desire to sell this territory to the United States.”<sup>217</sup> The United States was not prepared for this transaction and so instead Russia arranged a fictitious sale of Alaska to an interest in San Francisco to prevent Great Britain from seizing the territory.<sup>218</sup>

Due to influences of the doctrine of Manifest Destiny the United States had interest in expanding its territorial possessions and the potential purchase of Alaska was discussed with Russian diplomatic staff in Washington. As early as “1852 [Seward] had spoken for aid to the whalers in the Arctic Ocean and had taken the occasion to say that the Pacific Ocean would be the theatre of the world’s politics in the future, and that the United States should be there.”<sup>219</sup> However, territorial growth of the United States accelerated conflict over other domestic issues and the purchase of Alaska was postponed until the end of the Civil War.

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<sup>215</sup> (Moore, 1898, pg 762)

<sup>216</sup> (Clark, 1930, p 64)

<sup>217</sup> (James, 1942, p. 20)

<sup>218</sup> (Clark, 1930, p 68)

<sup>219</sup> (Clark, 1930, p. 78).

The relations between the United States and Russia remained friendly throughout the duration of the Civil War and the Russian Navy stood ready in both California and New York ports to contribute assistance to the Union in the event that Great Britain provided aid for the Confederacy. Following the war, “Baron Edward de Stoeckl, Russian Minister, returned to Washington early in 1867, with instructions to sell the territory. More significant than the motive of friendship was the fact that this possession had become of no value to Russia and was a burden to the government.”<sup>220</sup> This time, the United States was keen to purchase Alaska, in part to demonstrate to the rest of the world that despite having just financed an expensive civil war, the country had a healthy financial position.

And so the United States purchased Alaska from Russia for the sum of \$7,200,000.00 in gold. The *Alaska Treaty* states:

“His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825... .”<sup>221</sup>

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<sup>220</sup> (James, 1942, p. 20)

<sup>221</sup> (Miller, 1981, p. 1) Date discrepancy is due to differences between the Gregorian and Old Style calendars.

Russia wanted to dispossess herself of Alaska for several different reasons.<sup>222</sup> Due to the ineffective method employed to maintain its effective occupation of the territory through the Russian-American Company as “the company was guilty of such abuses that when they were aired...the government decided not to renew the charter after 1862, and the company continued to do business merely because no one forbade them to.”<sup>223</sup> This demonstrates the ineffectual control that Russia actually maintained over the territory. A second consideration included the difficulty of protecting and maintaining empire abroad, given the exceedingly great distance between the Russian capital in St. Petersburg and the Alaskan territory. The Russian government had noted, “that the state of our colonies worsens daily. That, distant as they are from the mother country, they have no importance for Russia while the necessity of defending them will continue to be in the future, as it has been in the past, as difficult as expensive. His Imperial Highness is of the opinion that it is urgent to abandon them by ceding them to the United States... .”<sup>224</sup> Russia was faced with the likely prospect of simply losing the colony to another power—and without opportunity for compensation. Finally, the governance structure and feudal society of Russia made an extended empire difficult to maintain. This was noted in a lengthy three-hour speech to the U.S. Congress by Senator Sumner who said that Russia “wished to strip herself of all her outlying possessions as Napoleon had stripped himself of Louisiana in order to gather her strength for her struggle with England for the control of Asia.”<sup>225</sup> And so Russia sold all North American possessions and their resources without realising its full future economic potential.

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<sup>222</sup> (Clark, 1930) (James, 1942) (Shiels, 1967)

<sup>223</sup> (Clark, 1930, p. 67)

<sup>224</sup> (Shiels, 1967, p. 15)

<sup>225</sup> (Clark, 1930, p. 67)

The United States was interested in Alaska for a variety of reasons, including amity with Russia, the quest for additional territory in promotion of ideas of manifest destiny as well as an opportunity to implement the Monroe Doctrine. However, the *Alaska Treaty* was rather unpopular to the general public who referred to the territory as 'Seward's Folly', 'Walrussia' and the 'Polar Bear Garden'. The exchange was described in a leading newspaper as "Russia has sold us a sucked orange."<sup>226</sup> The government had some difficulty in convincing the House of Representatives to ratify funding for the final payment of the purchase, but this was eventually overcome in part due to the fact that the United States had transferred occupation and had begun administration of Alaska immediately following the signing of the treaty. As such it would have been an embarrassment for the government to rescind on the treaty.

While the changes in territorial sovereignty that occurred in the *Alaska Treaty* had major implications for international relations in that it removed Russia from North America and made the United States an Arctic maritime state, there is a further significant development with major implications for the trajectory of international law in the Arctic. This is the culmination of a series of events including the *Bering Sea Arbitration 1893*, the *North Pacific Fur Seal Convention 1911* and eventually the insertion of a special clause in the *United Nations Convention on the Law of the Sea 1982* that introduced the idea of stewardship into international environmental law, which is pursued by the Arctic Council and by Canada as a mechanism of territorial control.

Soon after the *Alaska Treaty*, various entrepreneurial individuals took advantage of the lack of effective administration and policy of the United States government in Alaska and engaged in extensive

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<sup>226</sup> *New York World*, 1 April 1867 in (Shiels, 1967, p. 2)

hunting and killing of fur seals, which had breeding grounds located in the Alaskan Archipelago. When Washington received tales of the slaughter, they quickly moved to prevent indiscriminate destruction of the species with an 1870 act that stated:

“It shall be unlawful for any person or persons to kill any... fur seal, or other fur-bearing animal, within the limits of said territory, or in the waters thereof; and any person guilty thereof shall... be fined ... or imprisoned, or both at the discretion of the court, and all vessels, their tackle, apparel, furniture, and cargo, found engaged in violation of this act, shall be forfeited.”<sup>227</sup>

The Secretary was also permitted by law to determine who and when fur seals could be hunted and soon after the enactment of this legislation, the Alaska Commercial Company was granted a twenty year lease with “the right to take seals on the Pribilof Islands [agreeing] to kill no more than 100,000 young male seals”<sup>228</sup> in the months from June-Oct of each year. Despite this exclusive charter from the government of the United States to the Alaska Commercial Company, the monopoly was “soon threatened by pelagic sealers attracted to the North Pacific and Bearing Sea by the enticement of quick fortunes.”<sup>229</sup> While the Alaska Commercial Company was restricted in their hunting methods, the methods used by rogue sealers profoundly impacted the fur seal population. While the Alaska Commercial Company only hunted male seals on land, the rogue sealers would indiscriminately kill both male and female fur seals at sea, which had the effect of killing three seals

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<sup>227</sup> (Sanger, 1869, p. 241)

<sup>228</sup> (Gay, 1987, p. 23)

<sup>229</sup> (Gay, 1987, p. 24)

with one blow: a pregnant female and her unborn pup and a hungry pup on land that no other seal would feed.<sup>230</sup>

When the fur seal experienced an extreme decline in population in the course of one season,<sup>231</sup> the United States government, fearing the extinction of the species, used the Navy to enforce the 1870 legislation and confiscated the equipment of all rogue sealers. As a significant number of these sealers were citizens of Canada, the British government,<sup>232</sup> responded to the pressures of the Canadian government to protest the United States' policy and the confiscations. However, the United States maintained because Russia had formerly claimed sovereignty over the entirety of the Bering Sea, that as a result of the Alaska Treaty, the United States had inherited the authority to exercise sovereign jurisdiction over their newly acquired half of the Bering Sea. Disagreement ensued and the United States agreed to go to international arbitration over the issue.

The issues presented to the Paris Court of Arbitration in 1892, included whether Russia had maintained exclusive jurisdiction over the Bering Sea, and as a result of the Alaska Treaty, whether "the United States has any right, and if so, what right of protection or property in the fur seals...when such seas are found outside the ordinary three-mile limit."<sup>233</sup> The United States had never tried to prevent the freedom of navigation, nor the right of other nations to fish upon the high seas, but had only attempted to protect the fur seal from extinction. They claimed:

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<sup>230</sup> (Gay, 1987, p. 26) (Moore, 1898, p. 767)

<sup>231</sup> Estimates calculate that the seal population saw a decline of around 75% in one season.

<sup>232</sup> Great Britain handled foreign policy for the government of Canada until the mid twentieth century.

<sup>233</sup> (Gay, 1987, p. 73)

“In view of the common interest of all nations in preventing the indiscriminate destruction and consequent extermination of an animal which contributes so importantly to the commercial wealth and general use of mankind...[the United States] invite it (the international community) to enter into such an arrangement...as will prevent the...speedy extermination of those animals and consequent serious loss to mankind.”<sup>234</sup>

The arbitration court found the United States in violation of the principles of the freedom of the seas and that as Russia had no right to restrict access of commercial adventurers in the Bering Sea, so also the United States had no right to confiscate the equipment of pelagic fur sealers and was required to compensate those whom they had economically disadvantaged.

While the United States lost their moral appeal to the international community in their claims of stewardship over the fur seal to the government of Canada on the basis of economic injustice, the result is that within a few years the maritime nations around the north Pacific entered into the *North Pacific Fur Seal Convention 1911*. So despite their apparent initial legal loss, the international legal challenge of United States’ domestic legislation resulted in the creation of international environmental legislation on the basis of stewardship, largely considered to be the first case for stewardship of natural resources in international law.<sup>235</sup> Of striking interest, Canada, the ‘belligerent’ against the stewardship claim of the United States regarding the fur seals, now uses the same stewardship argument to promoting their control of the Northwest Passage.

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<sup>234</sup> (Moore, 1898, p. 776)

<sup>235</sup> (Fitzmaurice, 2009, p. 134)

The contribution of the *Alaska Treaty* to the development of the future of Arctic international relations and of both international maritime and environmental law is significant. Not only did it make the United States a maritime Arctic territory and eliminate all Russian influence from North American territory, but it established a clear obstacle to British political and military supremacy in the North Pacific. Eventually, this transfer of territory also created clear divisions between North American allies against the Soviet Union in Cold War fronts as the Arctic became seen both as a theatre of war and as a route of attack. The political and legislative events following the *Alaska Treaty* also led to creation of the idea of environmental stewardship and the notion of the protection of the common heritage of mankind that would eventually become imbedded in both the *United Nations Convention on the Law of the Sea 1982* and the *Antarctic Treaty 1959*. And finally, the non-precise language and disagreements over translations of the *1825 Anglo-Russo Convention* and the *Alaska Treaty 1867* have led to current, unsettled disputes regarding the delimitation of the maritime boundary between the United States and Canada in the Beaufort Sea.

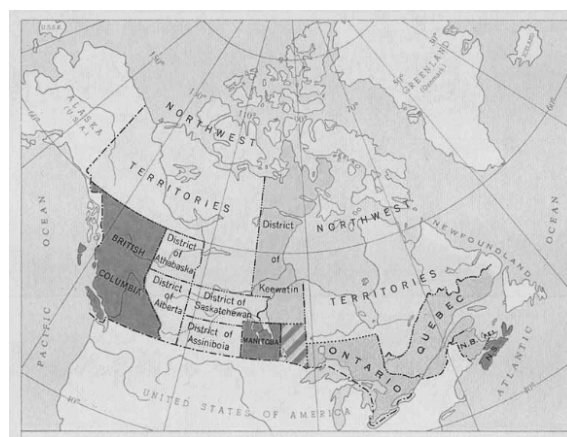


Figure 7: Dominion of Canada 1882<sup>236</sup>

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<sup>236</sup> (Government of Canada, 1957 a)



The development of the laws of territorial acquisition and events that occur within this period have a number of implications for the Arctic region, even though the political-legal aspects of many of the events themselves occurred outside of the definitions of the physical Arctic. The first is that these laws and the processes of enforcing them established 'ownership' and subsequently the sovereignty of states over North American Arctic territories. Whereas, had these laws not been developed, indigenous populations would have retained the ownership of the land, but as European empires deemed that the land was not 'effectively occupied' for legal purposes, they were able to assume administration and ownership of the whole of the North American Arctic. The principles of territorial law continued to be reinforced through the granting of territorial charters, such as the transfer that gave all of Rupert's Land to the Hudson Bay Company and also through treaties granting restoration of illegitimately seized land, as occurred in the *Treaty of Utrecht*. Finally, the laws of territorial acquisition provided the legal mechanism which determined the geopolitical boundaries that are seen today in Arctic international relations and also created principles of utility and occupation that continue to be relevant in contemporary Arctic sovereignty debates.

### **Rules and Codes of the Interwar Years**

The Interwar Years of the international system brought with them a change in the focus levied on the Arctic by the states that claimed sovereignty over its territory. Although exploration continued in the Arctic region, sometimes sponsored by states, but often funded by private investors, the nature of the exploration transitioned from the pure pursuit of territory to scientific exploration, although this scientific exploration was also used in pursuit of territory. Into the 1930s it was believed there might be

additional yet undiscovered islands hiding within the sea ice and the new technologies of the period were used to search for these unclaimed territories. However, aside from the possibility of these few islands, all known land within the Arctic had been annexed by the states of Canada, Russia, the United States, Denmark and Norway. This period brought with it new conversation in territorial possibilities, such as the potential of sovereignty over sea ice, the sector principle and some of the final determinations of sovereignty over land caught up in the decline of the empire.

The acquisition of the North Pole by Peary in 1909 for the United States heralded the end of the age of territorial discovery in the Arctic when Peary, operating under the principle of the laws of territorial acquisition telegraphed U.S. President Taft, “placing the North Pole at his disposal.”<sup>237</sup> Taft congratulated Peary on this immense achievement, but replied: “Thank you for your generous offer. I do not know exactly what I could do with it...I sincerely hope that your observations will contribute substantially to scientific knowledge.”<sup>238</sup> This rejection of the United States of the opportunity to claim sovereignty over this layer of the North Pole on the basis that it was located in the middle of the Arctic Ocean, on sea ice and part of the high seas established precedence within international relations that this aspect of the pole was outside the realms of territorial claims by sovereign states.

This outward projection of exploration into the maritime was indicative that all the continental territory adjacent to the Arctic Ocean had been coloured into political maps. Within North America, the *Hays-Herbert Treaty* of 1903 determined the land boundary between British Columbia and Alaska, leaving only the borders within the Arctic maritime to be delineated, as other land

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<sup>237</sup> (The New York Times, 1909)

<sup>238</sup> (The New York Times, 1909)

boundaries had been determined in the last century. In the Arctic Ocean, sovereignty over the many islands, which had been discovered by explorers from many countries, created a tangled web of territorial division. Additionally, the sovereignty over major islands such as Greenland and Svalbard had yet to be legally determined, as they had been utilised by many countries, thus weakening the claims of sovereignty by discovery due to inefficiency of the principle of effective occupation.

Meanwhile, aviation technology was being used by the Arctic states to determine if any more undiscovered islands existed within the Arctic Circle. This exploration activity, coupled with the tangled web of existing sovereignty over minor islands via discovery and the uncertain sovereignty due to inconsistent effective occupation of the minor Arctic islands created a condition of insecurity over the northern territorial borders in the Arctic. To address this issue, in 1926 the Soviet Union issued a proclamation introducing the concept of the sector principle to the international system in order to address the circumpolar nature of the Arctic region. They said:

“All discovered lands and islands, as well as all those that may in the future be discovered, which are not at the date of the publication of this decree recognized by the Government of the USSR as the territory of a foreign Power, are declared to be territories belonging to the USSR... ”<sup>239</sup>

This formal declaration followed pronouncements made by a Canadian senator, who held that Canada held sovereignty to its sector on the basis of four claims, including discovery by Great Britain, transfer in the *Treaty of Utrecht*, the occupation of the

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<sup>239</sup> (Degras, 1952, p. 104)

Hudson’s Bay Company, and at last, the sector principle.<sup>240</sup> Although Canada never made a formal declaration of the sector principle, maps produced by the Canadian government were displaying the Canadian sector at least until 2007, depicting the sector line as an international boundary, (See figure 8).

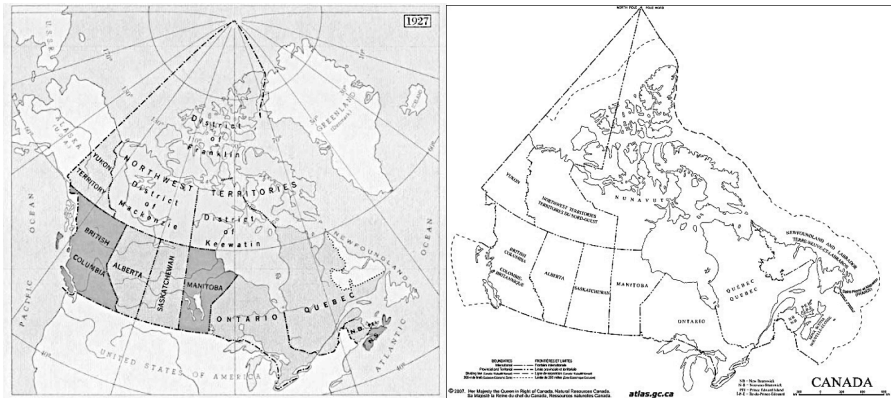


Figure 8: Canadian Maps 1927<sup>241</sup> and 2007<sup>242</sup>

Equivalent to the notion of the ‘regions of attraction’ included in the U.S. Monroe Doctrine of 1823, the sector principle indicated that all states were to relinquish claims to sovereignty over areas within this sector. It has been seen as parallel to the *Treaty of Tordesillas* as an early demonstration of the sector principle with the “practice of claiming sovereignty over a sector of the earth's surface, as measured by meridians of longitude”<sup>243</sup> being utilised to divide the world between Spain and Portugal. Within the Canadian sector, the U.S. was happy to comply as the only territory to which the United States had any claim were minor islands within the Canadian Archipelago. This proclamation also had the result of solidifying Canadian claims to sovereignty over territories transferred in the 1880 Arctic Islands transfer from the

<sup>240</sup> (Head, 1963, p. 203)

<sup>241</sup> (Government of Canada, 1957 a) This evolutionary map also explains that “By 1925, Canada extended to the North Pole.”

<sup>242</sup> (Government of Canada, 2007 a)

<sup>243</sup> (Head, 1963, p. 202)

Great Britain, who had not fully established sovereignty over all of the islands in the Canadian archipelago through either discovery or effective occupation. Although the sector principle had the result of establishing regions of attraction within the Arctic Circle up to the North Pole, due to the U.S. not pursuing the sector principle within the sector left to them by the development of Soviet and Canadian sectors, the sector principle failed to become the dominant rule for establishing territorial sovereignty over maritime areas within the Arctic region and only applied to *terra firma* within those sectors.

The final determinations of sovereignty over land within the Arctic occurred in the *Svalbard Treaty 1920* and the judgement on the *Legal Status of East Greenland 1933*. In both of these locations, multiple states had been utilising the land and the resources, eliminating Norway and Denmark from establishing clear sovereignty over the territory and thus it was necessary to settle the issue through legal mechanisms of the international system. The *Svalbard Treaty* provided that all member states already utilising the Svalbard islands to “carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality,”<sup>244</sup> important for states mining coal on the islands to diminish their energy needs. So although the treaty gave ‘most’ sovereignty to Norway, it prevented it from having permanent sovereignty over the resources of Svalbard, usually understood to be a condition of territorial sovereignty.

In Greenland, due to divisions of empire in Scandinavia as a result of the Napoleonic Wars, the legal status of this large Arctic island had failed to be established through effective occupation of a single sovereign state. Similar to the support of the United States

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<sup>244</sup> (The Svalbard Treaty, 1920)

to Canada's claim over the entirety of the Canadian Archipelago via the sector claim and despite an agreement with Denmark to use Greenland during the First World War for military purposes, the United States did "not object to the Danish Government extending their political and economic interests to the whole of Greenland,"<sup>245</sup> additionally there was recognition of Danish sovereignty over Greenland by other states. This is important due to the rule of international recognition as being a component of state sovereignty. However, the discussion over the sovereignty of Greenland was a matter of contention between Denmark and Norway, who were once both part of the same empire, with Norway making declarations of sovereignty over the area of East Greenland. The International Court of Justice ruled in the judgement on the *Legal Status of Eastern Greenland 1933* that the entirety of the island fell within Danish sovereignty, concluding the determination of the final major land borders of the Arctic region.<sup>246</sup>

There are several implications for international relations and international law in the development of rules and codes for the Arctic region during the Interwar Years. The first is that the Arctic states began to create solutions for dealing with the circumpolar nature of the Arctic region. This includes the use of the sector principle, which although this method failed to establish sovereignty over maritime areas due to lack of application by all of the Arctic states, it succeeded in finalising sovereignty over the many little islands in the Arctic, with the exception of Hans Island. The result of this period is the solidification of terrestrial territorial boundaries, a move necessary due to processes of decolonisation within Great Britain and Scandinavia. It is mere

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<sup>245</sup> (International Court of Justice, 1933, p. 36)

<sup>246</sup> There is currently a dispute over the sovereignty of an island, a mere rock, called 'Hans Island' between Canada and Denmark in the Davis Strait.

providence that saw these sovereignty claims settled before the knowledge of the vast resources of the region was truly realised.

A second implication is that it was also determined that sovereignty over the North Pole at the surface of the Arctic Ocean could not be claimed by states due to the pole being positioned in the middle of the high seas, and also being located on a gyrating structure of sea ice. Although the entirety of the legal status of ice requires further development, the introduction of this rule of 'no sovereignty over sea ice' resulted in the U.S. declining the sector principle in the Arctic maritime and also sets precedent for the other legal layers of the North Pole that will eventually be developed as the international system evolves throughout the twentieth century.

### **Rules and Codes during the Cold War**

The Cold War years within the international system brought with it radical change in the codes and rules that frame the Arctic maritime as the focus of the Arctic states began to dwell on the resources of the world's oceans. The interstate conflict of the Great Wars during the Interwar Years had emphasised the need of states to secure new sources of energy, in order to maintain energy security for defence and for economic growth. In addition to the need for additional energy, the Interwar Years had seen vast development in technology, creating more opportunity and options for the extraction of resources in previously unreachable places—especially within the oceans. These interests and capabilities of states thus introduced an opportunity for a major shift within the rules of the international system governing the maritime regions and the simple rules in the law of the sea, *mare liberum* and *mare clausum*, were about to undergo a major transformation.

This transformative shift in the rules organising the behaviour between states in the maritime was introduced by U.S. President Truman in the *Truman Proclamation 1945*, which states:

“Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. ...The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.”<sup>247</sup>

With this proclamation, the areas over which a state could claim sovereign jurisdiction expanded instantly to include large expanses of territory that was formerly conceived of as part of the high seas. Like the introduction of all rules, the Truman Proclamation required international consensus to become part of the fabric of the international system, and as most other states in the greatly expanded international system saw the advantages of this rule to their own national interests, the rule quickly became a part of customary international law. It is this lack of international recognition that is the reason the sector principle failed to establish maritime sovereignty in the Arctic and why the Arctic states have turned to the new framework of the law of the sea to establish sovereignty over the maritime Arctic.

This rule of the continental shelf was soon codified in international law, along with several other additional rules, was introduced in

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<sup>247</sup> (Truman, 1945)



the first *United Nations Convention on the Law of the Sea 1958*, adding new legal spaces of territory to the body of international law in territorial waters: the contiguous zone and the high seas. Changing the rules of territorial acquisition established during the Age of Discovery, the Convention determined that “the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation”<sup>248</sup> and that failure to utilise the continental shelf did not create permissions for other states to use it. Yet, these new legal spaces, although ‘permitting’ the Arctic states to extend their jurisdiction along the continental shelf 200 nautical miles (nm) into the Arctic Ocean, does not completely define the claims to maritime sovereignty in the Arctic of today. It would take further deliberation in two more *Conventions on the Law of the Sea 1960* (II) and 1973-1982 (III) to fully develop the layers of rules that currently apply to maritime claims in the Arctic Ocean.

The resulting maritime legal spaces coming out of the deliberations of the *United Nations Convention on the Law of the Sea 1982* include: the breadth of the territorial sea between three to twelve nautical miles, an exclusive economic zone of 200nm, and the ability to claim up to 350nm along the continental shelf, providing a state can prove that it is a natural prolongation of their mainland territory. It also establishes the areas outside of state jurisdiction as part of the common heritage of mankind, (See Figure 9). The text of *United Nations Convention on the Law of the Sea 1982* holds that:

“the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the

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<sup>248</sup> (United Nations, 1958, p. 314)

principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world.”<sup>249</sup>

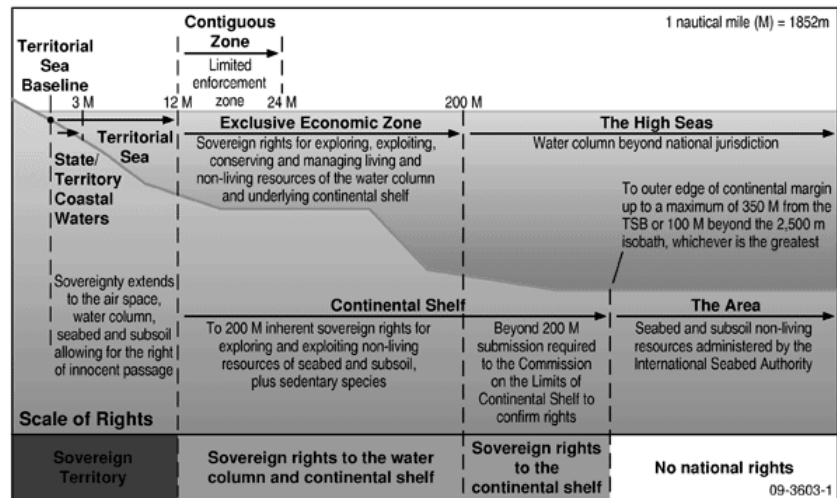


Figure 9: Maritime Zones under UNCLOS III<sup>250</sup>

For the Arctic, the development of the *United Nations Convention on the Law of the Sea 1982* resulted in giving states claiming territory in the Arctic Oceans up to the North Pole through the sector principle a means to now claim that territory through codified rules of the international system rather than clinging to rules that had failed to gain international consensus. However, it can be seen that as the Arctic states wait for their claims of up to 350nm to be reviewed by the United Nations Commission on the Continental Shelf, they continue to reiterate their historical borders established through the sector principle. Thus, Canada and Russia are now staking claims to multiple legal layers of space at the North Pole through their claims to the Commission through the *United Nations Convention on the Law of the Sea 1982* and with their continuing diplomatic statements to sovereignty over the pole.

<sup>249</sup> (United Nations, 1982, p. 25)

<sup>250</sup> (University of Southwest Australia, 2013)

In addition to the potential territory at the North Pole, the introduction of these new legal spaces through the addition of new rules to the international system begin to introduce several new territorial conflicts to Arctic international relations, including the disputes between Canada and Denmark in the Davis Strait, Russia and Norway in the Barents Sea Norway and Denmark in the Greenland Sea and the United States and Canada in the Beaufort Sea. During the Cold War Period the maritime boundaries between Canada and Denmark, excluding Hans Island and the Lincoln Sea were determined in the *Canada-Denmark Maritime Agreement 1973* using the median line as the method for delimitation.<sup>251</sup> A final territorial line to be determined within Arctic international relations during the Cold War Period is the *U.S.S.R.-United States Maritime Boundary Agreement 1990* which clarifies the boundaries of the *Alaska Purchase 1867* in the Bering Sea, but still awaits ratification by the Duma of the Russian Federation.

The final overarching rule of the international system during the Cold War Period was the rule of the existence of the Cold War itself, existing not in codification but only in the understanding of the behaviour of states interacting with one another in the international sphere—marked by an arms race fuelled by physical insecurity and suspicions of intentions as each side promulgated their political ideologies to a wider audience. For the Arctic, which was the shortest route between the two sides of the Cold War conflict, this resulted in the region being seen as both an arena for warfare and also a direct route of attack. This caused many displays of military prowess and demonstration of capability to operate in the region. While the rule of the Cold War no longer exists in subjective understandings, the technology developed in

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<sup>251</sup> In the dispute in the Beaufort Sea between Canada and the United States, the U.S. claims the boundary line follows the median, or equidistant principle. Canada, contrary to the method used in the Davis Strait, claims a line perpendicular to the territorial boundary.

this period is equipping the states to defend their prospective Arctic claims in the maritime regions.

The implications for international relations and international law in the development of rules and codes for the Arctic region during the Cold War years include that the period was marked by several major transitions. The first includes the addition of new rules to the law of the sea, making it acceptable to appropriate resources of the maritime regions once considered as outside the jurisdiction of states. The development of the new layers of legal territory within the law of the sea was facilitated by the rise of liberal institutionalism rising out of the Interwar Years to address not only the need to mediate global conflict, but also to address the growing number of states interacting within the sphere of the international system. Finally, although the sector principle, still implemented by Canada and Russia in the Arctic, has apparently given way to the new rules of the law of the sea, the capabilities developed during the Cold War continue to provide muscle to their current claims over the North Pole and the extensions of their continental shelves.

### **Rules and Codes Post Cold War**

The Post Cold War years of the international system are bringing with them change in the way that the Arctic states engage with each other as the rule of the understanding of 'Cold War' has disappeared. Additionally, states are increasingly cooperating on environmental matters for the region and have also developed a new framework for organising political action within the Arctic in the form of governance through the Arctic Council. In this period, it is also seen that nearly all the bilateral boundaries (those not including the overlapping claims at the North Pole) are also being codified within international law. Thus, it seems that in this period

of the international system, the codes and rules framing Arctic sovereignty continue to be developed within the evolving interests of states in their actions with one another and in their interaction with the international system.

The dominant rule added to international relations of the Arctic is that of the establishment of the Arctic Council, originally evolving out of the *Arctic Environmental Protection Strategy 1991* between all eight of the Arctic states. The cooperation provided through this agreement so near to the end of the Cold War gave states a platform for launching the Arctic Council, originally intended as an informal forum for discussing issues relating to the Arctic.

However, in 2011, the Arctic Council was made into a formal organisation with the establishment of a permanent secretariat, with the additional intent of coordinating action between the Arctic states. The addition of this rule to Arctic international relations adds a new layer of complexity, as it deals with issues outside of the jurisdiction of state sovereignty, providing a mechanism for states to project their Arctic specific interests into the international realm.

As the new rule of 'exclusive economic zones' and 'extended continental shelf' were added to the international system in the last period, maritime territorial sovereignty in the Arctic continues to be on the agenda of the Arctic states. In 1993, Norway and Denmark came to an agreement on their boundary in the Greenland Sea, in 2011 Norway and Russia agreed on the delimitation of their maritime boundaries, a dispute that had lasted around forty years. The last remaining bilateral boundary to be determined is that between the United States and Canada in the Beaufort Sea. The exigency for determining these boundaries includes the creation and addition of new rules to the international system, but also the discovery of vast quantities of oil and gas in

the Arctic region in 2002 by the U.S. Geological Survey. Before 1982, the rule on the extended continental shelf did not exist and before 2002 the Arctic states were largely unaware of the potential energy within the region and thus the impetus to establish these boundaries is a contemporary issue. What continues to be a matter of diplomatic contention is the status of claims at the North Pole while states wait for rulings from the Commission on the Continental Shelf.

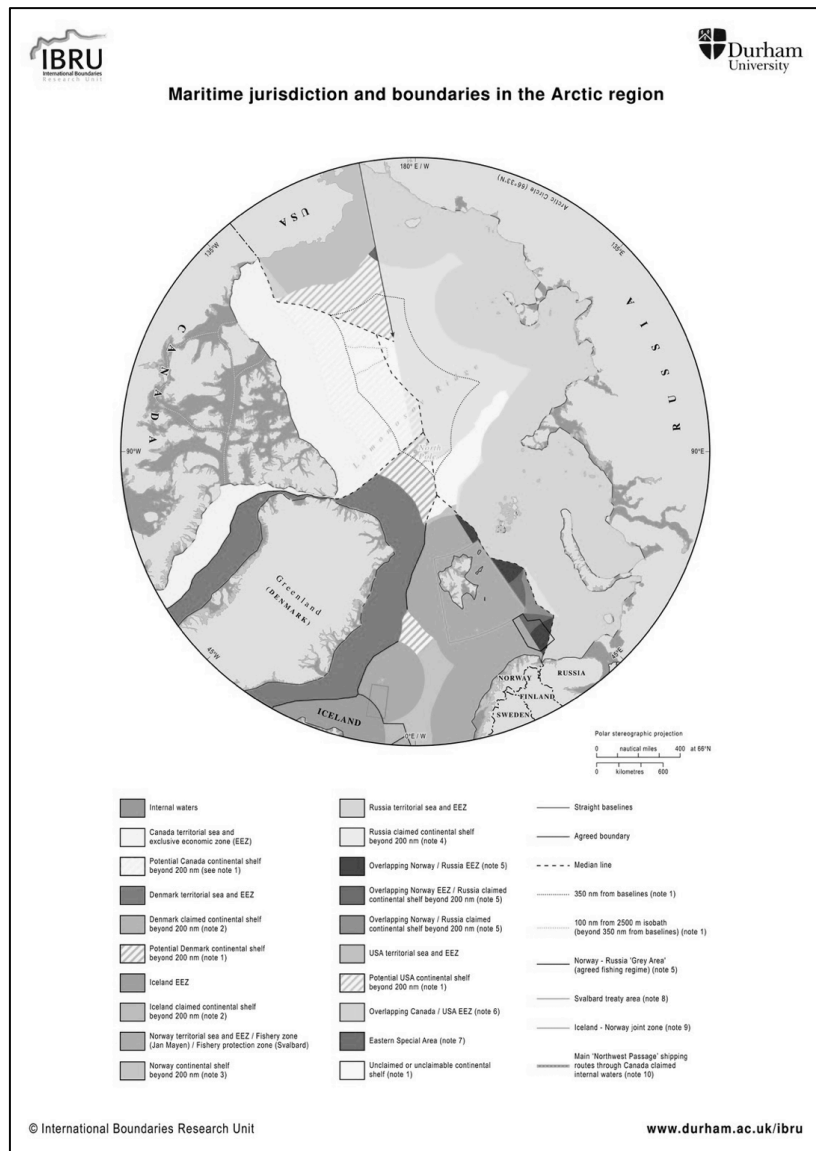


Figure 10: Maritime Jurisdiction and Boundaries in the Arctic Region<sup>252</sup>

<sup>252</sup> (Durham University, 2013)

The implications for the international system, and specifically for the development of Arctic in this period includes the turn toward environmental cooperation in the region and the development of mechanisms of cooperation based on regional interests, developed outside of the institutions formed in the Cold War Period. This turn towards cooperation is the result of the diplomatic stand-down of Arctic militarisation, although the technology for this still exists. States are still exercising their ability to operate in the Arctic in a military capacity, but some of this is done in tangent with one another as seen in the *Search and Rescue Agreement 2011*. This cooperation in the development of regulatory frameworks and military cooperation will allow the Arctic states to prepare for the onslaught of the interests of non-Arctic states in the resources and shipping lanes of the Arctic Ocean. Finally, the impetus to solidify maritime boundaries for resource security in the newly created territorial legal spaces in the Arctic has been a continuing focus of the Arctic states in contemporary international relations.

## **Conclusions**

Contemporary claims of Arctic sovereignty and the historical division of sovereignty over territory within the Arctic can be understood by tracing the development of political and legal events from the *Treaty of Tordesillas* to the *United Nations Convention on the Law of the Sea 1982*. The discovery of the New World by Europeans created a vacuum within the international system where shared understandings of expected behaviour by states expanding their political boundaries into the territories of far away lands was undefined. The creation of this vacuum acted as a catalyst for introducing a new set of rules to the international system. Although the unincorporated world was initially divided between Spain and Portugal by the accepted international

authority of the period, within a century the legitimacy of this rule was challenged by the rising powers of England, France and the Netherlands as the power of Papal influence diminished in correlation with the rise of the notion of territorial sovereignty and the right of monarchs to be the ultimate authority within their territorial boundaries.

The legitimacy and ultimately, the dominion, of the expansive possessions of the Iberian empires was reduced by the introduction of new rules of territorial acquisition and maintenance, practices that through custom and consensus became the law of nations; when these rules were violated, they were often reinforced through treaty agreements, returning the territory to the dispossessed state with rightful claims. So when France made illicit claims on the territories of the Hudson's Bay Company held in charter from Great Britain, they were reinstated in the *Treaty of Utrecht*, with punitive repercussions in the both the Old and the New Worlds. Thus, all terrestrial claims to sovereignty in the Arctic have been established through laws of territorial acquisition, or by the transfer of these discovered territories by legal cession from one state to another, with the only purchase of territory by the Arctic littoral states occurring in the Alaska Purchase Treaty.

As the early claims to territory held by Spain and Portugal succumbed to the rising commercial interests of other European states, new rules regarding the organisation of maritime territory were also added to the international system in the principle of *mare liberum*. This principle reduced the exclusivity of trading privileges of the Iberian empire and enabled the development of trade routes by Great Britain and the Netherlands who established trading companies and authorised privateering, bringing wealth and resources back to northern Europe. It was this expansion of



trade routes that led to the intense exploration of the Arctic by Great Britain as they endeavoured to utilise the Northwest Passage. Through this activity, the resources of the Arctic began to attract commercial interest and the harsh Arctic territory was incorporated into the political boundaries of states through the laws of territorial acquisition.

Yet the expanding opportunities for trade networks and the increase in maritime traffic also introduced the notion of maritime protectionism in the rule of *mare clausum* as Great Britain attempted to protect resources in waters around Britannia from exploitation by other states. The introduction of the principle of territorial waters to the international system allowed for states to claim sovereignty over maritime territory within the limits of the cannon shot rule of three nautical miles. These two rules, *mare liberum* and *mare clausum*, became the expected behaviour within the global maritime, established as the law of nations. Thus, when the United States apparently claimed sovereignty over the entirety of Bering Sea in the effort to protect fugacious seal populations, it was determined through international arbitration that this attempt at extraterritorial control was in violation of the expected standards of behaviour within the international system.

However, the establishment of standards for the notions of territorial waters and the high seas was not the finale for the transformation of rules organising the division of maritime territory within the Arctic. The principle of the freedom of the seas outside of territorial waters continued to be reinforced as the dominant maritime rule of the international system, but the concept of limits to territorial waters was challenged by the national interests of states following the Age of Discovery. It is the principle of *mare liberum* that caused the failure of the incorporation of the North Pole at the surface of the sea ice into

the territory of the United States in the early twentieth century. This is due to the laws of territorial acquisition declining with the end of the Age of Discovery and the rapid growth of the community of states within the international system. Thus, sea ice and the North Pole itself, as part of the high seas, were accepted as outside the reach of sovereign claims.

Accepted through state practice and customary law, the maritime rule of *mare liberum* continued to be a dominating guideline within the international system into the twentieth century. However, this time period brought with it enormous challenges to the rules of the international system as the interests of states in the oceans changed from merely a focus on the ability to maintain trading networks, to also having interests in the resources contained within the seas. Thus, the new rules of sovereignty over the resources of the continental shelves and the exclusive economic zones were added, eventually becoming codified in the *United Nations Conventions on the Law of the Sea*. It is these new rules that have created the expansion and the complexity of claims of the littoral states to territory within the Arctic by creating new layers of territory and new procedures for establishing legitimacy over those claims.

It can be seen that the rules and codes that structure contemporary Arctic territorial claims are the result of the legitimisation of certain practices suited to the needs and interests of states in the particular eras of the international system. Much of the Arctic was absorbed through imperial expansion, but changes in the international system had brought an end to the rules of territorial acquisition. So the rules of the international system held that the North Pole of 1909 was outside the potential sovereignty of the United States as this socially constructed geographical point was located only on the sea ice, a feature of the high seas.

However, the North Pole of 2013 has new rules guiding the behaviour between states, which apply to its condition as becoming a part of the sovereign territory of a littoral state.

Through the creation and layering of rules within the international system, there are now four potential legal spaces in which the North Pole is situated: airspace, ice at the surface of the sea, the sea column and the seabed. The delineation of airspace customarily follows the lines of territorial waters. However, in the Arctic, while the U.S. claims territorial airspace along the lines of territorial waters, both Russia and Canada claim territorial airspace up to the North Pole. Through conversations on the legal status of ice, the North Pole on the surface of the sea ice is not subject on its own to sovereign jurisdiction. Additionally, the sea column at the North Pole is outside the limits of the rule of the exclusive economic zone and thus its resources are part high seas and the common heritage of mankind. However, it is the final category that attracts the interest of the littoral states in contemporary international relations: the North Pole on the seabed of the Arctic Ocean, a tangible geographic point where currently waves the Russian tricolour, and the actual point of contention between Canada and Russia as they wait their claims to the United Nations Commission on the Continental Shelf. So while the Arctic states wait for their maritime territorial claims in the Arctic to be determined through the current rules of the international system, they continue to make diplomatic gestures using old familiar rules, although some of them have expired, to demonstrate the validity of their claims to the North Pole to the international community of states.

As the international system continues to evolve, so also change the rules and codes that guide the behaviour of states within this structure. Although the maritime territorial sovereignty of the

Arctic is being determined through the current rules and codes of the international system, is not the end of the evolution of Arctic as a region within the system. As new resources and new technologies are discovered, new layers of territory become accessible and new voids are identified in the legal structure of the international system. The ongoing development of Arctic specific rules and codes will continue to be the product of the needs of the Arctic states in response to the constraints of the international system in which the guidelines are developed.

## Part Two: Policy

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## Chapter III

### U.S. Arctic Policy 1867-2013

Arctic international relations of the twenty-first century is showing the United States to be engaging with the Arctic in a tentative and even an arguably low profile manner compared with the often brash and bold activities and policy statements produced by Canada and Russia. This relationship with the Arctic is a result of the U.S. internal political scene, where partisan and bureaucratic politics have hampered decisions on a range of issues from drilling for fossil fuels in the Arctic National Wildlife Refuge to the ratification of the *United Nations Convention on the Law of the Sea 1982*. The United States has one of the smallest of the Arctic sectors and also has a short continental shelf that likely will not result in an extended claim of sovereignty under international law. Holding a certainty of sovereign title over the territory of Alaska, U.S. strategy in Arctic international relations pursues a different set of objectives to those of the other Arctic states, especially Canada and Russia, who are vying for claims to the North Pole. While Canada and Russia pursue Arctic foreign policies to establish and extend sovereign claims in the Arctic, the United States is pursuing an Arctic policy that fulfils broader U.S. national interests including interest of security, the environment, and economic and infrastructural development. U.S. Arctic policy has deviated little throughout the periods of U.S. engagement in the region, although the methods for pursuing this policy have changed with the transitions within the international system.

### Research Questions:

- What is the historical development of U.S. Arctic policy?
- Is U.S. Arctic Policy largely reflective of their broad foreign policy strategies in a given era?
- How was U.S. Arctic Policy implemented in the different eras of the international system?
- What national interests can be identified in U.S. Arctic policy?
- What rules have the United States followed in their pursuit of national interests in their Arctic policy?

### **U.S. Arctic Policy during the Age of Discovery**

U.S. engagement with the Arctic began during a period of imperial expansion within the international system by dominant states. For the United States, this can be considered as a form of the pursuit of security in the national interest, spurred by two major concepts within U.S. policy in the middle of the nineteenth century: the Monroe Doctrine and Manifest Destiny. Early thought within the United States had determined that the Mississippi River offered a defensible and formidable natural geographic boundary; however, when the Louisiana Purchase was acquired in 1803, purchased almost by accident from Napoleon who could no longer afford sustain his American empire while expanding his empire in Europe, the territorial size of the United States doubled over night. Following this rapid territorial expansion by the U.S. government, American settlement and economic activities gradually expanded westward. Under the new attitude of territorial expansion it was soon realised that European empires, such as Spain, Russia and Great Britain, who held territorial claims in parts of North America, were retarding U.S. expansion “thwarting our policy and hampering our power, limiting our greatness and checking the

fulfillment of our manifest destiny to overspread the continent allotted by Providence for the free development of our yearly multiplying millions.”<sup>253</sup> This turn toward expansionist imperialist policy was combined with the Monroe Doctrine which formally warned that where “the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.”<sup>254</sup> The Monroe Doctrine, although tempering European territorial expansion in the Americas, was also specifically directed at Imperial Russia who had indicated that they also intended to expand from Alaska to the Oregon Territories, territory that the now growing United States believed to be the new western limits of their boundaries.

It was during this period of imperial expansion when William H. Seward, believing the U.S. *Constitution* to be “adapted to the inevitable expansion of the empire,” served as a Senator in the upper house of Congress, as a war minister during the U.S. Civil War and eventually as the U.S. Secretary of State.<sup>255</sup> An advocate of U.S. expansionist policies and pursuing national interests of the United States, including territorial and resource acquisition, Seward attempted a failed purchase of Greenland but successfully added the Alaska Territory to the United States territorial holdings in 1867, for the sum of 7.2 million dollars in gold, or \$0.02 per acre. This transaction ultimately signalled to other powers that might challenge U.S. territorial expansion that the U.S. government had sufficient resources, even following the costly Civil War, to make extravagant purchases in gold. If sufficiently solvent to expand territory, they were also economically equipped to defend their territory with the military infrastructure that remained after

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<sup>253</sup> (Sullivan, 1845, p. 6)

<sup>254</sup> (Monroe, 1823)

<sup>255</sup> (Seward, 1858, p. 15)



the Civil War. Additionally, this purchase actively implemented the Monroe Doctrine by removing a European power completely from the landscape of North America.

Ratification for the allocation of funds to conclude the *Treaty with Russia 1867*, also known as the *Alaskan Purchase Treaty* was delayed for several months after the treaty was signed as Congress was divided over whether the empty 'wasteland' of Alaska was worth the price tag set by the Russians. Congressional debates on the purchase of Alaska in the 40<sup>th</sup> Congressional session depict the character of United States as "a land stealing people by nature, and that our propensities and our manifest destiny are to steal land until our 'abutments' ...shall be the one on the Atlantic and the Pacific and also upon the Arctic and on the tropic seas."<sup>256</sup> If the land could eventually be seized, there was little impulse to purchase the territory. However, the position that although Imperial Russia was the "most despotic Government in the world, [but] in that Government has always been found a friend an ally,"<sup>257</sup> determined that it was in the best interests of the United States to maintain a favourable Russian alliance. It is for these two reasons—manifest destiny and the desire to maintain positive diplomatic relations with Russia that Congress ultimately ratified the investment capital for the *Alaskan Purchase Treaty*.

The entire Alaskan region was believed to be icebound and desolate, so political opponents who deemed its acquisition as a foolish venture labelled the purchase 'Seward's Folly'. However, Seward believed in the project of American expansion and also saw value in the new territory, which had scarcely been utilised by Imperial Russia due to corruption by the Russian-American company, the administrators of Russian interests in the region.

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<sup>256</sup> (Shellabarger, 1868, p. 377)

<sup>257</sup> (Shellabarger, 1868, p. 377)

Imperial Russia was prompted to sell their American Arctic possession in part due to rumours of gold and the inability of the government and the Russian-American company to cope with the results of a gold rush, as recently seen in the California Gold Rush less than twenty years previous.<sup>258</sup> Additionally, by selling the territory to the United States, Imperial Russia pre-emptively prevented loss of the territory to the British Empire, who was still in the throes of global territorial expansion.<sup>259</sup> Visiting the new territory in 1869, Seward said, "I realized, if indeed I did not discover in those [Alaskan] Territories a new, peculiar, and magnificent field of commerce and empire."<sup>260</sup> And so, the vision of an American imperialist, pursuing the national interest of territorial expansion, made the U.S. into an Arctic state long before the true security and economic values of the region were realised.

The *Alaskan Treaty Purchase* can be considered as the first U.S. policy document for the Arctic territory as it executes U.S interests in the region by defining boundaries of the territory, gives the terms of the cession in property and commercial contracts, and outlines the treatment of foreign citizens, natives and military installations. In the treaty, the U.S. federal government immediately assumes authority over all *terra firma* in Alaska. However, while they agreed to honour existing rights of private property, all existing commercial contracts were cancelled, all Russian government papers were surrendered to the U.S. and any military equipment and personnel were immediately expelled. Foreign citizens were permitted to return to native lands, or within the space of a few years could become naturalised citizens of the United States with all associated rights and privileges.

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<sup>258</sup> Fort Ross, Imperial Russia's other North American possession, was sold to John Sutter in 1840. It was at Sutter's Mill where the ore that sparked the Gold Rush of '49 was found.

<sup>259</sup> (Bolkhovitinov, 1993)

<sup>260</sup> (Seward, 1869, p. 24)

However, continuing the paternalistic and asymmetric relationship the United States held with native tribes in the continental United States, any indigenous populations, or 'uncivilized tribes,' became "subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."<sup>261</sup> This clause is of great significance because it establishes the custodial relationship of the United States with the indigenous inhabitants of Alaska, with future relevance to sovereignty debates in other states over Arctic territory and primacy of states in the international system in the twenty-first century.

Within the space of a few years, rather than the generation of time that Seward predicted, the economic value of the Alaskan Territory was initially realised. It was written of this early realisation of Alaskan value that "hitherto our new possession has seemed almost a myth too vague an intangible...like an unexpected legacy, its magnificence and value have not yet been comprehended; but the time is close at hand when her mighty forests will yield their treasures, her mines will open out their richness, her seas will give of their abundance, and all her quiet coves will be converted into busy harbours."<sup>262</sup> Within twenty years, the purchase price of the territory was regained from the trade of seal furs alone,<sup>263</sup> By the 1950s, Alaska had paid for itself four hundred and twenty-five times over.<sup>264</sup> It was through the economic development of Alaska and the charter of the Alaskan Commercial Company in 1870 that the United States first demonstrated sovereignty over Alaska in the same method as Imperial Russia had done through the Russian-American Company. It is this interest for economic affairs, and eventually the

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<sup>261</sup> (Government of the United States, 1867, p. 542)

<sup>262</sup> (Hallock, 1886, p. ii)

<sup>263</sup> (Lee, 1998, p. 63)

<sup>264</sup> (Fairbanks Daily News-Miner, 1958)

seal fur trade, that soon led to two disputes with neighbouring Canada.

The United States initially faced difficulty in the development of effective administration in the region, despite having passed *Congressional Act No. 211* in 1867 which extended “the laws of the United States relating to customs, commerce, and navigation”<sup>265</sup> to the territory, it required further legislation to provide for military operations including *Executive Order July 3, 1875* prohibiting the importation of military hardware into Alaska. Additionally, the government failed to incorporate the residents of Alaska into the administrative structure of the federal government, denying their rights as U.S. citizens under the Constitution by remaining as an unincorporated territory. President Arthur remarked to Congress in 1881:

“I regret to state that the people of Alaska have reason to complain that they are as yet unprovided with any form of government by which life or property can be protected. While the extent of its population does not justify the application of the costly machinery of Territorial administration, there is immediate necessity for constituting such a form of government as will promote the education of the people and secure the administration of justice.”<sup>266</sup>

The U.S. *Constitution* enables for the Federal government to extend laws and regulation to a new territory, and the *Northwest Ordinance 1787* provides direction for the development of territorial government, which in the first stage includes appointing a governor, three justices and a secretary. However, this system

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<sup>265</sup> (Zabriskie, 1870, p. 874)

<sup>266</sup> (Arthur, 1881)

was initially problematic in Alaska as “the total white population of Alaska is about 250, and for purposes of political illustration, the number of voters is usually put down at fifteen. To find this handful of people a Governor and a representation in Congress, to say nothing of the courts, would be a farce of the broadest kind.”<sup>267</sup> Congress ultimately provided Alaska with the final element of effective occupation by establishing Alaska with a civil government in the *1884 Alaska Organic Act*, making U.S. sovereignty over Alaska complete.

The development of U.S. economic interests in the Arctic with the establishment of the Alaska Commercial Company led to legislative protectionism over commercial resources, when the United States prohibited the harvesting of fur seals by any unauthorised persons within the waters delimited by the *Alaska Purchase Treaty*, passing a resolution to permit the removal and confiscation of property of those found in violation of the legislation.<sup>268</sup> Tensions were created with neighbouring Canada when these acts were enforced, in part because the United States claimed jurisdiction over all the seas within the treaty limits as territorial waters, beyond the limits of the customary three nautical miles with the U.S. trying to protect the commercial longevity and continuation of this valuable resource.<sup>269</sup> The issue was ultimately resolved by an international tribunal who determined “recognized the potency of venerable legal relics” that “the United States had no rights of protection or property” over

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<sup>267</sup> (The New York Times, 1880)

<sup>268</sup> See 27 July 1868, An Act to extend the Laws of the United States relating to Customs, Commerce and Navigation, Section 6 and 3 March 1869 A Resolution more efficiently to Protect the Fur Seal in Alaska, No. 22.

<sup>269</sup> The methods of Canadian sealers attempting to avoid detection and detention by U.S. authorities led to the use of extraordinarily destructive methods which killed and wasted both pregnant females and pups leading to the decline and near extinction of this seal population.

the fur seals, signalling an end to the ability of states to unilaterally declare control over territory.<sup>270</sup>

Following the Bering Sea Arbitration, in 1897 the United States negotiated a multi-lateral convention delivering a temporary moratorium on seal hunting, agreed between Japan, Russia and United States. The first international conservation treaty, the *North Pacific Fur Seal Treaty 1911*, regulated the fur seal industry between the states littoral to the Bering Sea and is arguably the first act of multi-lateral Arctic governance. The U.S. followed this treaty with a domestic five-year moratorium on seal hunting in order to allow herd populations to regenerate. Additionally, under the leadership of the progressive, yet imperialistically inclined President Roosevelt,<sup>271</sup> the notion of environmental stewardship-- if only rationalised for the protection of economic resources— becomes a feature of U.S. policy, including in the Arctic. Under this administration, the Pribilof and Alexander Archipelago reserves were established in Alaska. These legislative developments reinforced the principle of the freedom of the seas, initiated an era of both domestic and international legislation based on environmental consideration and finally, it also provided opportunity for states bordering the Arctic region to begin cooperating on issues of international interest.

Yet despite this rudimentary international cooperation in the Arctic, other territorial rivalries remained. The territorial land boundary between Imperial Russia and Canadian British Columbia had never been clearly delimited due to disagreement over the interpretation of the *Anglo-Russian Convention of 1825* and the *Alaska Purchase Treaty* also failed to address this issue. This led to the Alaskan boundary dispute with Canada when the economic

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<sup>270</sup> (Brown, 1894, pp. 364-5)

<sup>271</sup> President T. Roosevelt, an avid outdoorsman, established the National Park System, including the preservation of Yellowstone and Yosemite.

potentials of the Alaskan Territory were at last being realised and economic interests were further accelerated by the Alaskan/Klondike Gold Rush in 1896. Previously, the ill-defined boundary had been of little consequence as the region was so sparsely populated. American imperialists had also anticipated that this territory would ultimately become the property of the United States, potential that diminished when British Columbia joined the Confederation of Canada.

Unable to reach an agreement with Canada on the position of the boundary, the United States superseded the Canadian home government and negotiated directly with Great Britain, agreeing to arbitration by a mixed tribunal, who ultimately determined the final location of the boundary.<sup>272</sup> As the U.S. position of the boundary was supported by Great Britain over the position of the boundary in the Canadian claim, Canada felt betrayed by their imperial motherland.<sup>273</sup> President Roosevelt declared the agreement “furnished a signal proof of the fairness and good will with which two friendly nations can approach and determine issues involving national sovereignty.”<sup>274</sup> However, the contemporary Beaufort Sea dispute is a continuation of the same disagreement over the interpretation of the 1825 treaty, and the issue remains for the United States to resolve in order to finalise their Arctic territorial claims and resource rights.

Pursuing interests within the territory following the completion of the *Alaska Purchase Treaty*, the attention of the U.S. government turned to the wider Arctic regions. In 1870, the U.S. Congress passed a resolution providing \$50,000 to the Department of the Navy to send an expedition to the North Pole, with results to be

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<sup>272</sup> The tribunal was composed of 3 Americans, 2 Canadians and 1 Briton.

<sup>273</sup> (Keenleyside & Brown, 1952)

<sup>274</sup> (Roosevelt, 1903)

reported to the National Academy of Sciences,<sup>275</sup> renewing momentum for exploration lost due to the American Civil War. Reporting on his expeditions, American explorer Isaac Hayes determined that the motives for Arctic exploration, despite the repeated failures and hardships included: access to commercial passages, procurement of resources and ultimately, the motive of discovery: possession.<sup>276</sup> During this period of expansion, the U.S. acquired 'first stage' possession of many islands in the Canadian Archipelago, even claiming to Greenland, according to the U.S. Navy when one explorer "landed, unrolled the national flag, and took possession of the land which he had discovered."<sup>277</sup> Congress continued to sponsor both naval and army expeditions, led by explorers such as Hall, Greeley, and De Long, every expedition failing to reach the North Pole. At last, the privately financed Admiral Peary acquired the prize of the period in 1909.

However, by the time Peary reached the North Pole, the tide of territorial expansion through discovery was turning in the international system, affecting the spread of sovereignty claims in the Arctic. So although Peary claimed the North Pole for the United States, expensive lessons from declaring jurisdiction over maritime areas in the Bering Sea had been recently learned by the United States. So the opportunity to accept this possession was rejected by President Taft. Yet, Taft still noted Peary's accomplishment in a message to Congress saying:

"The complete success of our country in Arctic exploration should not remain unnoticed. For centuries there has been friendly rivalry in this field of effort between the foremost nations and between the bravest and most accomplished

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<sup>275</sup> The National Academy of Sciences is an institute established by an Act of Congress in 1862 to "provide scientific advice to the government 'whenever called upon'", (National Academy of Sciences, 2013).

<sup>276</sup> (Hayes, 1868) Hayes specifically mentions whale oil.

<sup>277</sup> (United States Department of the Navy, 1876, p. 104)



men. Enlightened governments have encouraged expeditions to the unknown North and deserved honours have been granted to the daring men who have conducted them. The unparalleled accomplishment of an American in reaching the North Pole...has added to the distinction of our navy, to which he belongs, and reflects credit upon his country.”<sup>278</sup>

With the last of all known land having been discovered, recorded and mapped within the political jurisdiction of the states littoral to the Arctic and the freedom of the seas preserved, the Age of Discovery expired in the Arctic. The introduction of these rules, or shared understandings which restricted unlimited territorial expansion within international relations bring a transition into the next phase of the international system: the Interwar Years when a new rule would be attempted to secure those territories yet undiscovered by the Arctic states.

United States Arctic policy during the Age of Discovery saw the development of several objectives for the U.S. government including the expansion of territory, extension of the functions and mechanisms of government over the new territory, establishing control over resources and the exploitation of their economic potential. Additionally, the government reinforced the asymmetric relationship with the indigenous populations maintained elsewhere in the United States by excluding them from rights and privileges of ordinary U.S. citizens, instead absorbing them within an unequal custodial relationship. The progressive finale of this period also saw the development of environmental stewardship agendas, even if only for the protection of commercial interests, this practice triggered the beginning of environmental conservation and preservation principles into the realm of

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<sup>278</sup> (Taft, 1910)

international relations. The initial failure of U.S. environmental legislation in international territory meanwhile reinforced the principle of the freedom of the seas, which goes forward as a predominant concern of U.S. policy to this day.

### **U.S. Arctic Policy during the Interwar Years**

U.S. policy and engagement with the Arctic transitioned during the Interwar Years, moving both to the use of the American Arctic as a tactical cache of resources, but also using the entirety of the North American Arctic as a security buffer zone and staging point for military operations. Exploration and the impulse for discovery continued, but as technology such as airplanes and radio communications were developed, these tools were used to pursue strategic U.S. interests, in science, economics and security. The Monroe Doctrine continued to be a dominant motivator in the rationale for U.S. policy in their cooperation agreements and development decisions in Alaska, Canada and Greenland, but the rising powers of Japan and a unified Germany were the cause of security concerns. In this period, the modern international system was in its infancy as power was consolidated between political units in Europe to form states. Meanwhile, the imperial powers of the Age of Discovery began to turn to liberal institutionalism as the answer for the prevention of conflict, and began extensively codifying international law as a method for establishing normative expectations for behaviour by states entering into the international community of states.

In this next phase of the international system, Arctic exploration did not disappear completely with the acquisition of the North Pole, but the aims of exploration turned from 'discovery' of territory as a primary objective toward exploration for scientific and economic aims. Of the dwindling number of expeditions sent

into the Arctic, investors desirous of future returns privately financed many of these expeditions. Funding from the U.S. government enabled scientific exploration without immediate financial returns although it was noted, “purely scientific [research] must have some bearing, and very often a direct bearing upon economic values sooner or later.”<sup>279</sup> This scientific exploration of the Arctic enabled the pursuit of both the economic and security interests of the United States in the region with tax funded agencies such as the U.S. Geological Survey assisting with the mapping of the terrain and discovery of natural resources. This work allowed for the development of mining through the Alaska Mining Commission, established by Congress, and for development of the fishing industry enabled by Congressionally funded navigational aids. Areas thought to contain oil were removed from public sale and were set aside as naval petroleum reserves to be used in the case of a national emergency. Additionally, the polar aviation expeditions flown by the Air Corps of the U.S. Army were used to survey the Arctic for any remaining unknown islands, which could be added to the U.S. territorial portfolio.

With a territorial government established in Alaska, the thoughts of the federal government turned from exploration to development of the economic capabilities of the territory. In 1913, President Wilson said “A duty faces us with regard to Alaska, which seems to me very pressing and very imperative; perhaps I should say a double duty, for it concerns both the political and the material development of the Territory. The people of Alaska should be given the full Territorial form of government, and Alaska, as a storehouse, should be unlocked.”<sup>280</sup> This development included supporting the construction of the Alaska Railroad, in a bill providing financing “for government construction of railroads

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<sup>279</sup> (Debenham, 1930, p. 25)

<sup>280</sup> (Wilson, 1913)

in Alaska under the full control of the president.”<sup>281</sup> This project was further enabled through the federal government transferring federal public land to be used by the railway, as had been done to complete the Transcontinental Railroad following the U.S. Civil War, which greatly opened up migration and economic development of the American West. However, while the railroad supported tourism and the movement of goods within Alaska, the lack of a link to the continental U.S. failed to enable the expected economic boom, initially muting the suggestions of building an extended railroad or highway from Alaska through Canada to the United States.

As part of the opening of Alaska in the early 1930s, the building of a highway through Canada from Alaska was promoted as being in the economic interest of U.S. Arctic policy. A report to Congress deemed that a highway increasing accessibility to Alaska would not only increase tax revenues for the Federal government, but by “providing a new and valuable area for exploration, for recreation, or business purposes” would “promot[e] friendly relations between citizens of the United States and Canada” as the highway would traverse through Canada to reach Alaska.<sup>282</sup> However, as the fur trade declined and Alaska’s only oil field at Katalla failed, the economic incentives of the Alaskan Highway were meagre in the wake of the Great Depression.

Security incentives for the project were initiated in the Second World War after the invasion of Imperial Japan in territory throughout the Pacific and of Germany into the Soviet Union, with one U.S. General saying “the progress of events has inclined me to the view that the construction of an Alaskan road is advisable as a long range military measure.”<sup>283</sup> Thus, in 1942, both Congress and

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<sup>281</sup> (San Francisco Call, 1913)

<sup>282</sup> (Bucksar, 1968, p. 218)

<sup>283</sup> (Embick, 1989, p. 394)

the War Department approved the project for the purposes of “furnish[ing] a route to link up the established airfields and thus permit their expansion” and to “provide an overland auxiliary supply route to Alaska.”<sup>284</sup> It was agreed that following the war, the United States would surrender control of the Canadian segment of the highway. This approach to security policy through cooperative development of the North American Arctic carries into the next phase of the international system.

The concerted effort of the United States to make secure the homeland led to two Arctic policy outcomes through continued enforcement of the Monroe Doctrine and engagement with other Arctic states to cooperate in pursuit of collective security. One example is during this period the United States the changed their position on the sovereignty of Greenland by surrendering any claims to the island. This became an issue of both security and cooperation when it became apparent that were the Germans to be successful in their hostile efforts, Greenland and Newfoundland could be used as staging points for a Nazi invasion of North America.<sup>285</sup> Thus, the State Department negotiated the *US-Danish Agreement on Greenland 1941*, where the U.S. confirmed their acknowledgement of the sovereignty of Denmark over Greenland, but assumed “responsibility of assisting Greenland in the maintenance of its present status,” securing “the right to construct, maintain and operate such landing fields, seaplane facilities and radio and meteorological installations as may be necessary for the accomplishment of the[se] purposes.”<sup>286</sup>

The policy of funding both infrastructural development and scientific research in the Arctic, now considered standard practice by the U.S. government, aided in the development of military

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<sup>284</sup> (Bucksar, 1968, p. 221)

<sup>285</sup> Greenland became the sole possession of Denmark following a tribunal in the International Court of Permanent Justice 1933, and Newfoundland was a British possession.

<sup>286</sup> ( (United States Department of State, 1941, p. 130)

infrastructure, including roads, radio communications and airstrips.<sup>287</sup> In addition to their pursuing their own research objectives, the U.S. participated in the Second International Polar Year in 1932, collaborating on research to solve the abnormalities of magnetic field lines in the Arctic environment that caused interference in radio communications. This information was sorely needed during the Second World War when the Aleutian Islands were occupied by Japan, and when the Arctic Convoys carried supplies from North America via Iceland to the contribute to the war effort in Europe. To support military communications in the region, Presidents Wilson and F.D. Roosevelt requisitioned public land in Alaska to establish Naval radio stations.

In addition to researching technology for military use, the U.S. policy also supported operational and training research for the troops. Commissioned by the War Department, polar explorer Stefansson produced a military Arctic manual because “there might be a war coming which would carry our troops to spheres of operations where they would need an Arctic technique and a knowledge of Arctic conditions—basic...to the success of the operations....”<sup>288</sup> In these examples, it is seen that the policy decision to fund the scientific exploration of the Arctic, had its pay out in the ability to use the knowledge to pursue the policy objective of security as a primary national interest.

This security interest continues in the U.S. position on sovereignty over maritime areas. After Taft declined the North Pole, the freedom of the seas from then onward became a dominant theme of both U.S. Arctic policy and U.S. foreign policy, in general. This policy position was delivered to the international community by President Wilson in his Fourteen Points speech calling for

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<sup>287</sup> Now known as research & development.

<sup>288</sup> (Stefansson, 1944, p. 25)

“Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace an in war...”<sup>289</sup> Freedom of the seas, for U.S. national interests, meant not only the ability to continue commerce and trade in time of war, but also allowed access through the Northwest Passage and other areas of the Arctic maritime for both scientific exploration and access to distant Arctic islands over which the U.S. held incomplete sovereignty in the Canadian archipelago.<sup>290</sup> As the field of aviation developed, the U.S also extended this concept of ‘freedom of the seas’ in customary law to the skies, promoting the ‘freedom of over flight’, which was used widely in the Polar routes.

Finally, for the indigenous inhabitants of Alaska, U.S. policy continued to maintain the custodial relationship with the tribes. However, given the struggling conditions of Native American reservations in the lower forty-eight, the decision was made not to establish reservations in Alaska. Despite the Fourteenth Amendment to the Constitution providing that all persons born in the United States would be citizens, given the protectorate relationship of the federal government with indigenous inhabitants, there was uncertainty over whether this applied to the American natives. Thus, Congress passed the *Indian Citizenship Act of 1924*, declaring, “all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States.”<sup>291</sup> While this act indirectly becomes a part of U.S. Arctic policy, it ultimately causes a conflict in relations between the government and the Alaskan indigenous peoples in later years.

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<sup>289</sup> (Wilson, 1918)

<sup>290</sup> The U.S. surrendered this incomplete sovereignty to Canada following their sectoral declaration during the Interwar Years.

<sup>291</sup> (United States Government, 1929, p. 1165)

United States Arctic policy of the Interwar Years saw a change in the objectives of exploration from that of discovery and expansion of territory towards the motives of exploration for scientific knowledge and economic incentives. As this knowledge expanded and the U.S. faced the upheaval of two world wars, decisions were made on the type of infrastructure that should be developed through government-funded projects. This development had two primary focuses---one on the development of infrastructure, such as roads and railroads in order to be able to exploit the wealth of the Arctic, moving the economic capital back to the continental United States. The second focus was made exigent by the turmoil within the community of states as they struggled to transition from the expansionist practices of the Age of Discovery to a system made smaller by technology, the consolidation of power in a number of European states and the gradual solidifying of what would become the modern international system supported by the introduction of public international law.

### **U.S. Arctic Policy during the Cold War**

U.S. engagement with the Arctic during the Cold War developed according to the construct of the international system and the shared understandings of the hostility, suspicion and threat of the bi-polar world. Throughout the world, the United States promoted peace and security through international institutions that became of feature of the modern international system. These institutions were used to provide order to expanding community of states introduced to the system through decolonisation and the decline of formal empire. However, in the Arctic, U.S. policy tended to rely on bilateral forms of cooperation and security interests dominated the visible engagement with the resources and development of the region. As Alaska and Soviet Union are separated in the Bering Strait by only fifty three miles, the reality that “there is no physical



frontier between the United States and the Soviet Union...the American and Soviet flags are within a few miles of each other..." became significant with development of airplanes and other advanced weapons in the Interwar Years which caused these miles to become increasingly diminutive as a frontier buffer zone.<sup>292</sup> To this end, territorial borders in the Arctic were secured by surveillance technology, and infrastructure was developed to provide energy security while the environment issues were used as neutral, non-security related point of cooperation.

In 1946, General Arnold, wartime commander of the Army Air Force, announced to the graduating class of the U.S. Military, that the nation's first line of defence now lay to the north. If the United States were ever attacked, the enemy "will surely come from over the Pole."<sup>293</sup> As a result of this belief in the potential of the Arctic being employed as both a theatre of war and as a route of attack, security interests dominated Arctic policy, and funding was allocated to the research and development of technologies capable of operating in the Arctic conditions, especially in the form of submarines, but also including icebreakers and radar surveillance systems. The strategic importance of the ability to operate in the Arctic maritime for the U.S. military was seen in the commendations of President Eisenhower with "a sincere Well Done" to the crew of the *U.S.S. Nautilus* who broke through the surface of the ice at the North Pole lauding their achievements in "a revolution in naval tactics and construction."<sup>294</sup> While much of this was pursued through general Cold War policy, the National Security Decision Memorandum 1971, states the explicit Arctic policy objective of "improving the U.S. capability to inhabit and

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<sup>292</sup> (Chamberlin, 1950, p. 80 )

<sup>293</sup> (Leary & LeSchack, 1996, p. 2)

<sup>294</sup> (Eisenhower, 1958)

operate in the Arctic.”<sup>295</sup> In addition to submarine capabilities, this ability was also pursued in the development of Wind-class ice-breakers and through an 1988 agreement on Arctic cooperation, the United States and Canada collaborated in “the opportunity to increase their knowledge of the marine environment of the Arctic through research conducted during icebreaker voyages, and their shared interest in safe, effective icebreaker navigation.”<sup>296</sup> Meanwhile the U.S. maintained their policy on the freedom of the seas and the status of the Northwest Passage as an international strait.

Another method implemented by the U.S. in promoting their security interests in the Arctic was through continued cooperation on pre-existing arrangements with Canada and Denmark, begun during the Interwar Years. In 1951, the United States renewed its agreement for the defence of Greenland “in accordance with the principles of self-help and mutual aid”<sup>297</sup> but this time to defend against incursions by the Soviet Union, a former ally in the Arctic. Even though it was understood that the Soviet Union had more vulnerable targets in their Arctic, the lack of targets in the north did not make the U.S. feel secure and they turned to early warning systems such as the Distant Early Warning line stretching from Alaska to Greenland, to prevent surprise attacks from coming from the U.S.S.R. across the Arctic. A security secret, labelled Project 572, the Distant Early Warning line was “the most important link in the 10,000 miles outer ring of radar fence” and was established through bilateral U.S.-Canadian cooperation, which also resulted in the *North American Air Defense Command Agreement 1958*, establishing ‘NORAD’ for the purposes of air surveillance and

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<sup>295</sup> (National Security Council , 1971) As a classified security document, it was determined in the NSDM 144 that “there should be no public statements concerning the Arctic policy of the United States,” rationale for this assumed in the intent of keeping the Soviets unaware of a specific Arctic strategy by the United States.

<sup>296</sup> (Government of the United States, 1988)

<sup>297</sup> (Government of the United States, 1957)

defence, including the annual tracking of Santa's sleigh journey from the North Pole.<sup>298</sup>

U.S. environmental policy of the Cold War era had a two-pronged approach. The first approach implemented the Arctic policy directive of "promoting mutual beneficial international cooperation in the Arctic" and was pursued through multilateral and bilateral environmental agreements such as the 1973 *Agreement on the Conservation of Polar Bears* with the entirety of the circumpolar Arctic, continuing the policy of the protection of endangered species seen in an earlier period with the protection of the fur seals.<sup>299</sup> The United States also agreed to the *U.S.-Soviet Cooperation in Environmental Protection 1972* which "aimed at solving the most important aspects of the problems of the environment and will be devoted to working out measures to prevent pollution, to study pollution and its effect on the environment, and to develop the basis for controlling the impact of human activities on nature."<sup>300</sup> This policy development paved the way for the later cooperation that would culminate in the 1991 *Arctic Environmental Protection Strategy* signed by all eight of the circumpolar states.

However, despite this turn to multi-lateral cooperation and policy supporting the cooperation in environmental issues, it was in this period that the United States developed its position on the possibilities for an 'Arctic Treaty' similar to the one agreed upon for the Antarctic in 1959, with the result of postponing sovereign territorial claims in that region. Under the Nixon administration, this potential Arctic Treaty System was called the 'Northlands Compact' approach. In a national security memorandum, Secretary of State Henry Kissinger informed the U.S. Departments of State

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<sup>298</sup> (Morenus, 1957, p. 49)

<sup>299</sup> (National Security Council, 1971)

<sup>300</sup> (Government of the United States, 1972)

and Defense that “The President does not desire, however, that the United States undertake discussions at this time with... countries with Arctic interests with the aim of promoting the establishment of a multinational Northlands and Arctic Cooperation Compact and the convening of an international conference to this end.”<sup>301</sup> The position of the United States regarding an Arctic Treaty currently remains unchanged.

The second approach of U.S. policy on Arctic environment is guided by the principle of “supporting sound and rational development in the Arctic region, while minimizing the effects on environment.”<sup>302</sup> Efforts to minimise the effects of pollution in the region has been implement by cooperation in scientific research and by creating an Arctic Research Commission in the *Arctic Research and Policy Act of 1984* with the aim of establishing a research agenda in order to be able to “mitigate the adverse consequences of development to land,” expanding knowledge of the Arctic to “enhance the lives of Arctic residents, [and] increase opportunities for international cooperation.”<sup>303</sup> The result of development in the Alaskan Arctic has included the extraction of fossil fuels, such as those in Prudhoe Bay—for the purposes of national energy security in the OPEC crisis of the 1970s, and the building of the Trans-Alaskan Pipeline in order to transport that oil to the warm water seaports of southern Alaska where it is loaded on to tankers and carried elsewhere. This ultimately resulted in the 1989 *Exxon Valdez* accident, spilling millions of barrels of oil into Arctic waters, destroying fishing industries and the local ecosystem. Through this, it is seen that U.S. policy toward national security and economic development supersedes its policy to only ‘minimise effects’ on the Arctic environment.

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<sup>301</sup> (National Security Council, 1972)

<sup>302</sup> (Government of the United States, 1983)

<sup>303</sup> (Government of the United States, 1990)

Although Alaska finally became a U.S. state in 1959, the exigencies of the Interwar Years and Cold War era policies caused the federal government to retain control of more than half of *terra firma* within Alaska. Thus, United States Arctic policy during the Cold War saw the continuation of some objectives for the U.S. Government, especially in areas of national defence, freedom of the seas and mutually beneficial international cooperation. New objectives introduced include the approaches of environmental and development policy which saw a transition from research to promote national defence to research in the aim of development of Arctic resources for economic and energy security and the creation of agencies to determine policy directions and orchestrate research which furthers U.S. policy agendas. Finally, in a move away from the development of international institutions which are characteristic of the international system in this period, the U.S. positioned itself against the creation of an Arctic Treaty System, instead preferring a collection of agreements to organise cooperation in the region.

### **U.S. Arctic Policy Post-Cold War**

U.S. engagement with the Arctic in the Post-Cold War Period responds to a change in the structure of the international system due to two ideological transitions: the failure of the Communist project behind the Iron curtain resulting in the end of the bi-polar system and the global response to terrorism led by the now hegemonic United States. Additionally, U.S. Arctic policy responds to the relative decline of U.S. power as other states such as China become more influential within the international system, who signal increasing interest in global caches of resources to support their growing economies--including those resources found in the Arctic. During this period, the United States releases three Arctic policy documents in the Clinton, George W. Bush and Obama

administrations. Each policy document addresses the changing nature of the international system, focusing on national security and defence needs, the strengthening of cooperation between the Arctic states, protecting the Arctic environment, increasing scientific monitoring and finally, including indigenous communities in governance mechanisms.

International cooperation and the development of frameworks for Arctic governance is a significant development in the Arctic policy of the United States while it continues to avoid the notion of an Arctic Treaty System. In this period, international cooperation has been seen in the form of the 1991 *Arctic Environmental Protection Strategy*, a non-binding agreement seeking “cooperation in scientific research to specify sources, pathways, links and effects of pollution....”<sup>304</sup> The cooperation behind this agreement led the U.S. to consider the Arctic Council as an alternative to managing, through international cooperation, the unique issues of the Arctic environment not already adequately addressed within international law. However, U.S. policy has determined that “the Arctic is primarily a maritime domain” transferring the geographic focus of Arctic policy from the Alaskan territory to the Arctic Ocean.<sup>305</sup>

However, international cooperation has not been entirely within the remit of Arctic Council, as seen in the 1997 Arctic Military Environmental Program which was developed to address Soviet Cold War nuclear waste deposits in the Arctic marine environment. In this programme, the United States and Norway “pledged to promote sustainable development and protection of the fragile Arctic environment” in addressing this issue.<sup>306</sup> The U.S. is promoting “environmentally sustainable development”

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<sup>304</sup> (Arctic Council, 1991, p. 2)

<sup>305</sup> (Government of the United States, 2009)

<sup>306</sup> (Clinton, 1999)

while “conserving the region’s rich and unique biological resources.”<sup>307</sup> Thus, there has been open criticism of Japanese and Canadian whaling practices, specifically declaring Canadian practices to be in violation of international law and calling the action “unacceptable”, as “Canada's conduct jeopardizes the international effort that has allowed whale stocks to begin to recover from the devastating effects of historic whaling.”<sup>308</sup> Both of these issues concern U.S. national interests in the protection of the Arctic ecosystem, including fisheries, which are being impacted by environmental change. U.S. policy now formally promotes the pursuit of “responsible Arctic region stewardship.”<sup>309</sup>

A multitude of diplomatic statements made by the U.S. continuously reiterates the intent of the United States to abide by international law, although policy dictates it “is prepared to operate either independently or with other states to safeguard [U.S.] interests.”<sup>310</sup> This statement on respecting international law is necessary, as the U.S. has not yet acceded to the *United Nations Convention on the Law of the Sea 1982*, which provides for extended territorial claims along the continental shelf. However, territorial claims of up to two hundred nautical miles entered into customary law through the *Truman Proclamation* in 1945, a principle that was codified into international law in the *Convention on the Continental Shelf 1958*. Thus, it is the position of the United States to exercise “authority in accordance with lawful claims of United States sovereignty, sovereign rights and jurisdiction in the Arctic region,”<sup>311</sup> however recognising that acceding to the Law of the Sea Convention is the means to “best secure international

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<sup>307</sup> (Government of the United States, 1994)

<sup>308</sup> (Clinton, 1997)

<sup>309</sup> (Government of the United States, 2013)

<sup>310</sup> (Government of the United States, 2009)

<sup>311</sup> (Government of the United States, 2009)

recognition of our sovereign rights.”<sup>312</sup> U.S. practice regarding Arctic sovereignty holds that with the exception of *extended* continental shelf claims, sovereignty over Arctic territory was confirmed and established in a previous era. Reflecting this view of Arctic sovereignty throughout the circumpolar Arctic, the U.S. responded to Canadian Prime Minister Stephen Harper on his statement that Canada is “fully committed to strengthening its Arctic sovereignty on every level” with the position that “the United States does not question Canadian sovereignty over its Arctic islands.”<sup>313</sup> To improve the ability of the United States to gain recognition of its sovereignty in Arctic fora, Congress has recently made attempt to appoint an Arctic Ambassador for the U.S. Department of State.

In a transition from earlier Arctic policies, and representative of the rights of indigenous peoples promoted through the United Nations, U.S. policy on indigenous participation in Arctic affairs has advanced to a more enlightened position than that assumed during the Age of Discovery. Early policy treated indigenous residents as different and as lesser in value than white populations in the Alaskan territory, and even prohibiting through legislation the sale of firearms and alcohol to indigenous persons. In a later period, indigenous residents were granted citizenship under domestic law through a Constitutional amendment and eventually gained rights to own land and establish their own communities. Current U.S. policy now provides for the government to “engage in a consultation process with Alaska natives” recognising that change in the Arctic environment affects their traditional ways of life, although the policy still holds that “tribal governments’ [have a] unique relationship with the United States.”<sup>314</sup> This inclusion of indigenous communities is also being replicated in the Arctic

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<sup>312</sup> (Government of the United States, 2013)

<sup>313</sup> (Bush, 2007)

<sup>314</sup> (Government of the United States, 2013)



Council, representing change within the international system through the addition of a rule on the rights of the indigenous.

The primary line of effort in U.S. Arctic policy continues to pursue United States security interests, including the interests of defence and energy security. The U.S. policy documents of this era have highlighted three different defence approaches with the Clinton policy having the objective of “meeting post-Cold War national security and defense needs” and that the U.S. “must maintain the ability to protect against attack across the Arctic.”<sup>315</sup> The George W. Bush era policy identified the transition within the U.S. government to create the Department of Homeland Security and holds that the United States has “fundamental homeland security interests in preventing terrorists attacks and mitigating those criminal or hostile acts that could increase United States vulnerability to terrorism in the Arctic region.”<sup>316</sup> Finally, the recent policy of the Obama administration intends to “advance United States security interests by evolving infrastructural capabilities, and the enhancement of domain awareness of activities, conditions, and trends in the Arctic region that may affect our safety, security, environmental or commercial interests” as there are “many nations across the world [who] aspire to expand their role in the Arctic.”<sup>317</sup>

Energy security in the Arctic region is being pursued in U.S. Arctic policy through exploration of energy reserves in the Arctic maritime, discovered in the 2002 U.S. Geological Survey, the report that triggered some of the current activity in the Arctic. The U.S. is also considering utilising energy reserves of the Arctic which were set aside in earlier eras, such those in the Alaska National Wildlife Refuge, although thus far, proposals to develop these resources

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<sup>315</sup> (Government of the United States, 1994)

<sup>316</sup> (Government of the United States, 2009)

<sup>317</sup> (Government of the United States, 2013)

have not passed through Congress due to partisan politics. It thus appears that to the United States, the energy security is a more vital interest than environmental protection in the Arctic regions.

Reflecting changes within the international system with the end of the Cold War, United States Arctic policy during the post-Cold War Period saw the development of several objectives including a transition from the realities of bi-polarity and an attack from across the Arctic to the notions of the need for homeland security and the ability to prevent terrorism in the Arctic. U.S. policy also demonstrates awareness that competition for resources in the Arctic requires active development of infrastructure, maritime sovereignty and international law to maintain the Arctic as a preserve for the Arctic states. To this end, international cooperation has developed from the language of “minimizing adverse effects to the environment”<sup>318</sup> to that of “responsible stewardship [which] requires active conservation of resources, balanced management, and the application of scientific *and* traditional knowledge.”<sup>319</sup> This cooperation increasingly involves multilateral agreements through all eight of the Arctic states, rather than mere bilateral agreements on environmental issues. And finally, reflective of a change in the international system is the U.S. policy on the inclusion of indigenous participation and knowledge in discussions of Arctic issues, although the U.S. continues to hold an asymmetric relationship with indigenous peoples and nor are indigenous political entities considered as equal with states in the international realm.

## **Conclusions**

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<sup>318</sup> (National Security Council, 1971)

<sup>319</sup> (Government of the United States, 2013)

The vast and frozen wastelands of Alaska, which Seward purchased in an act of imperial impulse, has been one of the greatest sources of wealth in which the United States has invested. Since the time of this purchase, the U.S. has had six main policy objectives which include sovereignty and security, the environment, economic development, advancement of scientific knowledge, relationships with indigenous inhabitants, and finally, international cooperation. In this chapter, these policy objectives and methods for achieving them have been discussed relevant to four different periods of the international system in which rules guiding the behaviour of states in international relations have been introduced. Through this long term development, it has been determined that U.S. policy and their pursuit of policy objectives and national interests in the Arctic reflects the structure of the international system, as they have adapted their behaviour to the rules of the expanding community of states.

It has also been seen that U.S. engagement in the Arctic has continuously pursued national interests and not merely their Arctic interests, in the areas of defence, economic security, and insistence upon the freedom of the seas as the U.S. could have claimed the glory of the territorial claim to the North Pole and the application of the sector principle as did other Arctic littoral states. Practices such as this avoidance of the sectoral concept, the introduction of the concept of the continental shelf in the *Truman Proclamation* and the U.S. avoidance of an Arctic Treaty System have demonstrated that as a leading power, the U.S. has been instrumental in shaping the structure of the international system in which Arctic international relations occur. And finally, through continued and deliberate pursuit of international cooperation, and restraint from continuing the expansionist practices of dominant powers in the Age of Discovery, U.S. practice in the Arctic acts as a stabilising force in Arctic international relations as their foreign

policy reinforces and guides the expectations of the behaviour of the other Arctic states.

## **Chapter IV**

### **Canadian Arctic Policy 1870-2013**

The roots of modern Canada, tenuously claiming sovereignty over the soil (and subsoil) of the Canadian Arctic sector, have germinated from the seed of an imperialist project. In 1867 Canada gained independence from its colonial administrators, resulting in the creation of a separate political unit with internal sovereignty over the population in a limited portion of British North America. External sovereignty over the Arctic was yet unproven as Great Britain gradually released its North American possessions to the Dominion of Canada and until the mid twentieth century, retained responsibility for much of Canada's foreign relations. Yet the transfer of sovereignty from Great Britain to the Dominion of Canada left Canada with uncertain sovereign possession of some of these territories, as British sovereignty was not itself firmly established. As a result of this uncertainty, for nearly a century, Canada has used a variety of methods to eliminate this domestically imagined insecurity and gain the support of external acknowledgement of Canadian sovereignty, which with the exception of a few unresolved disputes, in actuality faces no external challenges. This paper argues that Canada's Arctic policy and diplomatic engagement with the rules of the international system creates a crisis of legitimacy in their position in Arctic sovereignty and that this anxiety is the result of historical processes resulting from questionable colonial transfer, shared military operations, the rebranding Canadian identity as a Northern state and the development of additional rules within the international system.

### Research Questions:

- What is the historical development of Canadian Arctic policy?
- What rules has Canada used to secure their Arctic sovereignty in different eras of the international system?
- What national interests are represented in Canadian Arctic policy?
- What artefacts of state practice support their pursuit of Arctic sovereignty?

### **Canadian Arctic Policy in the Age of Discovery**

Canada became an Arctic state in 1870 with the transfer of the Northwest Territories and Rupert's Land through letters patent from the British Monarch, Queen Victoria, who transferred sovereignty over these territories to the newly created Dominion of Canada. Then in 1880 the British Crown transferred title of its Arctic islands to the Dominion of Canada. This included the British Arctic territories acquired by right of discovery from the brave ventures of explorers like Martin Frobisher, Henry Hudson and Sir John Franklin; however, it also included islands discovered by explorers representing other states. The idea of the uncertainty of the sovereignty of the Canadian borders as result of the 1880 transfer has been discussed by legal scholars, including Gordon W. Smith who stated, "What remained uncertain, was the extent of territories granted to her [Canada], since the limits of Hudson's Bay Company had never been conclusively settled. Equally uncertain was the status of the islands north of the mainland."<sup>320</sup> It is certain that since this time, including up to the present day, Canada has been attempting to establish its Arctic sovereignty.

The reason for this uncertainty is that given the laws of the acquisition of territory, it is possible that some islands belonged to

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<sup>320</sup> (Smith, 1961, p. 53)

the United States or to Norway by right of discovery. Because of this doubt, the wording of the transfer was left ambiguous in the hope that over the course of time, the status of the uncertain possessions would be forgotten. To demonstrate the evidence of this uncertainty, it has been claimed, "Canada took no steps to govern or incorporate the added territory between 1880 and 1895 and implies that uncertainty as to Canadian ownership."<sup>321</sup> From 1895, legal scholar Gordon Smith concludes that in order to eradicate the uncertainty over legitimate sovereignty, the Government of Canada began to organise the territories and to bring them under sufficient effective administration to demonstrate their sovereign status. In part, this task was begun by informing commercial operations, such as the American whalers operating near Baffin Island, that "they were subject to Canadian regulation."<sup>322</sup> Today, Canada claims "The legal basis for Canadian sovereignty over these islands rests predominantly on a mix of cession and occupation, to which considerations of self-determination could be added."<sup>323</sup> This position is reflected in contemporary Canadian Arctic policy, which frequently makes reference to effective occupation and by virtue of Canada's indigenous inhabitants.

During the Age of Discovery, the Dominion of Canada found itself in an interesting position located somewhere in between the conditions of internally and externally sovereign, with even their title indicating that they were subordinate to another political authority. Traditional notions of sovereignty have been focused on state-centric notions of legitimacy and authority; sovereignty within the state receives its legitimacy from the consent of the governed, the state using its derived authority to promote the interest of its citizens. However, the Dominion of Canada was

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<sup>321</sup> King, W.F. in (Smith, 1961, p. 53)

<sup>322</sup> (Mills, 2003, p. 129)

<sup>323</sup> (Government of Canada, 2008 b)

created in a colonial project and is the outcome of the atrophying of the British Empire. This resulted in the creation of what in contemporary politics would be labelled as 'home government', which is an interim government established as a transitional project to full sovereignty. Yet in colonial projects such as Canada, when this transfer of sovereignty was conveyed from the British Crown to the Dominion of Canada, the indigenous populations were once again prey to imperial practices.

When empires absorbed the territory of the Arctic through discovery and proclamation, the indigenous inhabitants were not recognised as having any political rights. Although this was status quo behaviour in the early years of the age of empire, by the time of the 1870 and 1880 transfers, the idea of indigenous populations as a people with political rights was gaining momentum. So in the creation of the Dominion of Canada, the indigenous populations have not enjoyed the same theoretical transfer of authority from the state of nature into a social contract. Instead, indigenous cultures have been the casualty of colonial projects and have been assimilated into the sovereign state by 'right' of the customary law of territorial acquisition and the dictates of the principle of 'effective occupation'. Such is the case with the indigenous populations and the state of Canada, a reality that continues to cause consternation for the Canadian government in their Arctic policy.

### **Canadian Arctic Policy in the Interwar Years**

Although Canada did not face challenges from states with claims to various islands in the Canadian Arctic archipelago, the attitude of insecurity over their sovereignty was already seeded. By 1925, Canada had dabbled in various efforts to demonstrate sufficient sovereignty over a vast area of the Arctic from Ellesmere Island in



the east to Wrangel Island, located north of Russia in the west. Some of this activity included sending explorers to survey the territory, including Vilhjalmur Stefansson's Canadian Arctic Expedition from 1913-18 and a trip across Arctic Canada by L.T. Burwash from the Mackenzie Delta to Hudson Bay in 1925-26, to collect information (economic, geological, etc.) "under orders from the Canadian Government."<sup>324</sup> Even today, sending scientists to the Arctic is considered an acceptable display of government endorsed sovereign activity in fulfilment of effective occupation in regions not fit for human habitation.

Yet, these scientific displays of sovereignty were not sufficient to dissipate the anxiety of the Canadian government regarding questionable entitlement to some Arctic territory, as aviation made it possible to explore the vast expanses of the Arctic with less hardship. Even though title of the Canadian Arctic had apparently transferred from Great Britain to Canada and the government of Canada had been exercising sovereignty as much as was possible in the region, they felt the need to additionally clarify their exact Arctic claims. Senator Pascal Poirier established the sector principle as Canadian method in 1907 with a speech to the Senate saying "the time has come for Canada to make a formal declaration of possession of the lands and islands situated in the north of the Dominion, extending to the North Pole," though a few of his peers chose to disassociate themselves with this position on the grounds of an uncertain legal position as the sector principle was not an accepted rule of the international system.<sup>325</sup>

Poirier identified that Canada could maintain claims to sovereignty in the Arctic via four legitimate methods: through English discoveries, through transfer of French territories to Britain,

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<sup>324</sup> (Burwash, 1929, p. 553)

<sup>325</sup> Canada Senate Debates 1907 at 266 in (Pharand, 1988, p. 8)

through occupation of the Hudson Bay and finally, through the sector principle. Poirier said,

“From 141 to 60 degrees west we are on Canadian territory. That is the territory that has been discovered by the seamen of England, which has been traversed by McClure and by Franklin. It is the territory that has been taken possession of by the Hudson Bay Company, and it is the territory that we claim, and I hold that no foreigner has a right to go and hoist a flag on it up to the north pole, because it is not only within the sphere of possession of England, but it is in the actual possession of England.”<sup>326</sup>

Although the Canadian government never issued an official declaration defining their sovereign territory as did the Soviet Union in 1926, the formalisation of the sector principle by the government of Canada is considered to have received official endorsement in 1925 through the Senate Debates “laying claim to everything between the longitudinal lines of 61 degrees west and 141 degrees west, extending ‘right up to the Pole’.”<sup>327</sup> A parliamentary bill requiring scientists and explorers to acquire a license from the Canadian government to operate in the region followed this endorsement.<sup>328</sup> Finally, the government of Canada further solidified this position through the publication of maps by government departments showing the international boundaries of Canada as extending up to the North Pole. This includes the Atlas of Canada 1957 showing the political evolution of Canadian Territory stating, “by 1925 Canada extended to the North Pole.”<sup>329</sup> Although the sector principle was never formally accepted as a rule of the international system and although it is contrary to the

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<sup>326</sup> Canada Senate Debates 1906 in (Head, 1963, p. 204)

<sup>327</sup> (Honderich, 1987, p. 30)

<sup>328</sup> (Smedel, 1931, p. 66)

<sup>329</sup> (Government of Canada, 1957 a)

existing rule of the law of the sea, Canadian maps as late as 2007 continued to represent the international border in this location.

Senator Poirier made his pronouncement that the North Pole was a possession of Canada by virtue of transfer from Great Britain, yet at this point the North Pole had still not been reached and he was thus arguing for the use of a 'spheres of influence' claim to the Arctic. Ordinarily, the law of territorial acquisition would dictate that territory is first discovered and then effectively occupied, yet due to the difficulties present in the Arctic region, the need for effective occupation has sometimes been dismissed by legal scholars, such as Lakhtin, who argued as "'effective occupation' cannot be reasonably realised, a substitute principle that sovereignty ought to attach to littoral states according to their 'region of attraction'."<sup>330</sup> Lakhtin also claimed that the *terra nullius* status of any part of the Arctic region had been "owing chiefly to the lack of any political or economic motive for attempting occupation and annexation."<sup>331</sup> This era was quickly drawing to a close.

Within just over a year of Senator Poirier's statements on the North Pole, Admiral Peary of the United States Navy reached the North Pole in 1909<sup>332</sup> and planted the U.S. flag as was the custom of many explorers, symbolically claiming the geographic point for the United States. However, U. S. President William Taft "refused to claim jurisdiction over the pack ice"<sup>333</sup> as claims to sovereignty over the sea were not permitted in the rules of the international system. Although the U.S. has never tried to establish sovereignty by used of the sector principle or the regions of attraction, they also never denied Canada's right to do so. In fact, as a result of

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<sup>330</sup> (Lakhtine, 1930, p. 705)

<sup>331</sup> (Lakhtine, 1930, p. 704)

<sup>332</sup> This actuality of this 'fact' has been questioned; however there is no way of disproving Peary's claim.

<sup>333</sup> (Pharand, 1973, p. 169)

diplomatic correspondence following the over flight of the pole by a dirigible in the early 1920s, the United States acknowledged the sovereign rights of Canada within its sector and relinquished any former potential claims to territory discovered by American citizens.<sup>334</sup>

This diplomatic event solved the first question over the legitimacy of Canada's claim to its Arctic territory, namely that they were claiming possession of lands and islands that had not been discovered by British or Canadian explorers and were also attempting to claim title to areas where no (white) man had gone before. But this does not end the question of Canada's legitimate claims to sovereign under the laws of territorial acquisition. Discovery is only the first element of achieving sovereignty. The few examples discussed above introduce another difficulty in the in the mind set of the Canadians in maintaining sovereignty in the Arctic: the Americans. Through collaboration with their powerful southerly neighbours, the Canadians encountered a second assault to the legitimacy of Canadian Arctic sovereignty.

Additionally, the Dominion of Canada domestically moved a step closer to becoming a full fledged sovereignty state within the international system when Great Britain passed the *Statute of Westminster 1931*, which determined that the laws passed by parliaments within the Domain superseded the laws of Great Britain, establishing full fledged domestic sovereignty for the Dominion of Canada. Although, state sovereignty within the international realm has traditionally granted entitlement to territorial integrity and the right of non-interference from outside forces, Canada still legally experienced 'interference from the Crown. Britain continued to be responsible for much of Canada's foreign policy until fears of the Interwar Years, such as occupation

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<sup>334</sup> (Fauchille, 1925, p. 661)

by Germany, forced these responsibilities to be assumed by Canada. However, the prematurity of the state of Canada forced them to consider a new partner to assist in the security of their newly acquired external sovereignty.

### **Canadian Arctic Policy during the Cold War**

As Canada faced a new security threat from across the Arctic Ocean, they entered into a new phase of insecurity regarding its Arctic sovereignty: effective occupation, or as much as could be reasonably required within Canada's sector, its 'region of attraction'. Arctic researcher Frank Debenham has noted that the early days of polar exploration were always for economic purposes. Early explorers confronted the rigours of the Arctic in search of a shortcut from Europe to Asia on their voyages of discovery, or sometimes of new fishing and whaling areas, but "we always detect as the purpose of the endeavour the lure of wealth in some form or another."<sup>335</sup> This economic interest turned to a different nature once "the original dream of feasible northern routes for broad and thriving commerce between Western Europe and the Far East dropped from the popular mind," it then became a collaborative project between science and economics.<sup>336</sup>

Scientists were sent out to collect all forms of information, in part necessary because so much was still unknown about the Arctic, but also because "it [was] realised in fact that nearly all of the kind of research which is described as purely scientific must have some bearing and often a very direct bearing upon economic values sooner or later."<sup>337</sup> During the decades from the 1920s to the 1940s, scientists were at their heyday in the Arctic, gathering data and experimenting with various developing technology without

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<sup>335</sup> (Debenham, 1930, p. 25)

<sup>336</sup> (Rogers, 1966, p. 297)

<sup>337</sup> (Debenham, 1930, p. 26)

any real pressure to produce economic value. But this pursuit of scientific exploration for economic interests was about to make a determined metamorphosis.

The pressures of national security eventually caused the United States and Canada to collaborate in their Arctic territories. The roots of this military insecurity began its growth during World War II, but another even more worrisome conflict would push Canada and the United States to further unite their military operations: the Cold War. When it was realised that the Arctic could be used as an attack route and also as a theatre of attack,<sup>338</sup> the network of collaboration between the two nations became even more entangled, but the physical part of the collaboration primarily occurred in Canadian territory.

As the Cold War increased in severity and with technology baring the vulnerabilities created by the proximity of the United States and the U.S.S.R across the minuteness of the Bering Strait and additionally being situated on directly opposing sides of the Arctic Ocean from both Canada and the United States, the strategic significance of the Arctic mushroomed. Subsequently, “developments in military technology have enlarged the role of the Arctic dramatically as a theatre of operations for major military systems, transforming the region into a focal point of contemporary strategic thinking.”<sup>339</sup> This led to the United States building the Distance Early Warning line from Alaska to Greenland across the Canadian Arctic and to develop the North American Aerospace Command. As advanced armaments developed to higher and higher levels of sophistication in the arms race between the United States and Russia, it meant that Canada was increasingly reliant upon the United States for its Arctic security

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<sup>338</sup> (Patriarche, 1949)

<sup>339</sup> (Young & Osherenko, 1989, p. 18)

and defence. With Canada unable to secure its Arctic territories without the assistance of another government, this situation continued to provide a source of worry for demonstrating effective Canadian sovereignty in the Arctic.

But again science, not related to military necessity, began to play another role in the Arctic. Naturally as technology advances, capabilities expand and it became possible for the Canadian government move beyond the hydrographical soundings that had been recorded by Stefansson during the Canadian Arctic Expedition 1913-1918 to actually having the capability to begin mapping the entire continental shelf. This led to the establishment of the Polar Continental Shelf Project in 1958—the same year in which *United Nations Convention on the Law of the Sea 1958* made its debut introducing the resources of the continental shelf as belonging to the littoral state in international law. Some research has been done into the linking of science programs as a way of promoting the displays of sovereignty, such as in Powell's work on the Arctic policy of the Diefenbaker government where he notes that the Canadian government found it "expedient to initiate a programme of hydrographic, oceanographic, geophysical, and biological studies of the continental shelf as a direct means of asserting Canadian sovereignty in the High Arctic."<sup>340</sup> It can be argued that the Canadian Government introduced these programmes also as a means to alleviate the insecurities of sovereignty brought about through the continued presence of the occupation of a foreign military and scientists on their soil for several decades. Ultimately, the mapping of the continental shelf was necessitated by the advent of *United Nations Convention on the Law of the Sea 1958*, which has continued with the project to fulfil the requirements of the *United Nations Convention on the Law of the Sea 1982*.

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<sup>340</sup> (Powell, 2007, p. 1801)

The second element of Canadian Arctic policy during the Cold War Period is a decidedly unfortunate chapter of Canadian history, and represents a continued asymmetric relationship between the core of the Canadian government and the peripheral indigenous inhabitants. In many ways, the history of Canada differs little from that of its nearest neighbour, though it might be considered that the French trappers and traders maintained better relationships with the natives than did their British successors, Canada was much slower in recognising the political rights of its indigenous inhabitants than was the United States. As Canada became increasingly Europeanised in tradition, culture and language,<sup>341</sup> it meanwhile ostracised the indigenous populations, extracting them from their homelands and decimating their traditional ways of life under the project of assimilation to “bring the original inhabitants of Canadian to citizenship as quickly as that can reasonably be accomplished.”<sup>342</sup> It was not sufficient that indigenous people had lost their traditional territory to the forces of imperialism; they were also required to become citizens of the state of Canada by default of their birthplace.

As indigenous inhabitants, the Inuit also felt the brunt effects of colonial governance and this policy of forcing the aboriginal people to become citizens. As trading outposts were established, many Inuit became ‘semi-nomadic’ as there was less need to move about with the sustained frequency of earlier periods.<sup>343</sup> Yet, this caused a problem for the Canadian government as they were worried that this decline in Inuit mobility caused “a potential weakening of its claim to Arctic sovereignty” due to its partnership with the United States.<sup>344</sup> To mitigate this problem, the Canadian

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<sup>341</sup> Official languages of Canada are French and English.

<sup>342</sup> (Government of Canada, 1949, p. 2285 )

<sup>343</sup> (Frideres et al., 2003)

<sup>344</sup> (Frideres et al., 2003, p. 100)



government forced many Inuit to move further north, away from lands suitable from extracting a living, and during the 1950s they were reorganised from their nomadic communities following the seasons for hunting and fishing, to permanent communities where their children were forced into residential schools where they lost the influence of the community elders who once would have passed on Inuit traditions and skills through a natural education.<sup>345</sup>

Canadians have not distanced themselves from Rousseau's observations that civilized 'westerners' find dissatisfaction, and even consternation with the lifestyles of those nomadic and property-less indigenous populations as they tried to make the indigenous citizens and to use them to further their claims to sovereignty. Only recently has the Canadian government formally apologised for the policies of this era.

Finally, during this period Canada found another method through which to enforce sovereignty over their territorial claims to territory in the Arctic in response to what they perceived as threats to sovereignty from the United States. This was through environmental legislative protection in the *Arctic Waters Pollution Protection Act 1970* which defines Arctic waters as "the internal waters of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, within the area enclosed by the 60th parallel of north latitude, the 141st meridian of west longitude and the outer limit of the exclusive economic zone,"<sup>346</sup> reinforcing the lines drawn of Canadian boundaries in historical maps. Through this, they are attempting continued use of the sectoral rule, but applying it with the new language of the *United Nations Convention on the Law of the Sea 1982*, even though

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<sup>345</sup> (Brody, 2010)

<sup>346</sup> (Government of Canada, 1985)

they had yet to ratify this code. Through this pollution prevention legislation was declaration of Canadian responsibility to prevent environmental degradation in 'their' Arctic waters. Thus, Canada was not only attempting a similar protectionist policy as made by the United States in legislating for the fugacious fur seal population in an earlier era, but were also claiming sovereignty of the Northwest Passage, an area of disputed sovereignty within international relations.

### **Canadian Arctic Policy in the Post Cold War Era**

In their statement on Canadian Arctic Sovereignty in 2006, the Government of Canada claims that sovereignty is defined not only as ultimate authority over a given territory, but that it is “increasingly defined in terms of state responsibility” and is “linked to the maintenance of international security”, including the responsibility of stewardship and occupancy.”<sup>347</sup> This position is reflected in their *Northern Strategy 2008*<sup>348</sup> and in their *Statement on Canada's Arctic Foreign Policy 2010*, which emphasise the four pillars of Canadian Arctic Policy: exercising sovereignty, promoting economic and social development, protecting the Arctic environment and improving and devolving governance. Although these policy objectives pursue Canadian national interests in the Arctic, the methods by which Canada has pursued these national interests includes the promotion of indigenous inhabitants on the national agenda and a rebranding of Canada as a 'northern nation' indicating that Canada still fosters uncertainty over the sovereign status of their Arctic.

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<sup>347</sup> (Government of Canada, 2006 b)

<sup>348</sup> Although the official languages of Canada are English and French and thus all government documents must be produced in both languages, the *Northern Strategy 2008* is also published in Inuktitut.

Adapting to the new rules of the international system, Canada ratified the *United Nations Convention on the Law of the Sea 1982* in 2003, however, the ratification of this legal mechanism provides another dimension of insecurity for the Canadian government regarding its Arctic sovereignty. Under the treaty, a country is able to claim an extension along its continental shelf for the purposes of mineral exploitation. Yet, a great deal of the area that the Canadian government is trying to prove belongs to them by right of the *United Nations Convention on the Law of the Sea 1982*, is the same parts of territory over which they have claimed to hold sovereignty since 1925 through the sector principle, if not since 1880 by virtue of imperial transfer. The need for Canada to adopt this code for the Arctic is to validate their claims to Arctic sovereignty. If Canadian sovereignty over the Arctic up to the North Pole was certain according to the lines drawn on Canadian maps, would there be little need for Canada to once again demonstrate legitimate sovereignty over their 'region of attraction' via the new rules. Clearly, the Canadian government sees the *United Nations Convention on the Law of the Sea 1982* as a means of gaining international recognition and legitimacy for external sovereignty over the Arctic. This is in part so they will be able to grant resource exploitation licenses—as no reasonable corporation is willing to take risk of investment without legal certainty of ownership.<sup>349</sup>

Yet in addition to the new rule of the international system delimiting sovereignty over maritime territory, Canada faces a challenge to its claims to Arctic sovereignty from another angle. As the processes of enlightenment over the rights of indigenous peoples have continued, political, social and economic rights have received considerable promotion on domestic political agendas, especially in relation to the rights of indigenous populations in

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<sup>349</sup> Chatham House Rules.

colonised countries and an acknowledgement that they are entitled to self-determination. Entitled to these inherent rights, and with a history of imperial relationships in Canada between the government and the indigenous tribes, there is ultimately the threat that the Inuit will claim their historical territorial rights to the Arctic and declare political independence from Canada. Thus, the project of the Cold War Period that began transforming indigenous people into Canadian citizens is yet more crucial in contemporary policy.

From the perspective of the Canadian government who claims sovereignty and thus territorial rights over the Arctic, the people who have called the Arctic home for a millennium --the Inuit-- are the weak point in Canadian Arctic sovereignty as in reality, it faces no real external threats from states within the international system. It is the relationship that the Canadian government has with its Inuit, using them as a reinforcement instrument for Canada's claim to sovereignty in the Arctic in the international realm that creates an unorthodox second layer, or dual sovereignty, within Canada. Canada as the primary layer of sovereignty has created a second layer of sovereignty empowered by the first layer, with the first layer demonstrating dependency upon the second for sovereign legitimacy. Through improving and devolving governance to the Inuit people in Canada, the Canadian Government has created a sovereign nation within a sovereign state and it is through existence of the sovereign Inuit nation that the sovereign Canadian state depends on for maintaining Canadian sovereignty in the Arctic.

*In A Circumpolar Inuit Declaration on Sovereignty in the Arctic 2009*, the Inuit refer to sovereignty as “the absolute and independent authority of a community or nation both internally

and externally.”<sup>350</sup> Rousseau claimed, contrary to Grotius, that sovereignty is indivisible. It is an integral whole and cannot be divided, for if it can be divided, sovereignty is nonexistent. The declaration also claims sovereignty has no fixed meaning and that it is a contentious term. The Inuit attempt to claim several different theoretical positions, including that sovereignty is changing and that sovereignties frequently overlap, such as with the development of the European Union. There is a measure of truth to this observation of dual layers of sovereignty; however the Inuit are attempting as a people to supersede beyond the sovereignty of the state, whereas the European Union is an collection of sovereign states designating the sovereign power of specific legislative and judicial areas to an overarching body--a different set of circumstances.

The awakening of the importance of the people of the North has been an acutely slow process for the Canadian Government. After the limited and damaging social policies of the 1950s, the North and its people were relatively ignored by Canada until sometime in the mid 1980s. During this period, there was a shift in the focus of the Canadian government to the lands in the North. There was suddenly a realisation that parts of Canada were being ignored by the functions of government and that the social and economic development of these areas could be beneficial for Canada as a whole.<sup>351</sup>

In order to demonstrate the sovereignty of Canada over its sector of the circumpolar north, the Canadian government realises the need for consensus from the people of the Arctic. This is demonstrated by the statement from the Hon. Willie Adams an Inuit Senator for the Northwest Territories, who said to the

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<sup>350</sup> (Inuit Circumpolar Council, 2009)

<sup>351</sup> (Canadian Diplomatic Personel, 2010)

Canadian Senate, “If we want to assert Arctic sovereignty, we need to ensure that the people from the community are involved. We have been living up there for thousands of years.”<sup>352</sup> Senator Adams, as a representative of the Inuit peoples of Canada was communicating to the Canadian government the need for engagement with the Inuit in Canada’s demonstration of Arctic sovereignty.

As a result of the relocation policies of the Cold War Period, which had the dual aims of development of northern territory, but most importantly to establish permanent civilization in the Canadian North as evidence of effective occupation with government administering services and governance over the people of the North, the Inuit in actuality have become a lost civilization weakened by the transitions from nature to civilized society as Rousseau so acutely observed in *The Noble Savage*. The Inuit leaders of today are eager to communicate that they are empowering themselves through education and involvement in the political agendas of the Canadian government to improve the lifestyles of the Inuit, regenerating them as capable leaders of their own affairs. This empowerment is acceptable to the Canadian government for two reasons: the first is that if the Inuit can effectively lead themselves, it results in less cost for the Canadian government who is heavily subsidising Inuit communities as recompense for past sins. The second reason is that an effective Inuit government working in tangent with the Canadian government provides reinforcement for Canadian claims to the Inuit Arctic for purposes of Arctic sovereignty.

The Inuit Nation of Canada finds itself in a seeming distinctively unique position: it is the acceptance of the Inuit to the administrative efforts of the government of Canada that places

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<sup>352</sup> (Government of Canada, 2006 a, at 1510)

Canada in position to claim sovereignty of the Arctic on two different bases: that of historic title from the Inuit having been using the Arctic environment in its entirety, including the Northwest Passage, since time immemorial to provide for their livelihood and also as being the recipients of the administrative benefits of a colonial power. This has resulted in many benefits for Inuit, including the formal establishment of their own territory under a consensus form of government and the 2007 Land Claims Agreement, which gives the Inuit legal right to the resources of its historic land (from a colonial government). But there is serious strategy at work behind the development of the devolving governance of the Inuit People as seen in the second Senate reading of the Nunivak Inuit Land Claims Agreement Bill, that this land is “a vital part of our national heritage that our government is determined to protect as we continue to assert Canada’s sovereignty in the Arctic.”<sup>353</sup>

Another element of important note is that by legal nature, the Land Claims Bill is actually a treaty and through this treaty those “who are party to this agreement agree to an extinguishment of their rights, or some of their rights, under the Charter.”<sup>354</sup> A treaty is ordinarily a legal agreement between two states, and by the Canadian government entering into a treaty with the Inuit people it has in effect acknowledged the right of the Inuit to territory that Canada claims under its sovereign domain. Yet this is perhaps an unequal treaty in that it has been made between an internationally recognised sovereign state and an indigenous people group with little or no representation on the international stage. Despite the attempt of the Canadian government to promote indigenous participation at the international level, the Inuit people have a difficult problem in attempting to exercise their ‘sovereignty’

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<sup>353</sup> (Government of Canada, 2007 b, at 1335)

<sup>354</sup> (Government of Canada, 2007 b, at 1440)

internationally as, while they are a nation holding some internal sovereignty, they are not a sovereign state with external sovereignty. As such, they are not entitled to the rights and privileges normally reserved for states, and this is reflected in their membership status within the Arctic Council.

This difficulty has been made manifest by the lack of inclusion of indigenous groups in negotiations of Arctic affairs at the international level, including the occasion of the Ilulissat Declaration 2008, in which only sovereign states, indeed only the littoral Arctic states were represented. This exclusion has been noted with chagrin by several people including Udloriak Hanson, special advisor to the Inuit Tapiriit Kanatami who has pled for the role the Inuit people deserve and wish to play with regards to the decision-making processes for Arctic affairs to be communicated to those operating at state level policy development.<sup>355</sup> At the same time, Dr. Simon Walmsley of the WWF remarked that they had failed, despite attempt, to include indigenous groups on the panel for the development of the Polar Code with the International Maritime Organisation.<sup>356</sup> This is because they had been unable to bypass the sovereign state to request the inclusion of representatives of indigenous groups. Thus it appears that this status is reinforced by the structure of the international system confirming states as the dominant agent within this system.

Regardless of this structural asymmetry, the Inuit have attempted to make their mark on Arctic international relations by issuing *A Circumpolar Inuit Declaration on Sovereignty in the Arctic 2009*. This declaration, although produced by the Inuit living in Canada, appears to be extended to include all Inuit peoples living throughout the whole of the Arctic, and includes signatories from

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<sup>355</sup> (Hanson, 2010)

<sup>356</sup> (Walmsey, 2010)



several Inuit groups. The declaration argues that the Inuit have historical title to the Arctic and its resources, based upon their presence in the region since ‘time immemorial,’ and confirms their right to self-determination as promoted in the United Nations Declaration on the Rights of Indigenous People. This reference to ‘time immemorial’ is the exact phrasing echoed in the Canadian Museum of Civilization and the Speeches of Stephen Harper and thus, it appears that not only is the Canadian government using the Inuit to maintain their Arctic sovereignty, but that the Inuit are reminding the agents of the international system that despite historic transgressions, that domestically they have the opportunity to rise above the suppression of imperialism.

In their declaration the Inuit claim to be a people, a single integral unit represented by the Inuit Circumpolar Council. They extend their political influence to label themselves as citizens of the Arctic states, citizens of the Arctic sub-units, citizens of the Arctic and indigenous citizens of the Arctic with all the rights provided by the UN Declaration of the Rights of Indigenous Peoples. However, this declaration was only recently recognised by the Government of Canada in November 2010—while at the same time issuing a disclaimer that this recognition posed no legal restraints on the Canadian government, again reinforcing the position of the United Nations Declaration on the Rights of Indigenous People which does not encourage the indigenous right to self-determination as license to independence. It seems difficult to claim citizenship of the Arctic based upon all these levels, when ‘the Arctic’ is not a state capable of conveying citizenship, and the state which does grant citizenship to the Inuit living in the Arctic, does not recognise their rights as an indigenous people.

The Inuit are laying claim to the right of self-determination of peoples as a means of claiming right to participate in the decision-

making processes of governance regimes in the Arctic. This appears to be gross misunderstanding of what the right of self-determination of peoples entails. While the Arctic Council has allowed permanent participants of indigenous groups, this is different than the role played by the Arctic member states. As such, this position does not represent acknowledgement by the Arctic states of the Inuit as having sovereign powers. There are at least two pieces of evidence to demonstrate this:

The first is that the Arctic Council is not permitted to discuss anything related to issues of security and defence, a power typically reserved for the sovereign state. Thus, the Inuit people have been excluded from a crucial element that demonstrates sovereignty. Secondly, membership into the United Nations is again a symbolic acceptance of the international system of the achievement of the status of a sovereign state. The Inuit people have not been considered for membership in this international governance organisation as a sovereign unit. Even countries like Taiwan, Republic of China, who have been operating as sovereign states for many years, have not been accepted into the UN due to the risk of rousing the ire of China, a permanent member of the UN Security Council. How much further away is the acceptance of a people group, without exclusive control of a territory, being granted sovereign status via the United Nations?

There are other examples that illustrate the political shift in the gradual awakening to the existence of the North as an integral part of Canada. One such visible example is a reflection on the change of the representation of Canada in official emblems, such as Canada's coat of arms. Canada's arms had initially been designed with the phrase *A Mari Usque ad Mare*, but during the last twenty years this has been colloquially expanded informally to 'from sea to sea to sea' in order to include the Arctic Ocean as having as

much significance as the Atlantic and Pacific Oceans to the framing of Canada.<sup>357</sup> This phrase has been repeated often by Canadian officials in public speeches. This movement to include the North eventually led to the creation in 1999 of the Territory of Nunavut in the Canadian northeast with Iqaluit (formerly Frobisher Bay) on Baffin Island designated as the governmental seat. The creation of Nunavut provided the final feather in the cap of the Canadian government for proving that final clause necessary under the customary law of territorial acquisition: effective administrative of government ministerial functions over a people group in the acquired territory. Before this, the Inuit people living within the area of Nunavut had remained largely outside of the control or jurisdiction of the Canadian government and thus could be perceived as a lack of sovereign control over Canadian 'territories' in the Arctic.

Another important element of establishing the sovereignty of Canada in the north has been the movement to encourage the citizens of Canada to embrace the history of the Inuit as their own, and in turn to promote the role of the Inuit as Canadians, and thus the Canadian people claiming historic sovereignty of the Arctic. One example of this being done is through the Canadian Museum of Civilization in Ottawa. The museum tells through artefacts, the tale of the Canadian people's history dating back to the late Paleo-Eskimo Period around 4500 BCE. By comparative standard of known histories of other civilizations, this is not such a long people's history. Canadian researchers are aware of the existence of a previous people group, but this people left little archaeological evidence behind when they mysteriously disappeared. The first people group that the Canadians clearly identify with are known as the 'Thule', their moniker stemming from the Greek concept of *thule*, 'the most northern place' as recorded by Pytheas, a Greek

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<sup>357</sup> (Canadian Diplomatic Personnel, 2010)

Arctic explorer who found either Norway or Iceland sometime during the third or fourth century BCE.<sup>358</sup> This group migrated from around the Alaskan region of western North America to Greenland. Here, their story abruptly ends.

As the Canadian government endeavours to form an attachment of the Canadian people to their Arctic identity, they have gone to impressive lengths to build an iconic temple of Arctic history. The building that houses the history of Canadian civilization, designed by architect Douglas Cardinal of Blackfoot ancestry is a masterpiece in itself—defying the traditions of modern design with only curved lines throughout the entire structure, is intended to represent the importance of the influence of geography on the development of Canadian history and culture.<sup>359</sup> The museum claims to offer for Canadians an initiation into their national identity.<sup>360</sup> What this national identity entails, according to those proffering a tour in Canadian identity can be found in the names of the permanent exhibitions, such as ‘From Time Immemorial—Tsimshian Prehistory’, ‘The First Peoples Hall’, and ‘Canada Hall’ which displays one thousand years of Canadian social history. Upon entering this museum it is at once obvious that the most important aspect of Canadian identity on display is its indigenous people. Very little is said of the British or French who colonised Canada from the 1600s and even less is said of the Vikings who may have frequented parts of Canada’s eastern seaboard in order to harvest grapes and nuts. Because a large percentage of present day Canadians are of European ancestry, the emphasis on the First Peoples and the Inuit seems a curiosity.<sup>361</sup> But when the import of indigenous populations is considered in the overall scheme of

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<sup>358</sup> (Morrison, 2010) (Mills, 2003, p. 537) (Simpson-Housley, 1996, p. 25)

<sup>359</sup> (Government of Canada, 2010) (Canadian Museum of Civilization, 2004)

<sup>360</sup> (Canadian Museum of Civilization, 2004)

<sup>361</sup> The First Peoples and Inuit are considered as separate peoples under Canadian domestic law structures.

Canada's strategy in its Arctic and on the world stage, the rational is at once clearer.

A relevant exhibit outside of the indigenous agenda of this purported national identity greets any visitor immediately upon entrance into the museum building. In life size model is a recreation of the figure of Vilhjalmer Stefansson, his sled and his team from the Canadian Arctic Expedition 1913-18. Stefansson was a Canadian Arctic explorer of the bravest type of all polar explorers. While many expeditions before him had met their demise due to lack of provisions, Stefansson hypothesised that white explorers should be able to live as did the natives: from the bounty of the land. Working directly under the auspices of the Canadian government on his third and final expedition, Stefansson "discovered some of the world's last major landmasses...bringing full circle a process his Viking ancestors had begun almost a thousand years before. Stefansson delineated and redefined for mapmakers many of the coastlines in the west-central Arctic. His hydro graphic soundings made while he was drifting dangerously on ice floes outlines, for the first time, the continental shelf from Alaska to Prince Patrick Island, and revealed the submarine mountains and valleys beneath the Beaufort Sea."<sup>362</sup> Stefansson, with his Viking heritage and as a representative of the Canadian government did much to further Canadian interest in the Arctic region as an integral part of the Canadian identity.

In recent years, the Canadian government has been broadcasting an intensified stream of 'Canadian identity'. One way this has been done is through the work of museums, like the Canadian Museum of Civilization. Museums hold a special status in the mind of ordinary citizens; they appear to many as being hallowed halls of preserved history. What is often forgotten is that history has been

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<sup>362</sup> (Diubaldo, 1999, p. 2)

presented through a particular historiographical interpretation, and often that presentation is attached to a particular agenda. It has been noted that “museums have long served to house a national heritage, thereby creating a national identity that often fulfilled national ambition”<sup>363</sup> and that they have played important roles in creating national identity and in promoting national agendas.”<sup>364</sup> There seems little room to doubt the role of the Canadian Museum of Civilization as a tool for promoting ‘the North’ in Canadian national identity and as a national agenda of the Harper government.

The formation of a notion of identity and especially that of a national identity requires the meshing of cultural and social notions of community with political symbols to attach the emotional sentiments and psychological processes associated with belonging. Commonly understood national symbols include state flags and national anthems, which are “carefully constructed, carefully represented projected image[s] of identity that result from a conscious decision making process.”<sup>365</sup> Indeed, even the Canadian national anthem radiates the realm of the Arctic in the identity of the Canadians. Canada is the ‘True North, strong and free’. Not merely part of the north, but a strong, free and true-blue Arctic state. When asked about the importance of the Arctic to Canada, many Canadians immediately refer to the lyrics of the national anthem.

The other facet of this intensified stream is a series of pronouncements from the government continuously emphasising the “symbolic significance of the North in Canadian national identity.”<sup>366</sup> Some examples of this can be seen in speeches made

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<sup>363</sup> (Kaplan, 1994, p. 9)

<sup>364</sup> (Kaplan, 1994, p. 2)

<sup>365</sup> (Cerulo, 1995, p. 5)

<sup>366</sup> (Dodds, 2010, p. 372)

by Prime Minister Stephen Harper, where he states, “Canada’s Arctic is central to our identity as a northern nation”<sup>367</sup> and “We are a northern country. Canadians are deeply influenced by the vast expanse of our Arctic and its history and legends.”<sup>368</sup> The Arctic has reached a high position on the agenda of the Canadian government due to its import in international relations, and they desire to articulate and even convince Canadian citizens of the value of the Arctic—certainly in economic terms, but most definitely in cultural terms in the perception of Canadians. This was also evidenced in the used of the Inuit Inuksuk as the official emblem of the Vancouver 2010 Winter Olympics, a location thousands of miles away from the place where this figure has any real symbolic or practical use. Yet the presentation of this identity to the world outside is a hard sell given the historical factors of colonial exploitation of the North and its peoples.

Finally, within their international engagement for Arctic policy, Canada exhibits an almost hysterical position on their defence of their Arctic sovereignty up to the North Pole. Since the signing of the *United Nations Convention on the Law of the Sea 1982*, Canada has been in progress of establishing their claims to sovereignty over the continental shelf, a new rule of the international system. Competing with Canada for this geographical marker is the Russian Federation, both having claimed up to this point through the sectoral proclamation during the Interwar Years. Although it remains to be determined through the Commission on the Continental Shelf, who—if anyone, can claim the North Pole, Canada has embarked on a volley of activity to signify that the North Pole is Canadian. This includes the issuing of passports to Santa and Mrs Claus in late 2012, indicating that as Canadian

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<sup>367</sup> (Harper, 2007)

<sup>368</sup> (Government of Canada, 2010)

citizens and residents, just as the Inuit are Canadian citizens—the North Pole is within Canadian territory.

## **Conclusions**

This paper concludes that Canadian Arctic policy from the foundations of the Dominion of Canada to the publication of their 2010 Statement on Canada's Arctic Foreign Policy has created crisis of legitimacy within Canadian policy over the status of their Arctic sovereignty. As a result of this crisis, the government of Canada has attempted several methods for establishing and exercising their sovereignty including claiming the Arctic through imperial transfer, effective occupation, the sectoral principle and most importantly, through their relationship with the indigenous peoples. In addition to these formal methods, they have used informal methods to promote their identity as an Arctic nation through the creation of an Arctic identity including the rigorous promotion of Canada as an Arctic nation, or a Northern state, with gratuitous use of Inuit symbols in international events and the issuing of the Clauses with passports.

The subject of Arctic sovereignty has received a significant amount of attention from Canadian policy makers in recent years, and many government officials, including Prime Minister Stephen Harper, continuously express the need to establish and/or reinforce sovereignty in the Arctic. Yet, it does not appear that any external challenges to Canadian Arctic sovereignty exist—the challenges are only from within, created through a sense of political insecurity due to the relationship with the indigenous inhabitants. As a result of this crisis of legitimacy, they have promoted the role of the Inuit as the key to their security of Arctic sovereignty resulting in the development of dual layers of sovereignty within Canada. This identity is needed to give the



government legitimacy and popular support for the pursuit of its Arctic policies on both the national and international stage and is being pursued through devolution of government administration to the Inuit people in attempt to prove Canadian Arctic sovereignty via the Inuit. There is now the state as the primary sovereign layer, and the indigenous with a tribal layer of sovereign status—a system that in actuality only continues to reinforce the asymmetric imperial relationship that is the cause of this crisis in the first instance.

The result of this promotion of the Inuit within the Canadian political hierarchy and the dual layers of sovereignty has had the effect of promoting the inclusion of the Inuit within Arctic international relations. Thus, the Inuit are also attempting to secure recognition at the international level of their rights as a sovereign people. Although they have been included as permanent participants on the Arctic Council, this inclusion has not in reality changed the structure of the international system and the hierarchical dominance of states as the primary agents. Despite their Inuit Declaration on Sovereignty, the international system is not able to cope with the notion of sovereignty of a people group without the same components held by states that is required for international recognition of external sovereignty.

Although Canadian Arctic foreign policy continuously makes reference to establishing Arctic sovereignty, it appears from a legal position, there is no uncertainty of Canadian Arctic sovereignty. They have a historic claim reaching back more than a century, have continuously represented the Arctic on official documents and have demonstrated effective occupation as much as possible in a hostile climate. Thus, this crisis of legitimacy regarding Arctic sovereignty over *terra firma* is a somewhat irrational situation, possibly reflecting that Canada is not willing to relinquish any

claims to the North Pole or any maritime territory they deem to hold, although claims to this territory have not been made according to rules accepted within the international system.

## **Chapter V**

### **Russian Arctic Policy 1619-2013**

The Arctic has been a predominant feature of Russian political and economic policy through four phases of the international system and through three different domestic political constitutions: Imperial Russia, the Soviet Union and the Russian Federation. Through each of these transitions, the relationship of Russia with the Arctic has adapted to the new rules of this system as it pursues its national interest in the region with each of these domestic transitions adding a new dynamic to the way in which Russia relates to the Arctic in state practice. The long-term analysis of Russian Arctic policy demonstrates this policy is the cumulative effect of an inherited identity resulting in state practice that sometimes appears to contradict the rules of the international system as Russia pursues its national interests in the Arctic.

#### Research Questions

- What is Russian Arctic Policy in the different eras of the international system and what is its character?
- What artefacts exhibit Russian Arctic policy?
- What rules of the international system have the Russian state followed in their Arctic policy?
- What are Russian national interests in their Arctic policy?
- How does change in the structure of the international system correlate with change in Russian domestic political structures and how are these changes exhibited in Russian Arctic policy?

## **Methodology**

Although seeing a transition to democracy following the breakdown of the Soviet Union, the character and methods of the government of the Russian Federation are currently in a transitional phase as much of the current leadership received their political training and indoctrination under Communist Russia; the current administration can be accused of attempting to preserve the characteristics of the Soviet State in order to perpetuate their own power.<sup>369</sup> Thus, this research has faced the following limitations: policy documents have disappeared from government archives during the course of this research, websites produced by the Russian government in English and in Russian versions appear to have different content making it difficult to determine specific policy positions, Russian diplomatic staff to the United Kingdom have refused requests for interviews and finally, a major constraint of this research has been the author's inability to read Russian and holding limited financial resources to engage translation skills.

Thus, to combat the unavailability of the complete set of Russian Arctic policy documents, this research uses the concept of data triangulation as methodology for this chapter. Data triangulation includes collecting data through several sampling strategies from different time periods, different types of sources and different social situations.<sup>370</sup> This method is used to construct an evolving picture of Russian Arctic policy over four eras of the international system and in three different forms of Russian government through the use of maps, formal policy statements and the actual engagement of the Russian state with the Arctic and the rules of the international system.

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<sup>369</sup> (Waller, 2005)

<sup>370</sup> (Denzin, 1970)

## **Russian Arctic Policy in the Age of Discovery**

In 1854, the Russian Arctic was considered worthless as it was “ever frozen.”<sup>371</sup> At this time, the Russian Arctic included not only the massive expansive of Siberia, a territorial expanse that today constitutes more than three quarters of Russian territory, but also it included the territory of Alaska and the Bering Sea. In the time that frames the development of the Russian state within Europe until the end of the Age of Discovery, Russian engagement with the Arctic largely follows the trajectory of the rules of the system during this period, with some exception in their legal treatment of indigenous persons and also in their approach to maritime territory. During the Age of Discovery, Russia expanded their territory into the Arctic applying the laws of territorial acquisition, developing territorial boundaries through unilateral declarations and bilateral treaties and also establishing sovereignty in their Arctic territories through effective administration by the levying of domestic legislation and incorporating the Arctic into economic development. However, the effects of international politics in this Age of Discovery resulted in both the expansion and contraction of the Russian empire according to the measure of their national interests including threats to sovereignty, security and economic interests of the Arctic.

Exploration of the Russian Arctic began in the Middle Ages with the voyages of the Pomors, often considered to be the first Russians to explore the Siberian Seas, by establishing the original Northern Sea Route beginning at the Kola Peninsula and moving eastward by both land and sea.<sup>372</sup> This was further developed in

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<sup>371</sup> (Friswell, 1854, p. 245)

<sup>372</sup> (Horensma, 1991)

the “maritime corridor known as the Great Mangazeya Route”<sup>373</sup> a route which was exceedingly lucrative for the fur trade, the ivory trade as well as other resources harvested through hunting and fishing. Some regional maps depicted the location and types of resources available, (See Figure 2). Due the lucrative and abundant economic resources coming from this area, adventurers from all over Europe were attracted to the region and as the Russian monarchs could not prevent poaching or secure payment of taxes with many foreign traders avoiding customs officials, in 1619, the Russian authorities “issued a degree forbidding the use of the sea route.”<sup>374</sup> As a result, the economic development of the Russian Arctic was stagnated until the Russian bureaucracy could better administrate over the territory.

Having initially focussed the efforts of imperial expansion southward towards the Volga, “Siberia was scarcely known to the Russians before the middle of the sixteenth century. For although an expedition was made...this incursion bore a greater resemblance to the desultory inroads of barbarians, than to any establishment of empire by a civilized nation.”<sup>375</sup> However, as the wealth of the Sibir region became known through exploration in the late sixteenth century, “‘jealous for the sovereign’s profit’, and not forgetting their own, came soldiers, mercenaries and Cossacks, led by Moscow-appointed administrators...they found ‘new lands’, built forts and imposed fur tribute.”<sup>376</sup> Russia annexed the Arctic via Siberia into the empire with the establishment of the Siberian Department, responsible for managing the conquest and administration of the region, especially for collecting tax revenues from furs for the state. Russia formally excluded the nearest political power, China, to any claims to Siberia through the *Treaty*

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<sup>373</sup> (Oliver, 2006, p. 165)

<sup>374</sup> (Armstrong, 1984, p. 432)

<sup>375</sup> (Muller, 1842, p. 5)

<sup>376</sup> (Slezkine, 1994, p. 13)

*of Nerchinsk 1689*, which gave to Russia all territory north of the Amur River; this geographic boundary to this day delineates the border between China and Russia. The political organisation of Siberia as an economic region makes Russian Arctic trade different from the trade of other countries as “the Muscovite state participated actively in the exploitation of the resources of Siberia.”<sup>377</sup> It is this economic political arrangement that would inevitably lead to the unprofitability of the extended Russian Arctic empire.

Under the reign of Czar Peter I in the late seventeenth century, Russian military power returned focus to the sea after the successes on land across the Asian continent, hoping to establish a Russian trading route to the Indies through the Arctic Ocean, a route that would bring additional profitability from the payment of tolls from foreign merchant ships.<sup>378</sup> It was during this period that Vitus Bering, a Dane, was commissioned into the Russian Navy, eventually charged by the Czar to lead expeditions through the Arctic. The Czar instructs Bering to “seek the point where it [Kamchatka] connects with America and go to some settlement under European rule, or if any European vessel is seen, learn of it what the coast visited is called, which should be taken down in writing, an authentic account prepared, placed on the chart and brought back here.”<sup>379</sup> This signals not only the importance of *European* discovery for the laws of territorial acquisition to apply, but also the process of recording any expeditions and discoveries for Russia should they not be otherwise claimed.

Although Bering, who left a strait and the Aleutian island where he died in 1741 to bear his name still marked on Russian maps, he was not the first to sail for Russia so far east of the political centre.

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<sup>377</sup> (Fisher, 1943, p. 48)

<sup>378</sup> (Tillotson, 1869)

<sup>379</sup> (Oliver, 2006, p. 42)

However, he officially demonstrated for the imperial government there was not a visible land bridge to North America, and nor did he find any evidence of European administration in the region as exploration from the other direction had yet to travel this distance. This was recorded on behalf of Bering by another member of the expedition, Gerhard Müller, a German working for the Russian Imperial Academy of Sciences, through the construction of the first complete map of the Russian Arctic Empire to be produced through official sanction. For Russia's North American territorial claims, what would follow the production of this map includes of other methods of the annexation of territory, including ceremonies of possession, wars, colonisation and economic development throughout the Arctic territories.

To mark their territorial claims to Alaska, the Russians used a variety of methods for their ceremonies of possession to demonstrate to other European parties with interest in the new territory that another sovereign already laid claim. These methods including the burying of plates with seals of the imperial government, the erecting of totems depicting symbols of the Russian state and by giving sculptures of the imperial crest to native chieftains. These methods were part of the process of establishing territorial claims under the laws of territorial acquisition and "were designed to be visible warnings to rival nations that the land was under claim. Crosses placed on prominent head lands, highly visible from the water, announced to late-coming seafarers that there was 'no vacancy. Symbolic gifts given to Native leaders—written proclamations, medallions, and coats-of-arms— also signified that the land was already under imperial claim. Other markers were silent, buried in the ground at secret locations, to be used as proof of ownership should it be disputed."<sup>380</sup> These claims to territory were eventually contested

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<sup>380</sup> (Foster & Henrikson, 2009, p. 2)



by the Spanish, British and American expansion in the late eighteenth and early nineteenth centuries.

In order to combat the deliberate encroachment of other empires from reducing their American territorial holdings, the Russian Imperial government issued what would set the precedent for the U.S. Monroe Doctrine. In 1821, a Ukase proclaimed:

“The pursuits of commerce, whaling and fishery and of all other industry on all islands, ports and gulfs, including the whole of the northwest coast of America, beginning from Behring’s Straits to the 51<sup>st</sup> degree of the northern latitude, also, from the Aleutian islands to the eastern coast of Siberia, as well as along the Kurile islands from Behring’s Straits to the south cape of the island of Urup, viz. to the 45° 50’ northern latitude, are exclusively granted to the Russian subjects.

It is, therefore, prohibited to all foreign vessels, not only to land on the coasts and islands, belonging to Russia, as stated above, but also, to approach within less than an hundred Italian miles. The transgressor’s vessel is subject to confiscation along with the whole cargo.”<sup>381</sup>

This had the effect of attempting to establish absolute sovereignty over the entire breadth of the claims of Imperial Russia in the Arctic. Not only was this proclamation in effect contrary to the rule of the international community in the understanding of the freedom of the seas, but it also establishes a precedent for the Arctic in the practice of notifying other states the territory is no longer open for conquest by other interested states. To a certain extent, this proclamation tests the fortitude of the international

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<sup>381</sup> (Lyman, 1828, pp 287-8)

community to uphold the existing principles of international law in preference to their greater national interests. This is a practice that Russia has continued in the Arctic with the sector principle in 1926 and the planting of the Russian tricolour in 2007.

The territory claimed by Imperial Russia in the Ukase of 1821 included not only the Kurile Islands,<sup>382</sup> but also territory in North America to as far south as modern day Portland, Oregon. Imperial Russia considered what was marked as ‘the river of the West’<sup>383</sup> as the naturally logical geographic border for separating the Spanish territory of New Albion from Russian America. However, the methods used by Russia to enforce their right by discovery made it difficult to maintain effective occupation over their North American territories, which were beginning to see intense testing by exploration from Spain, Great Britain and also from the United States who, having purchased the Louisiana Territory from Napoleon in 1803 were keen to establish trade along the major river systems stretching all the way to the Pacific Ocean.

Imperial Russia pursued effective occupation of Russian America through the establishment of the Russian-American Company in the Ukase of 1799, when the company was granted exclusive economic rights within the territory for a period of twenty years.<sup>384</sup> The company was modelled on the framework of some British economic institutions, including the Hudson’s Bay Company and the East India Trading Company, the former at one point being the largest private landowner in the world, owning more Arctic territory in North America than any of the Arctic states. It was thought that “an ostensibly commercial company managing territory and populace on behalf of an empire who

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<sup>382</sup> Sovereignty over the Kurile Islands is currently disputed between Russia and Japan.

<sup>383</sup> Now known as the Columbia River.

<sup>384</sup> Russian America was the only part of the Russian Arctic that was treated as a colonial possession, with the Siberian territory formally incorporated into the Russian state by the mid seventeenth century.

believe that this arrangement amounted to a cost-effective form of colonialism and provided a convenient scapegoat in case of failure.”<sup>385</sup> In exchange for the exclusive monopolisation of the economic resources of the region, the “government demanded that the company provide social services.”<sup>386</sup> However, the combination of corruption, reports of near bankruptcy, and the increasing economic pressures from competitors made it impossible for the colonisation project to retain favour with the Imperial Russian government who was dealing with an array of political pressures in the motherland.

To alleviate some of these pressures of maintaining effective occupation in the Alaskan colonies, the Imperial Russian government negotiated the *Russian-American Treaty of 1824* and the *Anglo-Russian Treaty 1825*,<sup>387</sup> and “during the next two years the Russians retreated from their extreme position.”<sup>388</sup> These two treaties are quite similar in both intent and in content, containing two apparent objectives. The first objective is the interest of Russia to prevent colonisation by other states in the region, thus both the United States and Great Britain agreed not to form any establishment in territories claimed by Russia. While this had the effect of reducing some of the pressures to territorial expansion from the United States and Britain, it provided only a temporary lull as the Crimean War would soon deteriorate relations between Great Britain and Russia in Europe initiating new fears over the security of their American territories. The treaty also resulted in a reduction of land claimed in the Ukase of 1821, but territory that Russia knew that it was unlikely able to maintain under the laws of territorial acquisition.

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<sup>385</sup> (Vinkovetsky, 2004, p. 164)

<sup>386</sup> (Black, 2004, p. xiii)

<sup>387</sup> These treaties did not have effect on the dispute between Great Britain and the United States in the area known as the “Oregon Territory” which including part of the territory claimed by Russia in the Ukase of 1821.

<sup>388</sup> (Pletcher, 2001, p. 20)

The second objective, however, and arguably the more important arrangement, is the incentive that caused the United States and Great Britain to agree to limitations on their expansion ambitions. These treaties both had the effect of diminishing Russia's claim of *mare clausum* over the North Pacific, attempted in the Ukase of 1821, without forcing Russia to rescind their claims with another international declaration. Instead, the Russian attempts to *mare clausum* were formally dissolved by treaty arrangement individually with the United States and Great Britain. Both treaties made arrangements for navigation, fishing, and trade with natives, although explicitly restricting the importation of armaments into the region and the sale of arms to the native populations. The deterioration of this claim to *mare clausum* at this critical point in the Age of Discovery prevented *mare clausum* from becoming and accepted rule of the international system.

Although the conflict in the Crimean between Russia and Great Britain did not result in any change of borders between these parties in North America, there was certainly realisation for the Imperial Russian government that it was difficult, if not impossible to defend their territory in Alaska. The colonisation and effective occupation of Alaska by the Russian American company was sub par, at best. British politicians noticed this inadequacy in 1859, corresponding that the Russians had failed to occupy the territories that they claimed in the 1825 treaty and that "what Russia has already obtained on this coast [is] by a claim void of any foundation."<sup>389</sup> Having settled the matter of the boundary of the Oregon Territory with the United States, Great Britain had considerable worry about their maritime access to the Pacific Ocean as they were slowly being framed in between the United States and Russia. Additionally, Russia and Great Britain were at

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<sup>389</sup> (British Parliament, 1859, p. 33)

odds in other aspects of international relations such as in the Far East, India, the Middle East and in the Mediterranean; conflict and loss of their indefensible American territories seemed a likely possibility.<sup>390</sup>

The Russian territories in North America had been diminishing with the inability of the Imperial government to adequately maintain effective occupation and administration of the territories. Having sold Fort Ross in California in 1842 and faced with the likelihood of the British Empire simply eroding their Arctic territories in North America, the Russian government had few options.<sup>391</sup> “The impossibility of preserving her colonies in the event of a war, the impossibility of protecting them from the consequences of the widely rumoured presence of gold there...and, finally, the transfer of Russian interests onto the Asiatic mainland--such were the reasons persuading the tsarist government to sell Alaska.”<sup>392</sup> Faced with this problem, when U.S. Secretary of State William Seward approached with interest of purchasing Alaska, they were quick to acquiesce, despite some initial problems with ratification for funding by the U.S. Congress. Russia agreed to the *Alaska Purchase Treaty 1867* with the United States simply to prevent losing it to Great Britain through gradual annexation or through an onslaught of colonising gold prospectors. This treaty ended Russia’s relationship with the Arctic in North America.

Meanwhile, in the Russian Arctic territories of Europe and Asia, exploration and development had stagnated due to climatic conditions affecting the Arctic known as the Little Ice Age. “As happened elsewhere in the Arctic, the Little Ice Age prevented Russian exploration and settlement along the northern Alaskan

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<sup>390</sup> (Black, 2004)

<sup>391</sup> Russia’s holdings in California were sold to John Sutter. The gold discovery that sparked the California Gold Rush in 1849 was found at Sutter’s Mill. 000

<sup>392</sup> (Bolkhovitinov, 1993, p. 193)

coast...It also prevented foreign ships from sailing along the Northern Sea Route...As long as the ice was a formidable barrier, Russia's claim to its Arctic mainland and islands was secure."<sup>393</sup> The effects of the atmospheric conditions began to decline in the mid to late nineteenth century. So by the time Russia was relieved of its North American possessions, the Arctic climate was improving to the point where Russia could once again concentrate on exploration and development north of 60°.

After the early bans by Tsarist Russia on using the Kola Seas and the Northern Sea Route, it was reopened by Czar Peter the Great with the Great Northern Expedition, which discovered not only Alaska but also launched a flurry of activity in Russian Arctic waters by both Russian and explorers from other European nations. However, this activity rapidly decreased when ships were stopped by or became stuck fast in the ice. After James Cook and his expeditionary members failed to sail through the passage, it was concluded in Western Europe that use of the Northern Sea Route was impassable; thus "no further attempts were made until the middle of the nineteenth century."<sup>394</sup>

When interest was reignited in the Northern Sea Route, it was spurred not only by the desire to use the route for commerce, but largely, by the objectives of sovereignty and security. Expeditions into the Russian Arctic maritime regions, over which they had no claim, except through arguments of *mare clausum*, were being sent to the region by other European states. As a result there was questionable sovereignty over islands such as Svalbard, Novaya Zembla, and Wrangel Islands as they were 'discovered' multiples times and utilised at varying points by several states. Thus Russia realised that a "way to defend Russian rights of sovereignty in the

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<sup>393</sup> (Grant, 2010, p. 91)

<sup>394</sup> (Alexandrov & Frolov, 2007, p. 7)

Arctic was to take part more actively in polar exploration.”<sup>395</sup> To increase their claims by right of the ‘most historical’ discovery and sufficient effective occupation, the interest in the Russian Arctic maritime experienced the “renewed interest of the Russian government in Arctic Studies,”<sup>396</sup> which included outfitting ships and expeditions such as the ill-fated *Zarya* in the Russian Polar Expedition of 1900-1902 through the Russian Academy of Sciences.

Security interests in the Russian Arctic were introduced in the advent of the Russo-Japanese War in 1904 when the fleet based in Russia's warm water port, leased in Port Arthur, was attacked without warning. The war taxed the capabilities of the trans-Siberian railway, which had carried goods from the Pacific to Western Russia. The importance of the Northern Sea Route for not only economic benefit became obvious, as the war “showed at a stroke the enormous advantages of the much shorter Arctic Passage” when the rest of the Russian Navy had to sail halfway around the world before it could provide support.<sup>397</sup> Thus “immediately after the war the government made available funds to explore this passage,” including financing for the development of icebreakers.<sup>398</sup>

Thus, the continuation of the discovery of new islands, the opportunities for scientific discoveries with both economic and security implications and the increasing geostrategic importance of Russian development along the coast including ports at both end of the Northern Sea Route caused Arctic territory, especially its maritime territory to become of import to the Imperial Russian government. Yet, due to the lack of infrastructural development in

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<sup>395</sup> (Horensma, 1991, p 12)

<sup>396</sup> (Alexandrov & Frolov, 2007, p. 12)

<sup>397</sup> (Horensma, 1991, p. 15)

<sup>398</sup> (Horensma, 1991, p. 15)

Siberia and the lack of political coordination to develop the infrastructure, the Northern Sea Route would remain relatively quiet for another century. The next phase of interest of shipping in the Northern Sea Route would be generated by a combination of climatic changes, development of new rules of international law, economic interests and improved technological capabilities.

### **Russia Arctic Policy in the Interwar Years**

The Russian relationship with the Arctic faced a dramatic change in the Interwar Years. Not only was there a change in the structure of the international system which was traumatised by the conflict and cooperation that came along with the great wars, but there was also a shift within the domestic political structure of Russia. This occurred in the Russian Revolution, which resulted in the removal of the Tsarist Imperial government that had ruled Russia for centuries and was responsible for past Arctic policy and engagement for Russia. This longstanding political structure was replaced by a new government based on principles of Marxist ideologies (albeit in an altered form), including the removal of the aristocracy and the theoretical equalising of class hierarchies through the redistribution of wealth and property. In theory, the ideologies behind the revolution can be considered as progressive, but in practice they were fraught with difficulty and conflict which left Russia in the throes of civil war immediately following the devastation of the first World War. While it is beyond the scope of this chapter to evaluate this transformation in depth, it is clear that these transformations changed how the Arctic was incorporated into Russian political consciousness, which has implications for the development of Arctic policy.

Although it was accepted that sovereignty of territory on ice could not be annexed through discovery, it was believe that within the



Arctic regions there still existed additional undiscovered islands and both Canada and United States were sending out regular expeditions to map these territories. This included exploration into maritime areas traditionally considered by Imperial Russia to have been enclosed Russian seas. These foreign intrusions caused consternation for the new Soviet government who needed to establish their own policy toward Arctic maritime sovereignty, and “after a government protest failed to produce the desired results, the Soviets decided to take action.”<sup>399</sup> This was done by sending out expeditions of their own, raising the Soviet flag on these territories and arresting foreigners on territory claimed by Russia. However, this only implemented the effective occupation of existing claims, which was not the only threat to Russian sovereignty in the Arctic.

The second way in which Russian sovereignty was being challenged was through the use of aviation, by using both zeppelins and airplanes to search the Arctic Ocean for unclaimed islands. Having been ravaged by the first world war, a civil war and a famine, Russia had put few resources into developing aviation technology and thus were years behind in developing technology that would enable them to seek new Arctic territories in the same manner. In order to prevent further intrusions into their Arctic ‘region of interest,’ the Soviet government issued the Declaration of 1926, which said:

“All lands and islands, both discovered and which may be discovered in the future, which do not comprise at the time of publication of the present decree, the territory of any foreign state recognized by the government of the USSR, located in the Northern Arctic Ocean, north of the shores of the Union of Soviet Socialist Republics up to the North Pole

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<sup>399</sup> (Horensma, 1991, p. 25)

between the meridian 32x 04'35 E...and the meridian 168x49'30" W...are proclaimed to be the territory of the USSR."<sup>400</sup>

This declaration in effect forms the early policy of Russia towards the maritime Arctic by continuing the sentiments earlier expressed by the Imperial Russian government in the Ukase of 1821. As the Russian boundary on the east had been determined in the treaty of 1867 with the United States and World War I had resulted in shifting political boundaries on the western front, the declaration codified in Russian domestic legislation for policy they were already physically enforcing. It has been indicated that for the Soviets "the rules of non-communist international law relative to annexation are not applicable to the Arctic."<sup>401</sup> Finally, this declaration establishes the parameters for the international boundaries printed on Russian maps to this day.

This establishment of the Russian Arctic sector had the immediate result of eliminating territorial insecurities for the Soviet government, but it also designated to them a new type of responsibility in the realm of effective occupation. The crash of the Airship *Italia* in 1928 provided this opportunity when the crew needed to be rescued from the Russian Arctic. Although Stalin had decided that Russia would not get involved in the rescue, the media had inadvertently committed Russia to the rescue and the government was forced to activate their mothballed icebreakers to prevent loss of face.<sup>402</sup> Although the rescue attempt was the cumulative effort of what was effectively one of the first internationally coordinated search and rescue operations in the Arctic region, it was the Russian icebreakers that successfully rescued the survivors. This rescue utilised the technological

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<sup>400</sup> (Taracouzio, 1938, p. 320)

<sup>401</sup> (Taracouzio, 1938, p. 338)

<sup>402</sup> (Lenoe, 2004, p. 222)

capability and experience of many states that had been participating in Arctic exploration, but in effect, it also established Russia's technological expertise and prowess for operating in the Arctic. The media praise that followed their successful rescue attempt "opened the authorities' eyes to the propaganda possibilities of the Arctic."<sup>403</sup>

With the development of Russia into the Soviet Union in 1922 and the eventual transfer of leadership from Lenin to Stalin, the Russian government began to focus more intently on the restructuring of society and economy more appropriate to the new ideology. These new strategies were implemented in the Five Year Plans, which had severe implications for the Arctic as Soviet style plans were applied to every facet of society. Although it is beyond the scope of this thesis to fully analyse each of these Five Year Plans, it is important to note that from the first plan, the Arctic was greatly affected as it interfered with the traditional lifestyles of indigenous populations. They also changed the landscape of the Russian Arctic causing it to become a base for the Soviet economy by increasing northern populations and development.

As part of the communist principle against the ownership of private property, the Soviet government began implementing a nationwide policy of collectivisation, which intended to eliminate the feudal structure of Russian society and replace it with state ownership of property. This policy of collectivisation was also instituted among the indigenous populations of the Russian Arctic, who were assessed as owning too many reindeer per person. Due to this assessment, thousands of reindeer were confiscated, and either killed or redistributed amongst collective farms,<sup>404</sup> resulting in the starvation of many indigenous peoples. Although the

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<sup>403</sup> (McCannon, 1998, p. 118)

<sup>404</sup> (Forsyth, 1992, p. 316)

government did eventually make the indigenous populations exempt from many 'Soviet duties' such as conscription and payment of taxes as this was outside of their traditional lifestyles, the "state appropriated tribal land and began to cash in on it's vast resources--including fish, timber, fur and gold--through industrialization."<sup>405</sup> This practice of collectivisation in Russian Arctic policy was ultimately against the best interests of the indigenous populations and the environment although it was intended to contribute to the health of the Russian state through economic development.

The Soviet project included the Marxist notion of 'mastery over nature' and the Arctic was "the ultimate battleground in the Soviets' great 'struggle against the elements'", where "triumphs in the Arctic were translated into victories of almost cosmic significance."<sup>406</sup> Following the successful rescue of the *Italia*, even icebreakers became not only part of the Soviet agenda for northern development and the Five Year Plans, but they also became part of the myth of the Arctic and the Soviet capabilities to overcome the difficulties of the region through man's (Soviet!) genius and capability. The Stalin-class icebreaker, of which several were built between 1932 and 1939, was glorified in both literal and visual arts, with one poet penning the words: "It is not vernal water overflowing, it is our icebreakers approaching. Not alone is the glorious hero."<sup>407</sup> In the visual realm, the Soviet government produced many postage stamps, which were seen by domestic and international audiences with images of icebreakers depicted as supporting scientific research and development in the Arctic.

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<sup>405</sup> (Rineer-Garber, 1999, p. 396)

<sup>406</sup> (McCannon, 2003, p. 243)

<sup>407</sup> (Miller, 1990, p. 45)

Even though icebreakers were conveniently used to promote the myth of the Arctic, they were truly an important component of Russian Arctic policy during the Interwar Years, due to their support in keeping the ports of the Northern Sea Route open in winter. The icebreakers were decisive in the development of the Northern Sea Route, as without their support, Arctic shipping would have been impossible.<sup>408</sup> The Soviets invested significant research efforts into developing icebreakers that could not only keep the ports and the Northern Sea Route open, but that could also carry coal and other minerals acquired through mining in the Arctic, including coal mined from Svalbard. Arctic development also included the establishment of 'refuelling' ports, which increased the range in which icebreakers could operate.<sup>409</sup>

Equalling in importance to the use of icebreakers was the eventual development of Arctic aviation, and those who flew for Russia in the Arctic were bestowed with the same honours that would later be given to Soviet cosmonauts. With aeroplanes acting as aerial scouts for icebreakers, "without aviation, the whole scheme of industrial development, settlement, geological and geographical exploration, and of navigation along the Northern Sea Route would be unthinkable."<sup>410</sup> Aviation contributed to both the economic and security goals and policy of Russia in this period by making it possible for ships to transport minerals and coal mined in the Arctic to the industrial core. They also work to sight additional developmental possibilities from air and gave the Soviet military the ability to patrol borders with more efficiency.

Economic development of the Arctic and forced migration began under the administration of the Imperialist Russian government, during which time three different types of 'forced' migration were

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<sup>408</sup> (Armstrong, 1952)

<sup>409</sup> (Armstrong, 1952)

<sup>410</sup> (Smolka, 1937, p. 85)

implemented, including immigration as part of the punitive policy. With the Russian Arctic existing as a vast empty space, this migration was considered necessary to promote economic development, or at the very least to exploit the economic resources of the region. This policy of forced migration was continued under the Soviet government albeit with some modification, including the transition to Arctic development with Soviet style principles, including changes from peasant communities to communal housing based around collective subsistence farming and promoting youth programs aimed at encouraging leadership amongst the Soviet youth. In addition to the utility of the policy of forced migration, based on personal experience of having risen above the hardships of the Arctic labour camps of Imperial Russia prior to the revolution, Stalin perhaps thought of the Arctic as a testing ground for best character that Russia could produce.

The essence of forced migration to promote Northern development and the development of the Arctic as a Russian economic base, is however notorious for its cruel and sinister side. "It was inevitable that the Soviet Union's development of the Arctic territories, beginning as it did with a relatively blank slate in the Arctic, would be a reflection of the regime itself."<sup>411</sup> Not only was the Arctic used to imprison societal undesirables, in places such as the island of Sakhalin which was used as a penal colony, a destination so bad that occupants hoped to be moved to Siberia, a place dreaded by all other Russians elsewhere.<sup>412</sup> The Northern Sea Route, supported by icebreakers and aviation, was used to transport thousands of 'migrants' to the work gulags dispersed throughout Siberia--not only as a part of the criminal justice

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<sup>411</sup> (Emmerson, 2011, p. 41)

<sup>412</sup> (Viola, 2007)

system, but more critically to provide labour in order to mine the resources that would fuel the Soviet economy.

### **Russian Arctic Policy during the Cold War Period**

Russian Arctic policy during the Cold War is in part a continuation of the Arctic policies developed during the Interwar Years, and is in part reflective of the new structure of the international system featuring the introduction of the new rule of ideological discordance that resulted in the insecurity of the Cold War. Providing continuity between policies of the Interwar Years and the Cold War Period is the continued leadership of Stalin over the Soviet Union. Combined with the new realities of insecurity, suspicion and antagonism of the period, Russian Arctic policy makes a decided transition in the Soviet relationship with the Arctic in reflection of the new reality as they moved to pursue their national interests in primarily security and economic development, and only engaged with issues of social development and environmental protection when they factored into the grander Soviet strategy. Near the end of the Cold War period, it is Russian Arctic policy that creates opportunity for future international cooperation in the region.

If the Soviet Union produced Arctic policy documents during this period, they are no longer available for analysis and so a textual analysis of the policy of this period is impossible. Rather, Russian Arctic policy, using the same national interests identified in their 2008 Arctic policy document: sovereignty, security, economic development, environmental protection, and international cooperation have been used to guide the analysis of policy in this period. As a result, this section has relied on historical accounts of Soviet foreign policy during the Cold War, official publications of

the Soviet government, such as maps, propaganda and postage stamps, evaluation of their engagement with international legal mechanisms, scholarly articles on Soviet policy and newspaper archives to form an analysis of Russian Arctic policy of the Cold War period.

Dominating Russian Arctic policy during the Cold War period is the combined focus on sovereignty and security in the region. At the beginning of the period, being without any other rules of the international system to guide the delimitation of their Northern maritime boundaries, the Soviet Union continued to use the sector principle to demarcate their territorial boundaries. Although the sector principle failed to be accepted as a rule of the international system, its continued use in this period is understandable for several reasons: first, given the increase in aviation technologies combined with the increasing attitude of hostility and insecurity, the use of the sector principle gave the Soviets a clearly designated area for sovereign airspace. Russian policy continues to use the sector principle to determine their contemporary airspace a designation which proves useful in the determination of responsibility in the event of managing search and rescue operations.

Secondly, as sea ice remained without a legal status but was used in a manner resembling land for scientific research activities, the sector principle was used to frame the areas of 'territory' in which Soviet scientists operated. This had the result of demonstrating of the effective occupation of the Russian government in the maritime Arctic should their claims to sovereignty be challenged. The Soviet Union installed dozens of drift stations, many which were permanently manned by scientists in order to study ice and weather conditions, sea currents and geomagnetic observations in order to "ensure the maximum development of the Northern Sea



Route” which included making “ sea and air navigation in the Arctic more secure” through “the systematic collection of all the data which are needed to improve ice and weather forecasts.”<sup>413</sup> For many years, the Soviets not only banned their scientists from collaborating with other international scientists, but also prohibited research from being conducted within their territorial waters and refused to let foreign ships use the Northern Sea Route.<sup>414</sup>

The importance of the Northern Sea Route within Soviet Arctic policy is demonstrated in the effort maintained to make the passage operable. Not only did the Soviet government fund extensive scientific exploration for the entirety of the Cold War, but they also invested in the technology necessary to keep the Northern Sea Route open and created a bureaucratic mechanism charged with maintaining the administration functions of the route. This technology included the extensive development of a fleet of icebreakers used to keep the passage open. In 1956, the Northern Sea Route Administration managed “15 icebreakers, 100 ocean-going freighters, 150 aircraft, and 35,000 employees... operat[ing] entirely in Arctic waters and handl[ing] up to 2,000,000 tons of freight in a season.”<sup>415</sup> If the capability of Soviet operating capacity in the Arctic is compared with its Arctic neighbours, it is easy to see that Russian considers its Arctic developmental operational capabilities of higher significance. However, this could be in part due to the nature and structure of the Soviet economy, which did not require capital profits to be pursued as a policy objective.

This focus on the operational capabilities in the Arctic maritime had two rationales: military security and economic development.

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<sup>413</sup> (Webster, 1954, p. 62)

<sup>414</sup> (Østreng, 1992)

<sup>415</sup> (Marsden, 1958, p. 33)

With the arms race being a predominant feature of the Cold War and two of Russia's strategic maritime access points, the Baltic Sea and the Arctic Ocean, having ice cover in the winter, the fleet of icebreakers maintained by Russia were a tactical component in their naval abilities and home defence strategy. As a result of the strategic importance, "the Arctic emerged as an arena of naval superpower competition."<sup>416</sup> Although the Soviets did not widely publicise their military capabilities during the height of the Cold War<sup>417</sup> as technology such as nuclear submarines and intercontinental ballistic missiles became the standard equipment of the superpowers, Arctic operating bases became viable options for Russia—and the source of fear for their rivals. This intensive activity would lead to the Soviets using the Arctic as a nuclear dumping site, an issue that would in the future provide an opportunity for cooperation. It was also determined that despite to Test Ban Treaties and Soviet assent to other similar international agreements, this did not in actuality reduce the military threat from the Soviet Union against the NATO allies of the West.<sup>418</sup>

Economic development and exploitation of the resources of the Arctic was another predominate feature of Soviet policy in the Cold War period. This economic development, supported by the infrastructure of the Northern Sea Route, targeted hydrocarbons—first with coal and then moving onto gas and oil to fuel the expansion of Soviet industrial development, but also mining other minerals as the Soviet Arctic is "well-endowed with non-renewable resources, such nickel, cobalt, platinum, copper, gold, tin, iron and diamonds."<sup>419</sup> To support these mining activities, cities were developed in the Russian far North, providing workers

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<sup>416</sup> (Millar, 1992, p. 212)

<sup>417</sup> (Armstrong, 1963)

<sup>418</sup> (Örviik, 1964)

<sup>419</sup> (Nassichuk, 1987, p. 274)

for infrastructural growth and transportation, such as the Leningrad-Murmansk railroad, which was built to bring these resources to the populated areas of Russia. This development was of significance as it “accelerated emplacement of infrastructure that is applicable for both military and economic purposes and the drive to promote colonization, industrialization, transportation and communications links and the overall economic modernization” of the Arctic region.<sup>420</sup>

The totality of the Soviet Communist conceptions of economic structure included not only the exploitation of the natural resources to support the core, but it also included the alteration of the traditional lifestyles and economies of the Russian indigenous peoples. This policy was initially implemented in the Interwar Years, resulting the immediate devastation of populations due to famine and starvation, but during the Cold War period the social effects of this restructuring were more evident as substance abuse and suicide rates increased. Finally, the effects of the Soviet policies on indigenous lands included severe environmental degradation so that even when these relocation and reorganisation policies were relaxed it continued to affect indigenous populations. It remains that “all facets of aboriginal life have been influenced by environmental degradation, [and] it is the traditional activities—reindeer herding, hunting, trapping, gathering and fishing which have been most affected”; this environmental degradation also “attacks the very essence of aboriginal societies.”<sup>421</sup>

Although domestic Soviet environmental policy was in effect to have no policy at all aside from the exploitation of resources until near the end of the Cold War, it is environmental policies that provided opportunity for international cooperation outside of the

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<sup>420</sup> (Leighton, 1986, p. 292)

<sup>421</sup> (Fondahl, 1997, p. 68)

realm of military insecurities. This included international agreements on the Antarctic where Russia holds suspended territorial claims, but also in the *1973 Agreement on the Conservation of Polar Bears*. Incidentally, despite this late awakening to ecological consciousness and the awareness of the exhaustibility of natural resources, it is the Soviets who initiated the advancement of international cooperation on the basis of environmental concerns in the Arctic.

In what can be considered as the first step towards the end of the Cold War in the Arctic and also the first officially delivered position on Russian Arctic policy, the Murmansk Speech delivered by Gorbachev proposed that the Arctic states “let the North Pole be a pole of peace.”<sup>422</sup> Identified within this speech are the elements that would become the foundations of contemporary Russian Arctic policy: international cooperation, security, scientific research, the environment, Northern development and indigenous populations. Yet even during the final days of the Cold War, this turn to cooperation came with caution that “promoters of environmental regimes for the Arctic should be aware of this Soviet desire to limit the players in the Arctic to those with direct interests and activities there, keeping control in the hand of the Arctic eight.”<sup>423</sup> Although the Soviet Union would soon disintegrate, resulting in a change in the structure of the international system, the speech at Murmansk signalled to the other Arctic states that future of Russian Arctic policy was inclined toward international cooperation addressing the issues arising within the region.

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<sup>422</sup> (Gorbachev, 1987)

<sup>423</sup> (Osherenko, 1989, p. 150)

## Russia Arctic Policy in the Post Cold War Period

Following the breakdown of the Soviet Union and the transition to becoming the Russian Federation, Russian Arctic policy has not only been required to adapt to the change in the character of the domestic political structure of Russia, but it has also needed to adjust to the transition in the structure of the international system. The loss of global predominance that Russia experienced as a result of the shift from the bi-polarity of the Cold War caused a crisis in Russian identity as the country sought to develop a new identity that befitted their new position within the international system while still maintaining the pride and dignity of centuries of Russian civilization. While waiting for this new identity to stabilise, the posturing that has taken place within state practice of Russian Arctic foreign policy gives uncertainty to an international audience, even though their official Arctic policy document swears obeisance to international law. In an earlier era, Churchill evaluated that Russia “is a riddle wrapped in a mystery inside an enigma”<sup>424</sup> and having faced another series of transitions, today, the character of Russia is even more opaque.

The key to understanding Russian Arctic policy is in the identification of national interests, including those delivered in the 2008 *Foundations of State Policy of Russian Federation in the Arctic for the period to 2020 and Beyond* and how they might be achieved through the Russian relationship with the Arctic. The document thoroughly outlines Russia’s national interests, issues and objectives in terms of its use as a resource base, focusing heavily on the development of the Northern Sea Route including “the creation and development of the infrastructure and communications management system of the Northern Sea Route to solve the problems of Eurasian transit,” but also identifies a desire to

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<sup>424</sup> (Churchill, 1939)

conserve the Arctic ecosystems and to maintain the Arctic as a zone of peaceful cooperation while also to built a military “capable of ensuring military security under various military-political scenarios.”<sup>425</sup> These policy elements give rationalisation to Russian state practice in the Arctic, including involvement in international agreements such as the *Arctic Search and Rescue Treaty 2011* and the forthcoming Polar Code, but also to military activity and preparation in the region, which so often causes consternation amongst observers of Arctic international relations.

Fulfilling Gorbachev’s invitation to launch international cooperation in the Arctic and transforming it into a zone of peace, the Russian Federation has been an active participant in Arctic international relations and in the creation of Arctic governance. This includes acceding to both informal and formal agreements of Arctic international relations from the 1991 Arctic Environmental Protection Strategy and the resulting Ottawa Declaration 1996, establishing the Arctic Council. They were also participants in the Ilulissat Declaration 2008 where they committed to abide by principles of international law, but also to find solutions to regional issues outside of formal Arctic Treaty, restating a Russian position that the control of the region remain within the Arctic. Pursuing this position, Russia also ratified the *Arctic Search and Rescue Treaty 2011*, creating the opportunity for military cooperation between the Arctic states to demonstrate their fulfilment of the obligations of sovereignty under international law. Finally, they peacefully ended a forty year dispute over a maritime boundary in a bilateral treaty with Norway. The reason for this international cooperation is not only to address Arctic environmental issues which Russia cannot manage alone, but also to also keep control of the Arctic between the Arctic states as international interest in Arctic resources accelerates.

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<sup>425</sup> Russian Federation, 2008

A critical element of Russian compliance with international law is their relationship with the legal framework, the *United Nations Convention on the Law of the Sea 1982*, which establishes the procedure to establish sovereignty over maritime territory within the Arctic. The Convention entered into force for Russia in 1997 and Russia made an initial submission on the outer limits on the continental shelf in 2001 to the Commission on the Continental Shelf. The maps included in this submission depict the maritime borders of Russia as including the entire length of the median line between the United States and Russia and nearly all territory up to the North Pole on their western boundary.<sup>426</sup> This submission was evaluated as deficient in scientific evidence, especially in light of the territorial dispute with Norway, which has since been resolved. Russia resubmitted a partially revised claim in early 2013 on the limits in the Okhotsk Sea, but did not resubmit revised claims to the Lomonosov Ridge. However, given the longstanding claims by Russia on territory up to the North Pole, which has a historic role in Russian identity, and in reflection of the contents of the 2001 submission, it is expected that the claim to this territory will remain as the current policy document states the “boundaries of the Arctic Zone of the Russian Federation may be specified in accordance with the Normative Legal Acts of the Russian Federation.”<sup>427</sup> As evident of state practice demonstrating policy, Russian posturing in the flag planting exercise on the seabed of the North Pole in 2007 also denotes intent to maintain current boundary delimitations.

Since the early days of Imperial Russia, the Russians have considered the Arctic area north of their *terra firma* as Russian territory. In each phase of the international system they have implemented some form of control over the maritime region—

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<sup>426</sup> (Russian Federation, 2001)

<sup>427</sup> (Russian Federation, 2008)

from the banning of fur trapping in the early part of the Age of Discovery as trappers were avoiding Russian customs and taxes to the establishment of the Northern Sea Route Administration that determines who is allowed passage through the Northern Sea Route. Considering this long term control over the maritime Arctic for Russian national interests, it is expected that in the Post-Cold War Period, despite the changes in rules to the international system, that Russia maintains the desire to control the economic benefits of the region, to keep economic flows heading towards Russian coffers. However, the adoption of the Northern Sea Route as a major shipping lane from China to Europe is likely to encourage economic development for Russia and is thus in the national interest. The increase of traffic in this sensitive region also increases possibility of industrial accidents and environmental damage.

As the effects of any accidents would harm Russian maritime industries, as was demonstrated in the 1989 *Exxon Valdez* accident in Alaska where twenty-five years following the region still suffers the effects of this disaster, Russia is keen to avoid accidents. To mitigate this probability, Russia is cooperating with other Arctic nations and the International Maritime Organisation to develop a mandatory international code, the *Polar Code* to regulate shipping in the Arctic region. Given the rule of the freedom of the seas, it is unlikely the Northern Sea Route Administration can maintain legitimate jurisdiction over the entirety of the Russian Arctic beyond the contiguous zone and the *Polar Code* will provide Russia with the international authorisation to control maritime traffic in they consider to be their Arctic. This code was being drafted in early 2014.

The condition of the Arctic environment has been given a platform in Russian policy since Gorbachev's Murmansk Speech, and is



being addressed through several different strategies. The first is through international cooperation mechanisms. In addition to environmental strategies associated with the Arctic Council, Russia is cooperating with the Environmental Protection Agency of the United States and several other states in the Arctic Military Environment Program. This aim of this program is to assist Russia in the decommissioning of Cold War era nuclear arms and also to begin clean up of hazardous wastes, which were dumped in the Arctic during the Cold War.<sup>428</sup> While there is little that can be done at present to stop the melting of tundra in the Russian Arctic as a result of climate change and global warming, Russia appears to be engaging in international cooperation with issues that it can address.

Cooperation by Russia in international agreements, and specifically to the *United Nations Convention on the Law of the Sea 1982*, the pursuit of claims to sovereignty through this mechanism is merely a method to attract international investment in hydrocarbon industries. Russia's adherence to this legal mechanism gives foreign investors a sense of legal security in the designation of property rights for the territory where these resources are located. However, the 2008 *Foundations of State Policy of Russian Federation in the Arctic for the period to 2020 and Beyond* clearly indicates that the Russian Federation considers its boundaries to have been determined in the 1926 Soviet declaration on the sector principle. In the event that the Russian claims the Commission on the Continental Shelf are denied, it is unlikely that Russia will change the territorial borders on maps.

Russia has drawn its international boundaries up to the North Pole in the pie shaped wedge of the sector principle since 1926. These lines consistently appeared on military maps, postage stamps and

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<sup>428</sup> (United States Environmental Protection Agency, 2013)

propaganda posters throughout the Cold War period, often with a Soviet flag displayed at the North Pole. Russia also considers its airspace to fall within this territory; airspace in which Canada and Russia both warn each other to 'stay out', making protest when they feel their airspace is violated. Given the layers of territory which Russia has long embraced as part of their cultural and political heritage, it is unlikely that they will be willing to redraw the lines on their maps any time soon.

## **Conclusions**

It is often said that the best predictor of future behaviour is past behaviour, yet the Russian Federation is in effect a fledgling state. While it is an heir to the Soviet Union, inheriting the Soviet seat on the Security Council, nuclear status and other treaty obligations,<sup>429</sup> the actions of the Russian Federation cannot be simply viewed as a continuation of the Soviet Union's behavioural tendencies: it must be analysed of its own merit. Given the relatively short history of a state with so much international status there has been little time for the Russian Federation to make its mark. Yet, fortunately it has provided several fascinating events for analysis, including the planting of the Russian tricolour on the seabed at the North Pole.<sup>430</sup>

While it is impossible to precisely predict the future of the Arctic, it seems likely that the Russian position is not a new phenomenon, a turning over of the behaviour leaf—especially given that its government is partially formed of remnants from the Soviet regime and many of its political leaders were trained in Soviet ideology. It appears wholly possible that the Arctic and its historical borders are indelibly planted into the Russian identity. While current professions prescribe adherence to settlement frameworks of

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<sup>429</sup> (Light, 2001)

<sup>430</sup> Also including the 2014 annexation of Crimea despite international protest and sanctions.

international law, the analysis of these events determine that the international cooperation on issues of the environment and resource development is temporary smokescreen of the Arctic Front and the absolute motivation for these policies is the Russian national interest.

## Part Three: Governance

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## **Chapter VI**

### **Arctic Governance: Transformation, Rules and Doctrine**

Territorial control of the Arctic has occurred in several different phases of the international system and the recent turn to governance by the Arctic states is the result of transformation within the international system and changes in the rules which coordinate the behaviour between states in the international realm. In its simplest form, governance is defined as 'the act of governing'. However with state sovereignty formally constrained by borders, and given the anarchic condition of the international system, this creates a vacuum of jurisdictional control in the territory outside of state borders. As global issues outside of their borders increasingly affect states, the domestic space where they pursue 'the good' in policy decisions for their citizens becomes an insufficient realm to pursue their national interests, thus they are compelled to seek solutions outside of their sovereign borders in a place where they are without authority. As the relative size of the globe has diminished and states have become increasingly interconnected, some mechanisms of international relations, such as war or international law, have singly become insufficient to achieve the goals of states. Consequently, within the anarchic environment of the international system, a new mechanism—governance-- has been developed by states help achieve the national interests that sometimes extend beyond the jurisdictional limits of their sovereign borders resulting in the transformation of the region. Governance is thus a method for creating jurisdiction through multilateral consent in areas outside of sovereign territorial boundaries. This creation of governance to address the weakness of the sovereign state system has also resulted in the

testing of a new 'indigenous rule' and has had the effect of creating of an Arctic Doctrine.

Arctic governance has developed in the post Cold War phase of the international system, a system which features a plethora of layered rules-- both tacit and codified, that guide the expected behaviour between states as they engage in international relationships. Many of the rules currently in force were developed in a transition of the international system following the Great World Wars of the twentieth century, which resulted in a shift away from classical imperialism and toward a form of imperialism that, although more subtle, continued to repeat patterns of domination, including asymmetric power and economic relationships. The early generations of governance sought merely to prevent war in Europe, but over the last century, it has become more sophisticated and is capable of being proactive--rather than merely reactive-- to international issues. As a new generation mechanism, Arctic governance is unlike other regional governance regimes previously established in the international spectrum, notably the Antarctic Treaty System, as it seeks not only to eliminate conflict between the Arctic states, but it also address issues in advance of their reality (such as using Arctic Search and Rescue to mitigate a human and environmental disaster) while pursuing and protecting the interests of the Arctic states in the region.

Arctic governance, formally established through the Arctic Council, is also unusual in that not all states are treated equal within the hierarchy of participation and it elevates indigenous groups to a higher status than non-Arctic states. Yet despite this elevation, the Arctic states have in actuality reinforced the rule of structural hierarchy that posits states as the dominant agents within international relations. Although this inclusion of indigenous

groups within the decision-making processes of regional governance has been lauded as a great step forward for the international system in restoring indigenous sovereignty over lands and resources once apprehended by the powers of classical imperialism, this chapter will argue that the inclusion of indigenous groups within Arctic governance is not a restoration of indigenous status and is merely a method of imperialism whereby states can portray legitimate sovereignty over the Arctic but that this inclusion does not pose a challenge to the hierarchy of agents within the international system.

This chapter investigates the transformations in the international system relating to Arctic governance, the rationale for its development, the positions of the Arctic indigenous inhabitants within this system and within Arctic governance and finally, the development of an Arctic Doctrine through the following questions:

- What transformations have occurred to result in the creation of Arctic governance?
- Why is Arctic governance being pursued by the Arctic States?
- Does Arctic governance alter the hierarchy of the central actors within the international system?
- Is Arctic governance an Arctic doctrine?

Governance in the Arctic<sup>431</sup> has been addressed by Olav Stokke, Evan T. Bloom, Timo Koivurova, Karin Keskitalo and Oran Young, among others. These scholars have traced its development from an embryonic condition, beginning with Gorbachev's *Murmansk Speech* in 1987, the catalyst for ending Cold War politics in the

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<sup>431</sup> Although this paper focuses on transformations within circumpolar governance at state level, Arctic governance can also include organisations such as the Barents Euro-Arctic Region, Council of the Baltic Sea States, Inuit Circumpolar Council, and the Saami Council, etc.

Arctic by calling for cooperation amongst the Arctic states on Northern issues. This was followed by the development of the Arctic Environmental Protection Strategy 1997, by invitation from the Finnish government as response to Gorbachev's call. These actions provided the foundational structure for the Arctic Council, which emerged as a more formalised structure following the Ottawa Declaration in 1996 to "provide a means for promoting cooperation, coordination and interaction among the Arctic states, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues...."<sup>432</sup>

Since this event, governance in the Arctic has steadily developed into a cohesive structure for managing the emerging issues of the Arctic. This has been solidified with the establishment of the standing Secretariat for the Arctic Council in 2012, introduced with the intent "to strengthen the capacity of the Arctic Council to respond to the challenges and opportunities facing the Arctic,"<sup>433</sup> giving the structures of Arctic governance greater formality and consistency. The Arctic Council is the overarching structure of Arctic governance as it includes the five littoral states of the United States, Russia, Canada, Norway and Denmark, plus the other states with Arctic territory: Iceland, Sweden and Finland—making it truly circumpolar in nature. Thus, in the space of less than thirty years, governance in the region has blossomed from the hostility and insecurity of the Cold War to mature into a structure where members can collaborate to address the issues specific to the region, including environmental change, changes to the human dimensions--including the effects on traditional indigenous lifestyles and the results of increasing commercial development.

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<sup>432</sup> (Arctic Council, 1996, at 1(a) p. 2)

<sup>433</sup> (Arctic Council, 2011 e, p. 2)



## The Discourse of Governance

In its most basic of definitions, governance can be defined as the control of the policy, affairs and actions of a state or organisation.<sup>434</sup> The term is often used to describe the “characteristics that are generally associated with a system of national administration”<sup>435</sup> but it can also be tied to global administration, described by the World Health Organization as “an international process of consensus-forming which generates guidelines and agreements that affect national governments and international corporations.”<sup>436</sup> The World Bank has identified several specific aspects of governance, including “i) [a] form of political regime; (ii) the process by which authority is exercised...; and iii) the capacity of governments to design, formulate and implement policies....”<sup>437</sup> The Institute of Governance, Ottawa defines governance as “the institutions, processes and conventions in a society which determine how power is exercised, how important decisions affecting society are made and how various interests are accorded a place in such decisions.”<sup>438</sup> International governance can be “confined to those processes which are intended to create a more supranational structure for dealing with the collective problems of the ‘global neighbourhood’.”<sup>439</sup> As this chapter is concerned with governance within international relations and, specifically the governance of a region vis-à-vis a community of states and as such uses a narrow conception of the term, to include the formation of the supranational administrative mechanisms and the exercise of power to manage the affairs and interests of the neighbourhood of the Arctic region.

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<sup>434</sup> (Oxford Dictionaries, 2013)

<sup>435</sup> (Weiss, 2000, p. 795)

<sup>436</sup> (World Health Organization, 2013)

<sup>437</sup> (World Bank, 1994, p. xix)

<sup>438</sup> (Weiss, 2000, p. 797)

<sup>439</sup> (Brus, 2002, p. 4)

The world over is intrigued by the almost daily developments in the Arctic. Scarcely a day passes without mention of the Arctic in media, often paired with the keywords of oil, territorial claims or resources. One day the Russians are planting flags and on another, the Danish military is safeguarding prospecting oil companies from environmental protest groups. At first glance, the region appears to be haunted with the ghosts of the Cold War with disputed claims to territorial boundaries, the training of special military forces and statements by political figures claiming sovereignty over their slice of the continental shelf pie pregnant with its bounty. Realist games of power politics are undoubtedly a feature of Arctic activity and if only these events are considered, the predicted future of the Arctic is bleak indeed. However, these examples and others like them do not adequately depict the nature of development in the Arctic as these power theories focus on the conflicting exertion of wills and interest of states which rarely results in “the crude maximisation of power as the basic goal of national interests.”<sup>440</sup>

The material factors of the Arctic give force to the drivers of interest in the region, but alongside the obvious pursuit of national interests of security and survival are the distinct signs of cooperation. The Arctic states have banded together to address the emerging issues that economic development and climate change bring to the region, causing the national interests of security and survival to become cooperative activities if the possibility of environmental destruction and economic loss is to be avoided. Thus, the Nuuk Declaration of the Arctic Council, the Ilulissat Declaration of the Arctic States and the International Maritime Organisation’s Polar Code which affirm protection of the Arctic environment as priority, along with a commitment to existing structures of international law as prescriptive order for the

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<sup>440</sup> (Frankel, 1970, p. 47)

behaviour of states in the international realm, lay positive steps to the future of a peaceful, secure and productive Arctic, an example of the uniqueness of liberal democracies “in their ability and willingness to establish peaceful relations among themselves.”<sup>441</sup> The developing governance of the Arctic has provided multiple opportunities for cooperation and many actors, including NGOs and indigenous peoples are promoting this progression. Yet power and authority in governance structures still remain with the state and so the liberal paradigm focusing on the roles of institutions and the equality of agents within the international system also remains inadequate to describe Arctic governance.

Governance institutions, or the lack thereof, reflect the structure of the international system in a particular era. Ultimately, “international cooperation is not formulated, and certainly not implemented, in a vacuum” but rather governance is introduced into “a ‘regulatory’ space already occupied by a set of problem definitions and policy strategies.”<sup>442</sup> The result is a continuous layering of institutions, regimes and other normative expectations, which together construct an international system understood through “shared knowledge, material resources, and practices.”<sup>443</sup> For the Arctic, the ‘regulatory’ space was absorbed into sovereign control in an era of classical imperialism; today, Arctic governance is being built upon this layering of rules with a foundation in imperialistic practices. The layers of rules do not eliminate the history of imperialism in the Arctic, rather they have the cumulative effect of enforcing the position of states as the rule-makers, thus establishing the standards for normative behaviour within the international system.

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<sup>441</sup> (Burchill, 2005, p. 59)

<sup>442</sup> (Hanf & Underdal, 1998, p. 161)

<sup>443</sup> (Wendt, 1995, p. 73)

The international system in which Arctic governance is constructed is not a tangible structure. Rather, it is a product of shared understandings between agents who accept that the structure does exist. Like all systems, the international system is ordered by certain rules, principles and procedures, but it is a “social structure that exists only in process.”<sup>444</sup> As a product of social and political development, this system is subject to change as new forces act upon it and as new rules are introduced to the system. The Arctic as a region in need of political organisation has been accepted by states with national interests in the Arctic region, who as a result are cooperating to protect and expand on these interests. So while the needs of the indigenous citizens of the Arctic might be included in these interests, it is not yet in their interest to elevate indigenous agents to the hierarchical level of states as this could provide competition to the sovereignty over territory in the Arctic.

Governance in the Arctic appeared in a recent phase of Arctic imperialism and is a method for combatting the anarchy of the international system. To borrow from Wendt, anarchy in the Arctic is what states make of it. Governance seeks not only to address the wills and interests of the Arctic states as they follow patterns of expected behaviour in international relations, but by banding together, states have created a technique whereby competition from states outside of the Arctic region can be controlled or even eliminated. This use of governance to isolate the Arctic meanwhile uses methods of imperialism to achieve control of the discourse and the material resources of the region.

This phase of Arctic imperialism follows an earlier phase of imperialism when the Arctic was militarised during the Cold War and the previous stage of expansive imperialism in which the

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<sup>444</sup> (Wendt, 1995, p. 74)

territory of the Arctic was carved up between the now littoral states. Throughout these phases, the international system was undergoing a series of gradual transformation of its own, with new rules being introduced to manage the interactions between states in their international relationships. The Arctic is without a comprehensive system of political organisation and the governance of the region is a system that has been pieced together, addressing the needs of the powers of the region in specific eras and closely mirrors the development of the international system—making Arctic governance a subset of the international system.

### **Rationale for the Creation of Arctic Governance**

There have been calls for the creation of an Arctic Treaty, similar to the regime created by the *Antarctic Treaty System 1959*, claiming the region would face meltdown if cooperation did not materialise.<sup>445</sup> Although Art. 234 of the *United Nations Convention on the Law of the Sea 1982* makes provision for special legal arrangements to be made for areas with ice covered waters, the Arctic littoral states have continuously stressed that the Arctic can be managed through existing mechanisms of international law. However, the caveat to these declarations is that existing international law cannot account for the special issues created by the climatic hostility of the Arctic region, and thus there is a need to create additional mechanisms for managing the Arctic. Hence, the creation of governance for the region, including the Arctic Council and other instruments of Polar Law such as those managing search and rescue and the operation of vessels in ice-covered waters.

International governance is a mechanism providing a means to manage the conditions created by two shared understandings in

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<sup>445</sup> (Griffiths, 1979)

the international system. Firstly, international governance addresses the problem of anarchy, which itself results in two deficiencies in international relations. The first deficiency is that under anarchy, there is a lack of an overarching global authority to order the behaviour between states. The second deficiency is that the international system is comprised of several hundred discrete political units, each with control over a finite territorial space. As the spaces beyond the sovereign borders of the state are *terra nullius* and lack the ordering power of political authority, they remain a no man's land, with all the insecurity and competition that arises from a lack of political order. Thus, international governance provides a mechanism whereby states can overcome the anarchy in the spaces of *terra nullius* to act with authority in these extraterritorial spaces.

The development of international governance arose out of the need for states to counteract the condition of anarchy in the international system. The international system can be likened to a sort of figurative pre-social state of nature, with states acting as individual units that must ensure their own survival against competition from other political units, as each unit wrestles with the dilemma of scarcity and the fear of insecurity. As states realised their survival is best vested in cooperation—or through some form of a social contact, such as those arising from governance and international law, mechanisms for ordering the normative behaviour between states are created. Thus, governance emerged as a counter-balance to international anarchy where existing international law mechanisms fail to fully address the interests of states, although it does not provide an absolute remedy.

Without state cooperation in the international realm, the life of states could indeed be “nasty, brutish and short,”<sup>446</sup> given the state of anarchy in the international system. In earlier stages of the international system, international relations was driven by absolute and unrestricted competition, resulting in the bloody rise and fall of many empires and the consolidation of other polities into increasingly larger political units—a situation which the *Peace of Westphalia* is often considered to have diminished, revisionist accounts aside. While it is sometimes supposed that the creation of governance systems has resulted in the decline of the power of states, resulting in a diminishing of state sovereignty, it has in actuality increased the potential quality of states.<sup>447</sup> The formation of international governance has not diminished state sovereignty for those states traditionally operating within the Westphalian system and has allowed the international system to evolve away from the Hobbesian conception of a fearful state of nature.

The development of governance in the international realm has had the result of creating a situation whereby states can coordinate the mutual pursuit of interests through cooperation in areas extraterritorial to their sovereign borders. In sacrificing unlimited restraint of territorial expansion by consenting to instruments of international governance, the threat of insecurity been reduced for the many as cooperation is the best method of ensuring the chance to prosper in a sort of collective security. While the condition of anarchy in the international system and the competition that initially emerges from this state of insecurity at first provides a Hobbesian atmosphere to international relations, what thus follows is a Lockean conception of the social contract which is initiated as a way to ensure the protection of “life, liberty and

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<sup>446</sup> (Hobbes, 1651)

<sup>447</sup> (Jennings, 2002, p. 36)

property.”<sup>448</sup> Although Arctic governance is not governance in the same ilk of governing occurring within the domestic sphere, its creation has given states a means whereby they can cooperatively control Arctic issues within the international realm.

When the Cold War ended, the structures organising the behaviour between the states littoral to the Arctic Ocean also disappeared, creating a vacuum in the normative expectations as the previous militarization-security order was no longer required. This sudden transformation in the international system created opportunity for the Arctic states to form new understandings for the region. From this has resulted the development of governance and political cooperation in the region, opposed to the former shared understandings of conflict and insecurity. In addition to the breakdown of the Cold War as the normative rule, the realisation of environmental change and of the wealth of the Arctic provided the impetus for the Arctic states to advance levels of cooperation to ensure territorial integrity, environmental protection and sustainable development within the region.

### **Identifying Transformation in the Arctic**

Governance in the Arctic has had the opportunity to develop due transformations in several dimensions. There are the physical transformations occurring in the Arctic at a rate faster than man has seen before, usually communicated in biannual publication of the minimum and maximum ice extents,<sup>449</sup> with references to the changes in volume of multi-year ice and melting of the permafrost. These transformations have been repeatedly identified in political speeches and reports from government, intergovernmental and non-governmental organisations and have been enumerated in the

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<sup>448</sup> (Locke, 1988)

<sup>449</sup> See National Snow and Ice Data Center. at [http://nsidc.org/cryosphere/sotc/sea\\_ice.html](http://nsidc.org/cryosphere/sotc/sea_ice.html)



academic literature on the Arctic. For example, the 2012 Arctic Report Card by the National Oceanic and Atmospheric Administration of the U.S. Federal Government indicates that “large changes in multiple indicators are affecting climate and ecosystems, and, combined, these changes provide strong evidence of the momentum that has developed in the Arctic environmental system due to the impacts of a persistent warming trend that began over 30 years ago...Thus, we arrive at the conclusion that it is very likely that major changes will continue to occur in the Arctic in years to come....”<sup>450</sup> It is the initial identification of these changes and their implications that caused Gorbachev to call for change in the foreign policy of the Arctic states towards the region, realising that the model of military pre-eminence was an unsustainable pattern for future security issues of the region.

The result of identifying these changes is the establishment of governance structures to address the implications of these environmental and developmental changes. Cooperation between the Arctic states was initiated by the prompting of Gorbachev in his *Murmansk Speech 1987*, identifying the climatic changes in the Arctic and encouraging cooperation for resource development. There is unfortunately, very little prospect of preventing these changes from continuing, and likely it is even impossible to prevent them from accelerating. To address both the dilemmas and opportunities that these changes bring to the region, a second form of transformation has also been occurring since the late Cold War Period, seen in the creation of governance structures for the region—from a situation with no discernable governance to a maturing structure capable of addressing the changing needs of the region. In fact, the structure of governance in the Arctic is developing at such a brisk pace that by the time academic

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<sup>450</sup> (National Oceanic and Atmospheric Administration, 2013)

materials are published on the topic new advances in the politics of the region have rendered them obsolete. Oran Young has previously identified these two types of transformation saying, "Taken together, these and a number of related developments are dramatic enough to justify the proposition that the Arctic is experiencing what systems analysts think of as a state change."<sup>451</sup> Arctic governance is thus an attempt by states to respond to significant state change within the region.

Yet, not discussed by others in their discussions of Arctic governance is that this state of change within the Arctic has the potential to create tension throughout the fabric of the international system. The third transformation identified within this paper is a change that has created the opportunity for the structures of governance within the Arctic to act as a catalyst for a transformation on a grander scale. The element with the potential to introduce this third transformation was identified by Young who said: "The Council has accepted a number of indigenous peoples' organizations as Permanent Participants in its activities, a notable precedent with implications extending far beyond the Arctic."<sup>452</sup> Despite the identification of indigenous inclusion in the governance mechanisms of the Arctic, the potential *de facto* implications for the international system are not identified or discussed by Young. This third form of transformation for the Arctic is seen as a change within the international system that would allow for the indigenous peoples to be considered as equivalent agents of power not only within Arctic governance, but also within the entirety of the international system, a situation that within the current structure of the international system is far from reality.

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<sup>451</sup> (Young, 2009, p. 424)

<sup>452</sup> (Young, 2009, p. 428)

The introduction of this element of change into the realm of international relations gives opportunity for it to achieve reality and the next section will discuss the method by which a trajectory of transformation is introduced to the international system and how this third transformation has been introduced to the Arctic region. However, it is the position of this chapter that although advances have been made away from an international system ruled by imperial practices of territorial land grabs and disenfranchisement of the indigenous people from their traditional homelands, states are still the primary agents of the international system and the gratuitous inclusion of indigenous populations of the Arctic as participants to governance processes does not effectively indicate a transformation in the structure of the international system to include indigenous groups as equal actors. Imperial practices have not disappeared from the international system but have merely changed form.

### **Governance + Indigenous Participation = An Indigenous Rule?**

Transformation in a system occurs because of the introduction of a new rule, or a new shared understanding, which influences the normative behaviour of the agents operating within that system, and it has already been identified that several rule changes have been made to result in transformation in the Arctic region. Rules are established to “shape normative and ideological frameworks that constitute stable patterns of interaction,”<sup>453</sup> and Kratochwil has identified that “rules and norms mold decisions via the reasoning process (deliberation).”<sup>454</sup> Rules provide stability and help to form expectations in regard to the behaviour of states within the international system, reducing potential for insecurity and providing a way to manage competition. As the dominant

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<sup>453</sup> (Burch, 2000, p. 187)

<sup>454</sup> (Kratochwil, 1989, p. 43)

agents of political organisation in the international system, for centuries, states have created rules that have positioned themselves advantageously. Some of the rules that have made states the dominant agents of international relations include those giving states a monopoly on war, sovereignty over territory, and jurisdiction over their citizens, amongst others. These rules have been tacit, demonstrated in the behaviour of states, and sometimes explicit, such as in the instances of ceremonies of possession, which made imperial power the new overlords of distant lands and in the creation of codified international law. Yet, within the circles of Arctic social scientists, it is a common belief that the inclusion of indigenous participants within Arctic governance has resulted in the introduction of a new rule that will change the hierarchy of agents within the international system.

One can observe that it is not within the remit of just any political agent to create similar rules and norms for themselves through mere declaration, desire or similar behaviour—there is a clear and distinct pecking order within the international system with states at the apex descending to the individual person at the end of the social hierarchy of political organisation. States have the ability to create rules in the international system. Individuals, and even groups of individuals do not have this ability. In the case of the Arctic, an attempt was made by an agent to introduce change within the system through the introduction of a new rule. This occurred in 2009, when the Inuit Circumpolar Council issued *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, which included the following statement:

“The conduct of international relations in the Arctic and the resolution of international disputes in the Arctic are not the sole preserve of Arctic states or other states; they are also within the purview of the Arctic’s indigenous

peoples. The development of international institutions in the Arctic, such as multi-level governance systems and indigenous peoples' organizations, must transcend Arctic states' agendas on sovereignty and sovereign rights and the traditional monopoly claimed by states in the area of foreign affairs."<sup>455</sup>

The declaration identifies that the Inuit have been living in the Arctic "from time immemorial"<sup>456</sup> and that although they have ultimately become the citizens of Arctic states, they are in fact an indigenous people with sovereign rights accorded them in international law through the *United Nations Declaration on the Rights of Indigenous People 2007*, including:

"the right to self-determination, to freely determine our political status and to freely pursue our economic, social and cultural, including linguistic, development (Art. 3); the right to internal autonomy or self-government (Art. 4); the right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with states (Art. 37); ...the right to participate in decision-making in matters which would affect our rights and to maintain and develop our own indigenous decision-making institutions (Art. 18); the right to own, use, develop and control our lands, territories and resources and the right to ensure that no project affecting our lands, territories or resources will proceed without our free and informed consent (Art. 25-32)...."<sup>457</sup>

Yet, despite these claims to sovereignty in the Arctic by the indigenous community (especially those claims relating to

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<sup>455</sup> (Inuit Circumpolar Council, 2009, 4.2)

<sup>456</sup> (Inuit Circumpolar Council, 2009, 1.2 )

<sup>457</sup> (Inuit Circumpolar Council, 2009, 1.4)

territory, resources and participation within treaty agreements), the territory of the Arctic--both terrestrial and maritime-- has been divided between the *states* of the region through a lengthy history of imperial practices, including the development of international law structured around the Westphalian notion of the primacy of states as the dominant agents within the international system. Arctic sovereignty has been determined at the international level through treaty based territorial delimitations, and by both tacit and explicit shared understandings. Historically, as peripheral agents, indigenous people have not been included in the treaty negotiations, or development decisions over the future of the land they inhabited. And despite rules, such as the right of indigenous persons to self determination, being introduced to the international system, Arctic sovereignty--past and future-- is within the hands of states as the dominant agents of the international system.

### **Asymmetric Relationship Between States and Indigenous Groups**

Traditional conceptualisations of international governance do not consider the role of non-state groups, such as indigenous persons: states are the most important actors within the international system. However, within the Arctic there has been some differentiation in the normal approach of states to governance in that 'symbolic' nods to their importance have been made in governance documents. This has been in part due to the promotion of indigenous participation within the devolution of domestic governance in Canada, coupled with the development of indigenous groups into politicised organisations and the acknowledgement of indigenous rights within the international

realm.<sup>458</sup> Yet, these changes are not sufficient to change the hierarchical position of indigenous groups within the international system.

While most change occurs so gradually it is barely discernable to those evaluating only episodic events as opposed to the *longue durée*,<sup>459</sup> by taking a cross section<sup>460</sup> of the international system in a given period of history, it should be possible to observe the international relations occurring within a different set of rules and principles ordering the affairs and conduct between states. In the first cross-sectional observation of Arctic governance during the corresponding first phase of Arctic imperialism, governance arguably did not exist. This is because the agents within the international system were operating under the *modus operandi* of *carpe diem*—or more precisely '*carpe terra nullius*'—seize any available territory and resources not effectively administered by another sovereign state. Emphasis is placed here on the requirement for land to be under the control of a legitimate state -- mere occupation by a people group did not qualify. According to European rationalisation, vacant land was available for territorial claim.

The single exception to this principle of vacancy is the notion of utility and that some land could be deemed as effectively administered by a commercial entity via the authority of a state, such as the charters held by the Hudson Bay Company or the Russian American Company. If a land was appropriately utilised or administered, it was no longer vacant. This was demonstrated as the Hudson Bay Company was considered as legitimate owner of the territory designated on its maps due to administration—and

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<sup>458</sup> The United Nations Declaration on the Rights of Indigenous People includes rights to self-determination, autonomy and self-government, (United Nations, 2007).

<sup>459</sup> (Brandel, 2012)

<sup>460</sup> A cross section is "A surface or shape exposed by making a straight cut through something, especially at right angles to an axis", (Oxford University Press, 2014).

was even returned due to this realisation by the *Treaty of Utrecht* after France attempted acquisition of the territory. In the case of the Russian American Company, the company operated under the remit of the Tsar to operate in the interest of the Russian empire. Yet these examples still fall out of the category of 'governance' proper as used by this chapter, as it constitutes governing inside, rather than outside of territorial boundaries.

These rules of territorial acquisition provided the justification for the annexation of the territory of the Arctic into the sovereign domains of the circumpolar states. And although the international system now incorporates enlightened principles such as the rights to self-determination, or the innocence of non-combatants in wartime, the introduction of indigenous representatives into the governance mechanisms as participants does not elevate them to the same status of the state. The state remains the primary agent of analysis in the international system and is not yet ready for the introduction of the rule of 'indigenous groups are equal with states', as it would upset the relative hierarchy and order of the international realm. Thus, it can be determined that the inclusion of indigenous groups into Arctic governance does not yet constitute a new rule.

### **Arctic Governance as an Arctic Doctrine**

In the contemporary discourse of Arctic international relations, the Arctic states have continuously confirmed it is their position that an Arctic Treaty, similar to the treaty system developed for the Antarctic, is unnecessary for the region. This position is seen in the 2008 Ilulissat Declaration of the five littoral states, in United States policy documents from the Cold War Period and an Arctic



Treaty, drafted in 1991, that was never adopted.<sup>461</sup> The idea for the Polar States to convene a conference to collaborate on legal issues of Arctic sovereignty was initially suggested during the Interwar Years, realising that the organisation of a conference to establish “a definite Arctic Doctrine”<sup>462</sup> would require the invitation of non-polar states as the international system had become more formalised.<sup>463</sup> In between the Interwar Years and now, law applying to maritime sovereignty, applicable to the Arctic, has changed so that states are now able to claim sovereignty over the Arctic maritime via the law of the sea rather than by the sector principle, eliminating the need for a conference on these issues. However, new issues and interests in the Arctic have since developed and to form an Arctic Treaty, establishing rules contrary to those already existing in international law—such as establishing the Arctic as a *mare clausum*-- would require the consent of non-Arctic states. Thus, through the establishment of Arctic governance and patterns of accepted practice in the Arctic, an Arctic Doctrine is being formed which guarantees only the involvement of Arctic states in regional cooperation, excluding non-Arctic states from the decision-making process.

There are significant differences in the comparative situating of Arctic governance and the Antarctic Treaty System in the international sphere, mostly relating to the geographic differences between the two Polar Regions that have led to different circumstances in their sovereign development. This has correspondingly resulted in different individual treaty arrangements being developed in the regions, correlating to the interests and duties that accompany sovereign rights of the involved states. Although they are similar in their climatic

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<sup>461</sup> Arctic scholar Donat Pharand produced a draft Arctic Treaty in 1991.

<sup>462</sup> (Taracouzio, 1938, p. 366)

<sup>463</sup> This recommendation was made by Soviet scholar Lakhtin in discussion on the legal viability of the sector principle claimed by Russia and Canada, but not by the United States, see (Taracouzio, 1938).

conditions, like their geographic situating, the development of the region has resulted in nearly opposite legal arrangements. Although both regions have legislation protecting exclusively polar species and encouraging environmental protection, the Arctic is being developed for economic advantages, while the Antarctic is currently protected from similar exploitation.

Arctic Governance Agreements vs. Antarctic Treaty System			
1973	Agreement on the Conservation of Polar Bears	1959	Antarctic Treaty
1991	Arctic Environmental Protection Strategy	1972	Convention for the Conservation of Antarctic Seals
1996	Ottawa Declaration	1980	Convention on the Conservation of Antarctic Marine Living Resource
2011	Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic	1991	Protocol on Environmental Protection to the Antarctic Treaty

Figure 1: Arctic Governance Agreements vs. Antarctic Treaty System

Although both the Arctic and Antarctic were approached through the opportunities of the Age of Discovery, they have developed in very different ways, especially in the area of formal sovereignty. The *Antarctic Treaty 1959*, Art. 4 makes provision for the suspension of territorial claims to sovereignty by states that have engaged with the Antarctic. This was agreed in a time when states had failed to fully administrate the region, with the exception of rotating populations of scientists, and in many respects the Antarctic treaty gave states a hiatus that allowed them to continue casual engagement with the region, at a significantly lesser cost than absolute empire. However, as the Arctic is an ocean surrounded by land, sovereignty over the surrounding land had been established long before the notion of the ‘common heritage of mankind’ emerged as a principle of international law. Additionally, the territory available for sovereign claims in the sea has continued to expand in the law of the sea in the latter half of the twentieth century. It can be seen in state practice and policy in the

Arctic, that state sovereignty and the rights that accompany sovereignty are the number one priority of the Arctic states.

It is the resources that lie in these extended territorial areas, such as the exclusive economic zone and the continental shelf, that impel states to pursue maritime sovereign claims in the Arctic. While access to (and exploitation of) resources for national interests is likely to always be a policy priority for states, within the Arctic, these resources are able to be isolated for exploitation by individual states due to the provisions of the law of the sea. This is not the case in the Antarctic where no sovereignty has been established over land and thus sovereignty over the resources in the sea is undesignated. With the *Antarctic Treaty System* restricting or prohibiting resource exploitation, it eliminated competition for these resources from other states. With sovereignty already determined in the Arctic, it is impossible to remove these resources from competition in the same manner; thus, the best option for states is to sequester the resources from themselves, eliminating competition and protecting national interests by improving resource security.

The *Antarctic Treaty* was formed through a conference of polar and non-polar states, establishing legitimacy in international law even though it veers from other traditional legal arrangements, such as laws of territorial acquisition, suspending sovereign rights of the occupying states, an arrangement which could not have been made without multilateral consent. With the Arctic having developed with territorial sovereignty determined by the littoral state and thus permanent sovereignty over resources simultaneously secured, the developments in the law of the sea to extend maritime sovereignty into the Arctic Ocean has given the littoral states access to the resources of the Arctic Ocean. This makes it unlikely, if not impossible, that the Arctic states would

ever agree to establish the Arctic Ocean as the common heritage of mankind. Nor would it strategically be in the interest of a singular Arctic state to waive rights to access to the resources of the Arctic. The resulting effect of choosing not to establish an Arctic Treaty is to purposefully exclude non-Arctic states from making decisions affecting resource development in the Arctic and thus governance has been developed which is specifically exclusionary, permitting membership only to Arctic states.

The use of international shipping lanes is one activity from which the Arctic states cannot exclude non-Arctic states, and nor would they desire to pursue this exclusion as the Arctic shipping routes are the longest sought after economic resource of the Arctic regions! However, the development of the polar routes as climate change encourages ice melt brings with it a new set of problems in the form of potential accidents, chemical spills and environmental damage. Without an Arctic Treaty, it is impossible for the Arctic states to establish legitimate regulations for shipping in the Arctic. To circumvent this weakness of existing Arctic governance mechanisms, regulations for polar shipping are being pursued in the forthcoming Polar Code, sponsored by the International Maritime Organisation, a specialised branch of the United Nations, gaining legitimation through the backing of the entirety of the international community of states. The Polar Code will provide the Arctic states with the authority to enforce safe shipping practices within the Arctic, without having to concede exclusionary practices in other matters to non-Arctic states.

The Arctic Council and other elements of Arctic governance together form an umbrella mechanism through which the Arctic states can cooperate on overlapping issue areas affecting the Arctic. This cooperation between Arctic states began through environmental protection strategies, but has advanced to address

Arctic specific issue areas as suggested in Article 234 of the *United Nations Convention on the Law of the Sea 1982*. An example of this cooperation is seen in the development of the *Arctic Search and Rescue Agreement 2011*, collaborated through the forum of the Arctic Council, but not produced officially under the council. It is likely that the future will bring with it additional Arctic specific legislation that addresses overlapping issue areas, developed through the Arctic Council which simultaneously strengthens existing mechanisms of international law.

While the Arctic states have stated that they do not intend to develop an Arctic Treaty and that they will abide by existing principles of international law and have not expressly produced a statement known as an Arctic doctrine, the development of Arctic governance should be seen as the development of an Arctic Doctrine for the Arctic states. There are explicit policies and preferences that have been repeatedly reinforced in the development of Arctic international relations including: state sovereignty as a primary focus, exploitation for national interests, exclusionary practices that isolate the resources of the Arctic for the Arctic states, and the encouragement of cooperation for overlapping issue areas. Taken together, these preferences should be considered to form an Arctic Doctrine, as they constitute the policy of the Arctic states.

## **Conclusions**

Arctic governance has developed due to the occurrence of two types of transformation, one within the international system, the other within the Arctic itself as it is affected by climate change and the technological capabilities of modern man. The need for the existence of governance is due to the constraints that the sovereignty of states places on their ability to legislate outside of

their territorial borders. Thus Arctic governance has been developed to create a mechanism for Arctic states to extend their influence over issues affecting their national interests outside of their borders.

The international system has undergone a rapid transformation in the last century from the Age of Discovery, where a few states participated in gross annexation of 'underutilised' territory, to a system of many states acceding to rules and codes of the international community to ensure their security and prosperity. Within this system is a hierarchy of social order, and states are the primary unit within this system as they are the political units that wage war, respond to international incidents and most importantly, have the sole authority to ratify international treaties. Within Arctic governance, the introduction of indigenous groups as permanent participants within the Arctic Council introduced the possibility of a rule change within the social hierarchy. It appears that although there have been claims by indigenous groups to political and territorial sovereignty in the Arctic, at present this inclusion of indigenous groups is not a rule change, but is merely a phase of political enlightenment, with states ignoring these sovereignty claims, attempting to include people who were earlier relieved of their territories by imperial states.

Finally, Arctic governance has created an environment for international cooperation where issues of the Arctic can be addressed and where solutions for these issues can be developed. This turn towards cooperation is possible only because of the transformation away from the rule of the Cold War when the Arctic states were hostile and the Arctic was seen in terms of war. The development of governance has made it possible for the Arctic states to avoid creating an Arctic treaty in which Non-Arctic States would need to be involved. Arctic governance has thus become an

Arctic doctrine through which the Arctic states are pursuing sovereign interests, including resources exploitation and excluding non-Arctic states from making decisions on Arctic issues.

## Chapter VII

### **A Political Assessment of the Arctic Search and Rescue Agreement: Text, Framing and Logics**

(This content of this chapter was published in *The Yearbook of Polar Law V*, Koninklijke Brill NV, Leiden, 2013.)

Testament to the advancement of the Arctic Council as a regional intergovernmental organisation, in May 2011, the Arctic states agreed upon its first multilateral legally binding instrument, *the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic 2011 (SAR Agreement)*.<sup>464</sup> The signing of the agreement occurred at the same Ministerial Council in which the Arctic Council provided for a permanent secretariat, two events advancing its relative importance as a central organisation of Arctic international relations and is seen as “a positive step toward building partnerships in the Arctic.”<sup>465</sup> Although it is a legally binding agreement, the *SAR Agreement* can itself be determined to be an instrument of not just hard law, but also as “primarily a political document,”<sup>466</sup> aiding state cooperation in the Arctic, not dissimilar to the usefulness the *Antarctic Treaty* provided for international relations in the Cold War climate of 1959. As there are points on politics, as well as capability, with significant mileage to be considered relevant to the *SAR Agreement*, it is the intent of this article to assess the political elements and implications of the *SAR Agreement*.

There is some difficulty in analysing a legal text for the political elements and the resulting implications without reviewing the communications exchanged between states in the writing of the

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<sup>464</sup> The *SAR Agreement* is the first instrument agreed under the auspices of the Arctic Council. Other multi-lateral treaties involving the Arctic include: the *North Pacific Fur Seal Convention 1911*, the *Svalbard Treaty 1920* and the *International Agreement on the Conservation of Polar Bears 1973* predate the creation of the Arctic Council.

<sup>465</sup> (U.S Department of State, 2011)

<sup>466</sup> (Exner-Pirot, 2012)



text of the agreement. In the Tromsø Declaration 2011, the Arctic Council approved the “establishment of a task force to develop and complete negotiation...of an international instrument on cooperation on search and rescue operations in the Arctic.”<sup>467</sup> The treaty negotiation process usually involves the representative of states presenting their interests to a task force and for a document to be forged from the merging of these interests. However, in the case of the *SAR Agreement*, no negotiation documents exist.<sup>468</sup> Thus, although it is impossible to determine issues of politics from the missing negotiation texts, several issues have been identified throughout this analysis of the international relations of the *SAR Agreement*.

The advent of the *SAR Agreement* gives way to the first point of political significance and this is that the agreement was signed at the same Ministerial meeting that also established the permanent secretariat for the Arctic Council. Without the permanent secretariat, the Arctic Council had been considered largely as a forum for dialogue on Arctic matters between the Arctic littoral states, states with territory within the Arctic Circle and indigenous groups with social interest in the Arctic. The establishment of the permanent secretariat signals the intention of the members of the Arctic Council to extend the intergovernmental organisation from a mere forum for conversation to a proactive regulating and decision-making body.<sup>469</sup> This strengthened operational intent will aid to optimise cooperation between Arctic Council members and its permanent observers as the interest in the region increases from outside states and commercial operatives, allowing the Arctic Council members to act as a unified body to the exclusion/inclusion of Arctic outsiders. The *SAR Agreement* is the first example of this increased operational capacity, and has been

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<sup>467</sup> (Arctic Council, 2009)

<sup>468</sup> (Balton, 2012)

<sup>469</sup> The Arctic Council is also preparing a treaty for preventing oil pollution within the Arctic region and is discussing legislation on polar over flight.

described by Russian Ambassador Vasiliev as “a landmark of Arctic Council cooperation” while the U.S. Ambassador Balton determined that due to the conclusion of the *SAR Agreement*, the Arctic Council is “becoming a stronger body.”<sup>470</sup>

When the *Arctic Council announced the SAR Agreement*, some media coverage generated in the international press heralded the agreement as an important step to international cooperation in the region.<sup>471</sup> Yet despite the positive coverage, on the implementation and ratification of the agreement there are at least two technical issues to be considered. These include the use of the term ‘agreement’ and the article providing for ratification within the official text. There appears to be differentiation between legal theory and actual practice as to the position of the agreement within international law, with resulting implications for legal responsibility in the event of an actual search and rescue (SAR) incident.

Not to disregard the political import of the *SAR Agreement*, it should be noted that legally it is an ‘agreement’, with resulting political and legal implications for this choice of instrument. Within international law there is no difference between a ‘treaty’ and an ‘agreement’ as the international agreement has been made between states of an intergovernmental organisation.<sup>472</sup> However the use of the word ‘agreement’ has circumvented the need for ratification of the instrument by some domestic parliamentary bodies as “in many countries, the constitution requires that international agreements in a form considered under the internal law or usage of the State to be a ‘treaty’ must be endorsed by the legislature or have their ratification authorized by it, ...whereas

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<sup>470</sup> (Arctic Council, 2011 c)

<sup>471</sup> For example, see (Meyers, 2011) and (Klapper, 2011).

<sup>472</sup> (United Nations, 2006)

other forms of international agreement are not subject to this requirement.”<sup>473</sup>

Somewhat complicating procedure for implementation of the agreement, there are differences among the Arctic States as to whether an agreement requires the same ratification mechanisms a treaty. For example, United States code mandates that agreements enter into force when the Secretary of State applies their signature,<sup>474</sup> while in Canada agreements are considered as treaties and enter into force when formally announced by the Minister of Foreign Affairs.<sup>475</sup> By negotiating an agreement, it allowed for some of the Arctic states, such as the United States, to immediately authorise the agreement upon signature by Secretary Clinton, in part based upon authority of earlier agreement and ratification to the treaties included within the *SAR Agreement*.<sup>476</sup> The negotiation of an ‘agreement’ rather than a ‘treaty’ thus avoided some pitfalls of internal political scenes in each of the eight Arctic states and eliminated some delay to the implementation of the *SAR Agreement*, such as has been seen with the United States failing to ratify the *United Nations Convention on the Law of the Sea 1982* causing potential difficulties for delineating Arctic maritime claims.

While this semantic differentiation between ‘treaty’ and ‘agreement’ appears to enable the circumvention of some of the pitfalls of internal politics, not all domestic ratification procedures have been completely bypassed, with Art 19.2 of the *SAR Agreement* making provision for ratification, as is required by international treaty law, and allowing for the provisional time

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<sup>473</sup> (Watts, 1999, p. 625)

<sup>474</sup> (Hoffman & Rumsey, 2012)

<sup>475</sup> (Government of Canada, 2011)

<sup>476</sup> (Hoffman & Rumsey, 2012, p. 86)

lapse before entry into force.<sup>477</sup> The *SAR Agreement* designates Canada as the legal depository for the *SAR Agreement*, making it responsible for maintaining register of ratification, however the team at the Treaty Law Division for the Government of Canada have declined to make information on what countries have completed ratification publically available, only saying “At this point, all the Parties have not yet completed their internal procedures for ratification. Once all the Parties would have completed their procedures, the Government of Canada, in his capacity as depository, will notify the Parties that the Agreement will enter into force after 30 days.”<sup>478</sup> However, despite this statement by the depository, it has been claimed by Björn Arp that by October 2011 both the United States and Russia have ratified the *SAR Agreement*, although evidence to prove this is not available.<sup>479</sup> Thus officially, the *SAR Agreement* has not entered into force and until it has, the agreement is only provisionally applied.

When the Arctic Council was formed as a result of the *Ottawa Declaration* in 1996, it was to encourage the engagement of the Arctic states on issues of sustainable development and environmental protection and specifically excluded matters of military security.<sup>480</sup> Given that a main focus of the Cold War had included the security of the northern borders and the possibility that the Arctic could be used as both a theatre of war and the route of attack,<sup>481</sup> the exclusion of military elements removed difficult points of political tension, and allowed for the creation of the Council. In a significant development of political relations, the *SAR Agreement* is step away from the policy of ‘no military’ or ‘no security’, without specifically changing the charter of the Arctic

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<sup>477</sup> (Arctic Council, 2011 b)

<sup>478</sup> (Government of Canada, 2012).

<sup>479</sup> (Arp, 2011, p. 1110)

<sup>480</sup> (Arctic Council, 1996)

<sup>481</sup> (Jalonen, 1988, p. 1)

Council. This is due to the fact that the *SAR Agreement* designates specific government operatives to be responsible for the coordination and execution of any search and rescue operations in the delineated areas. For some of the Arctic states, those operatives are part of national defence departments, i.e., the Coast Guard of the United States, the Canadian Minister of National Defense and the Russian Ministry of Civil Defense are the designated operatives for search and rescue operations in the Arctic in their respective sectors. So under the remit of search and rescue, the Arctic States have agreed to undergo what will essentially be joint military operations in the Arctic region.

There is good reason for this designation as these are the only entities with the practical ability to perform search and rescue in this region, yet the willingness of the Arctic states to make an agreement that will require the use of military capability is signal that the Arctic states are willing to begin proxy military cooperation in the Arctic region. Exner-Pirot determines that “the search and rescue agreement can thus provide a platform by which states can pursue what’s termed defence diplomacy – the peacetime cooperative use of armed forces and related infrastructure as a tool of security and foreign policy.”<sup>482</sup> Following the military stand-off of the Cold War, the *SAR Agreement* seems to be an ‘about face’ to security issues of the polar north, and can be deemed as a signal to Arctic outsiders on the strength of the cooperation between the Arctic states.

The inclusion of the use of military through the *SAR Agreement* can also be considered as a way for the Arctic states to address security concerns for the region. Historically, international SAR agreements and operations have sometimes been used by governments as a guise for addressing security and defence

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<sup>482</sup> (Exner-Pirot, 2012, p. 195)

concerns through international agreements as it is easier to gain consensus on SAR than on security/defence issues which require absolute inclusion of military.<sup>483</sup> An example of this was the United States pushing maritime security concerns over terrorism in the post-9/11 paranoia through with SAR mechanisms with the International Maritime Organisation (IMO).<sup>484</sup> Through this, Long-Range Identification Tracking (LRIT) regulations, requiring all ships to report positions and other significant data to a centralised database was established through the guise of being able to provide for search and rescue capability in accordance with the Convention on the Safety of Life at Sea (SOLAS). Thus it appears, with the *SAR Agreement*, the tradition of addressing security concerns through SAR coordination continues.

The *SAR Agreement* also seems to have political implications with regard to sovereignty as SAR has sometimes been used by states as a sovereignty ploy for enhancing territorial claims. This was demonstrated in the Aegean Crisis when after decades of territorial disputes, Turkey undertook a SAR operation within disputed waters claimed under Greek sovereignty. Not only was this an opportunity for the Turkish military to test military equipment as well as practice operations and capabilities, it was also a chance for Turkey to undermine Greek sovereignty in the functional zone of territorial waters, claimed by Greece where the state failed to exercise its territorial sovereignty.<sup>485</sup> It may be seen that the conducting of SAR operations in the Arctic can be considered as effective occupation of territory as the states wait for their claims with the Commission on the Continental Shelf for the *United Nations Convention on the Law of the Sea 1982* to be processed.

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<sup>483</sup> (Leslie, 2012)

<sup>484</sup> (Leslie, 2012)

<sup>485</sup> (Travisanut, 2010, p. 533 ) Ditto

In an additional point on undetermined sovereignty in the Arctic, it is interesting to note that the SAR areas designated under the *SAR Agreement* largely follow existing bilateral treaty lines, and also reinforce the sectoral sovereignty claims of Canada in 1925<sup>486</sup> and by Russia<sup>487</sup> in 1926,<sup>488</sup> (see Figure 1). While it was eventually realised that the ice in the Arctic covered an ocean and not *terra firma*, in the decades that followed, international law developed to allow for the continental shelf under the high seas to be claimed as territory for the purposes of economic exploitation through the law of the sea. As mentioned, these claims are currently pending due process through international legal mechanisms. There still also remain some maritime territorial disputes, notably the status of the Northwest Passage (NWP) and the Beaufort Sea, where the *SAR Agreement* line follows the territorial claims of Canada. While sovereignty can sometimes be determined through historic use and effective administration of a government, which can be provided through SAR operations delivery, the legal problematic of this delimitation has been circumvented in Art 3.2 which states: “The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States or their sovereignty, sovereign rights or jurisdiction.”<sup>489</sup> Thus, the Arctic states have specifically excluded the potential of the *SAR Agreement* to determine the status of sovereignty claims in the Arctic, though it remains to be seen if the exercise of SAR operations can contribute to these territorial claims.

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<sup>486</sup> (Canadian Geographic, 2012)

<sup>487</sup> In 1926 Russia was part of the Soviet Union.

<sup>488</sup> (Timtchenko, 1997, p. 30) Ditto

<sup>489</sup> (Arctic Council, 2011 b)

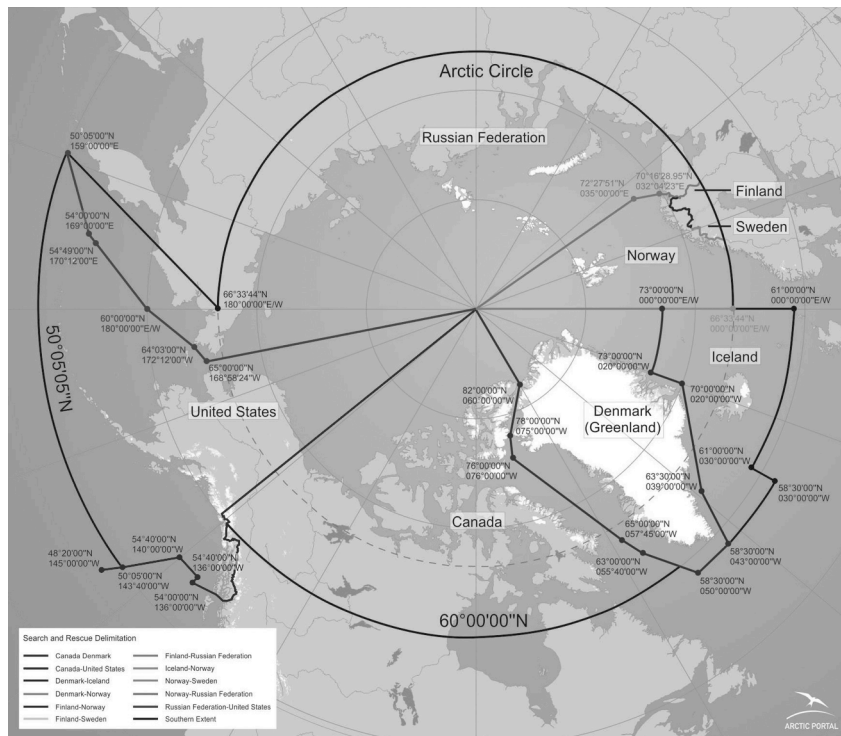


Figure 1: Arctic Search and Rescue Delimitation Map<sup>490</sup>

The advent of the *SAR Agreement* also represents a shift within the Arctic Council from focusing on soft law to hard law. While there are other instruments of hard law that apply to the Arctic, these pre-date the Arctic Council which previously operated through working groups and action plans addressing conservation and monitoring. Additionally, the diplomatic face of the Arctic Council has largely relied on multilateral policy declarations, such as the Ilulissat Declaration where the Arctic states committed to adhering to the principles of international law to deal with Arctic matters. The development of a single instrument to strengthen SAR in the Arctic when the *SAR Agreement* simply adapts and reinforces existing international law<sup>491</sup> to fit the unique condition of the region. S-M Kao et al point out that “[This] proves that the Arctic States are willing at least on an issue-by- issue basis to accept a legally-binding instrument, rather than stick to non legally-binding Declarations as they have in the past, to address

<sup>490</sup> (Arctic Portal, 2011)

<sup>491</sup> *I.e. SOLAS*



new challenges in the Arctic.”<sup>492</sup> It also serves to endorse the policy of the Arctic States that there is no need for an ‘Arctic Treaty System’ as the Arctic Council is able to modify existing hard law mechanisms to address the needs of the region, using the expertise of the working groups to provide recommendations. However, in time, it may be seen that a collection of a body of hard law could be incorporated into an Arctic Treaty System, just as *UNCLOS* began as four discrete conventions.

The transition to the use of hard law instruments by the Arctic Council also gives insight into the position of indigenous peoples within the group. Although the Arctic Council has the unique feature of including indigenous groups as permanent participants giving them status above the sovereign states with mere observer status, it is evident that the indigenous groups do not hold the same status within the Council as Arctic states themselves hold. Although, it is claimed “the organizations participate in the same manner as states in most other respects,”<sup>493</sup> this shift to hard law provides ample demonstration of the inability of the indigenous groups to operate on par with sovereign states in a number of ways.

An obvious signal of this inequality is that the parties to the *SAR Agreement* include only sovereign states and exclude any mention of indigenous groups as party to the treaty. In fact, there is no mention at all of indigenous groups within the text of the *SAR Agreement*. This is a reoccurrence of their exclusion from the state-level Ilulissat Declaration, except for their mention in the text indicating that the prevention of harm to indigenous communities required the stewardship of Arctic states.<sup>494</sup> Oran Young says “Indigenous peoples organizations have acquired a

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<sup>492</sup> (Kao et al., 2012, p. 836)

<sup>493</sup> (Bloom, 1999, p. 712)

<sup>494</sup> (Arctic Ocean Conference, 2009, p. 382 )

high profile in the Arctic Council, but it is notable that they were largely ignored in the process of crafting the May 2008 Ilulissat Declaration.”<sup>495</sup> It was their exclusion from the *Ilulissat Declaration* that cause some anger among indigenous groups, resulting in the release of *A Circumpolar Inuit Declaration on Sovereignty in the Arctic* which cited the “the right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with states.”<sup>496</sup> It appears that these declarations have not been sufficient to exact equality between indigenous groups and the Arctic states as they were still excluded from the *SAR Agreement*, with no evidence that there were even included as participants.

Another way in which indigenous groups cannot operate equal to states is in the delivery of SAR missions in the even of an incident. The *SAR Agreement* designates the competent authorities and responsible agencies for each party to the treaty and also makes allowance in Art 18 to “seek cooperation with States not party to this Agreement that may be able to contribute to the conduct of search and rescue operations.”<sup>497</sup> Indigenous representatives have claimed that they “must be fully involved in the search and rescue agreement because they will likely be the first ones on the scene of a major disaster.”<sup>498</sup> However, indigenous community groups have not been named as responsible for the delivery of SAR operations showing that it is still states held responsible for this duty to protect under both *SOLAS* and the *SAR Agreement*. It may be possible that individual states will utilise indigenous groups to carry out practical elements of domestic SAR, as is seen within the United Kingdom and the cooperation between the Coast Guard and community based volunteer Royal National Lifeboat Institution, but under international law the duty remains with the state and

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<sup>495</sup> (Young, 2010, p. 171)

<sup>496</sup> (Inuit Circumpolar Council, 2009)

<sup>497</sup> (Arctic Council, 2011 b)

<sup>498</sup> (CBS News, 2011)

not the indigenous groups to provide SAR capability thus giving rational cause for their exclusion.

The harsh reality of the Arctic climate also provides a dimension of difficulty to the delivery of SAR operations that will affect indigenous groups and states alike, both facing natural and technical obstacles of operating in the Arctic. This reality is a major reason for the need for the creation of the *SAR Agreement*, as SOLAS already provides an earlier global SAR mandate. The *SAR Agreement* facilitates the mechanisms for operational cooperation between the Arctic states in the event of an incident with Art 9.2 providing for the exchange of information and Art 9.3 providing for cooperation including “sharing information systems, search and rescue procedures, techniques, equipment, and facilities,”<sup>499</sup> which will help to address some of the difficulties of Arctic SAR requirements.

This cooperation also provides for an opportunity whereby states can conduct joint military operations in the name of SAR rather than for defence and security. The Arctic has a hostile climate that requires specialised equipment capable of withstanding the elements, and the collaboration under SAR provides opportunity for testing of operational capability without causing political tensions. This includes equipment such as “remote surveillance and detection technologies (i.e. satellite communications, GPS availability, weather stations)...[which] are limited in the Arctic due to a lack of coverage and the availability of real-time weather information.”<sup>500</sup> The opportunity to test and improve these systems will help to address the serious issues of SAR capability gaps in the Arctic region.

Some of these capability gaps have been seen historically in earlier

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<sup>499</sup> (Arctic Council, 2011)

<sup>500</sup> (National Oceanic and Atmospheric Administration, 2009)

Arctic disasters. A century ago, with an absence of much of the technology available today, the passengers of the *Titanic* were disadvantaged because of the scarcity of help available in the area of its demise. In 1912, danger from icebergs was detected from a personnel watchman, a rudimentary technique. Now, there are daily reports available from the International Ice Patrol on the whereabouts and population density of icebergs, though vessels should still exercise caution when operating in polar waters. Yet, this still does not address the scarcity of help available when disaster strikes. Despite advances in equipment and technology, decades later in 1959, the *Hans Hedtoft* also struck an iceberg, resulting in no surviving passengers, as there were no ships in the region available to report to the disaster and all aircraft were grounded due to inclement weather.

With increasing traffic in the Arctic the likelihood of accidents, both ordinary and from icebergs, increases and the cooperation provided through the *SAR Agreement* provides a means by which to diminish capability gaps through joint practice exercises and increased communication and technical cooperation. A U.S. Department of Defense report to Congress claimed that challenges to Arctic operations included: “shortfalls in ice and weather reporting and forecasting; limitations in command, control, communications, computers, intelligence, surveillance, and reconnaissance...due to lack of assets and harsh environmental conditions; limited inventory of ice-capable vessels; and limited shore-based infrastructure.”<sup>501</sup> This lack of capability to operate in the Arctic by the world’s greatest military shows that there is a hardware shortfall and that as Arctic traffic increases, it may prove difficult for SAR authorities to even have the equipment available to provide for search and rescue.

In addition to hardware shortfalls, there is a lack of experience in

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<sup>501</sup> (U.S. Department of Defense, 2011, p. 3)

providing for SAR operations in the extreme conditions of the Arctic. Through the *SAR Agreement* this lack of expertise is being addressed through joint practice operations, such as SAREX 2012. The Arctic Council highlights that “It is notable that all the ships, airplanes etc. were regional units normally operating in the High North nationally and in that context the exercise was conducted in a very realistic environment,”<sup>502</sup> which is important to prove the integrity of the exercise as there are rarely advance notifications of a disaster. Despite the relative success of the exercise to the faux disaster, it is not unlikely that it would be impossible for SAR teams to arrive a disaster in time to save lives, with the U.S. military noting in reference to the six day response by the Canadian Coast Guard to a ship running aground, “It’d probably take us six weeks to get adequate resources up for a similar thing in our waters”.<sup>503</sup> Thus, the cooperation provided by the *SAR Agreement* helps to alleviate this shortcoming.

With ice retreat increasing the accessibility of the Arctic making increased marine traffic possible, coupled with the increase of tourist cruise vessels and other commercial activity in the high north the potential for mass rescue operations also increases. A mass rescue operation is defined by the International Maritime Organization as “the need for immediate response to large numbers of persons in distress, such that the capabilities normally available to search and rescue authorities are inadequate.”<sup>504</sup> Obviously the *SAR Agreement* cannot do anything to alleviate the distances that much be covered in the Arctic, but it does help to address the potential that a single state may not have sufficient capability to provide for an entire mass SAR operation. The Automated Mutual Assistance Vessel Rescue System (Amver), a voluntary reporting system is also available to help in the event of

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<sup>502</sup> (Arctic Council, 2012)

<sup>503</sup> (Standifer, 2011)(in (O’Rourke, 2014, p. 46)

<sup>504</sup> (Culver, 2011, p. 22)

any rescue operation, creating “a force multiplier, offering a unique ability to ensure a blanket of safety across the far reaches of our search and rescue system. It doesn’t matter where in the world you are—we can likely find a ship to save you.”<sup>505</sup> However as can be seen from the Amver density plot for ship traffic in September 2012 (See Figure 2), there is a distinct lack of traffic in the Arctic, making this an unreliable source of SAR help.

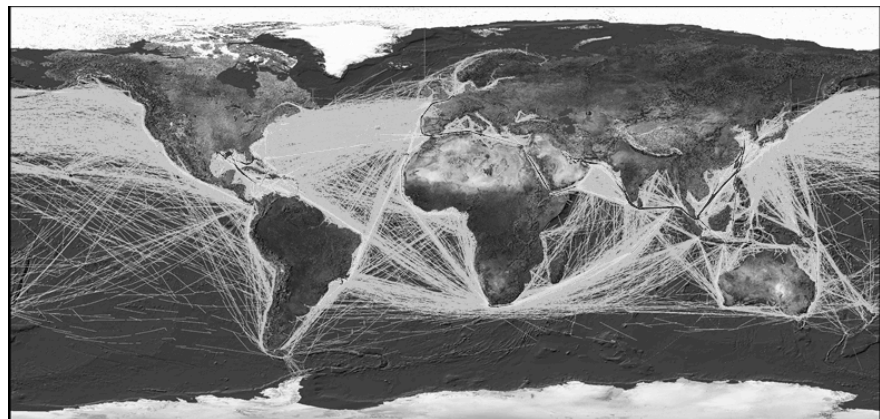


Figure 2: Amver Density Plot September 2012<sup>506</sup>

International law already dictates the requirement for coastal states be able to provide emergency maritime assistance in the case of an accident, the lack of capability by the Arctic states to provide for SAR in a territory in which they are attempting to claim, establish or extend sovereignty delivers a problematic and potential for significant political liability. Although the disputed areas for overlapping claims are minimal, an accident in which a state was unable to assist could either give reason for another state to emphasize their ability to provide required assistance and thus effective administration. A failed response could provide reason for the Arctic maritime to remain outside the jurisdiction of states and within the realm of the common heritage of mankind. The establishment of the *SAR Agreement* demonstrates the intent of the Arctic states to fulfil their obligations to SAR under

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<sup>505</sup> (Strong, 2011, p. 9 )

<sup>506</sup> (U.S. Coast Guard, 2012)

international law.

The creation of the *SAR Agreement* also has potential implications for those non-Arctic states with Arctic interests as it seems to solidify the cooperation of Arctic states as unified group and reinforces the development of identities as 'Arctic states'. Thus far, the Arctic Council has largely remained a closed forum with membership available only to states with territory in the Arctic. There is a small deviation to these league restrictions as a few other states have been granted 'observer' status and to qualify as an observer, states must "recognize Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic" and to "have demonstrated their Arctic interests and expertise relevant to the work of the Arctic Council."<sup>507</sup> This seems to heavily restrict those who can potentially impact the diplomatic manoeuvring of Arctic international relations. It is interesting to note that all states already admitted as observers to the Arctic Council are also NATO members. Currently, six other states have applications pending for observer status; all except one are NATO members.

Through pronouncements such as the Ilulissat Declaration, the Arctic states have continuously declared their loyalty to existing international law. They have also said that there is no need to create an 'Arctic Treaty' similar to the *Antarctic Treaty System* when there is already an extensive body of international law suitable to delimiting and managing the Arctic region and its peripheral regions as, "although international law is universal its interpretation and application may not, in practice, be easy particularly where the Polar Regions are concerned as numerous specific pre-conditions exist which may influence the result."<sup>508</sup> The *SAR Agreement* in fact demonstrates that international law is

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<sup>507</sup> (Arctic Council, 2011 d)

<sup>508</sup> (Loukacheva, 2010, p. 18)

not sufficiently comprehensive to address all the exigencies that the opening of the Arctic produces.

In the development of a region, most legal processes are retrospective. They are built around existing populations, traditions, etc. and the international law has been developed to act as guidelines for the behaviour of states in settling disputes on territory, resources and war, among other things. However, due to its hostile climate and distant location, the Arctic is the last region on the globe to remain untouched by these developmental processes. However, due to climate change, technological advances and commercial interest the Arctic can no longer escape the advances of development and a legal framework for addressing the coming changes should be considered.

The *SAR Agreement* attempts to address these issues of development as a proactive, rather than a reactive measure, building upon existing bodies of international law, and borrowing from codes of international law to develop policy unique to the exigencies of the region. In the development of polar law for the Arctic, it may be that future legally binding agreements will continue to adapt existing frameworks, so that they address the needs and interests of the Arctic states in the Arctic regions, possibly continuing exclusion of non-Arctic states.

## **Conclusions**

With SAR being defined as “search[ing] for, and provision of aid to, persons, ships or other craft which are, or are feared to be, in distress or imminent danger,”<sup>509</sup> SAR always has a priority on the salvation of lives, and is something that lies outside the mandated

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<sup>509</sup> (Government of Canada, 1998)



scope of Arctic Council operations. It is clear that the emphasis in establishing yet another instrument of law for the provision of SAR demonstrates the determination of the Arctic states to be able to provide for such salvation when needed through coordinated efforts. However, while life is priority in SAR and property of second import, it is also relevant that the capability to provide for the assistance in case of distress might also provide the ability to prevent the occurrence of a major incident or disaster from with environmental consequences from. In providing such assistance, the Arctic Council could thus be fulfilling its mandate in the Ottawa Declaration to provide for the protection of the environment.

During the last twenty years, the Arctic has developed into a key region in international relations in a transition strikingly different to interest in the region during the Cold War, a period noted for suspicion and hostility. With this transition, it is clear that that Arctic states, through the umbrella of the Arctic Council as the forum for discussion, negotiation and cooperation have arrived at some consensus for developing and protecting their mutual interests in the Arctic region, mostly through diplomatic exchanges but also now through the development of instruments of hard law, such as the *SAR Agreement*. In the text of the *SAR Agreement*, it is possible to see several interests of the Arctic states including the safety of life at sea, the safety of the environment, the boundaries (thus limitations) of responsibility and ultimately, sovereignty. While there is clearly avoidance of the settling of maritime disputes in the Arctic through the SAR Agreement, the agreement goes a long way in advancing the cooperation of the Arctic states through the safe political issue of search and rescue and may signal the trend for the future of Arctic international relations, or at the very least, provide for a new addition to discussion the body of polar law.

## Chapter VIII

### A Pending Governance Issue: The Legal Status of Ice

In 2002, *The Atlantic* covered a story on an 'Iceberg War' that had occurred off the coast of Newfoundland, Canada. The narrative of the story goes something like this: While a group of tourists were admiring the natural beauty of an Arctic iceberg in its stunning surroundings, "a barge equipped with a crane loomed from around the headlands, tethered itself to the iceberg, and started noisily and methodically chipping away at it with a device designed for dredging rock."<sup>510</sup> The tourists and the tour operators were aghast, as "people were stealing the iceberg right in front of our eyes."<sup>511</sup> While no one enjoys having a beauty spot or their holiday spoilt by development, this situation and others like it raise a number of questions regarding the legal status of ice within the Polar Regions. Most of these questions eventually return to one dominant query that has continually evaded resolution in international law for over a century: To whom does the freshwater within iceberg belong, and thus who has a right to its use and procurement?

Within international relations, the principle of sovereignty applies to areas within clearly defined and delineated borders.<sup>512</sup> The condition of the sovereignty<sup>513</sup> of states within only their territorial boundaries creates a situation whereby space outside of states is subject the condition of anarchy, which also characterises

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<sup>510</sup> (Curtis, 2002)

<sup>511</sup> (Curtis, 2002)

<sup>512</sup> This thesis does not have the scope or capacity to permit a discussion on the debates regarding the erosion of sovereignty.

<sup>513</sup> Sovereignty is defined as "the supreme power to make and unmake the law," (Bodin, 1967, p. 44).

the entirety of the international system. Terrestrial political borders of states within the international system have expanded until all *terra firma* is subject to sovereign control. Within the maritime, determined through state practice following a series of historical debates<sup>514</sup> on whether the sea could be 'owned', the principle of the *freedom of the seas* became a norm, and a state could claim sovereignty over as much sea as they could defend by cannon thus establishing the customary three mile limits for territorial waters. But as technology improved, states became increasingly interested in the control over the resources within the seas, even though maintenance the freedom of the seas was preferred for purposes of commerce and security.

Responding to this national interest and as a remedy to the anarchy of the international system, the law of the sea was adapted to allow states to establish sovereign jurisdiction over maritime areas, but only for the purposes of resource extraction. Through the Conventions on the Law of the Sea, states were designated control over the resources in the sea column up to 200nm and over the continental shelf up to 350 nm, and the high seas beyond these limits are defined within international law as 'global commons'.<sup>515</sup> There are many types of resources in the oceans, some living and some mineral. To address that living resources do not understand the notion of sovereignty and political boundaries, and that many of these resources are migratory or fugacious, legal frameworks have been developed for managing issues of overfishing.<sup>516</sup> In the extraction of mineral resources, which are largely stationary, no such frameworks have been established.

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<sup>514</sup> For example, see Hugo Grotius' *Mare Liberum* and John Seldon's *Mare Clausum*.

<sup>515</sup> Antarctic is also defined as a global common, (United Nations Environmental Program, 2014)

<sup>516</sup> For example, the *Convention on Fishing and Conservation of Living Resources of the High Seas 1958*.

In the case of icebergs, although they are technically mineral<sup>517</sup>, they are a fugacious resources and frameworks for regulating their use have not been established. This chapter argues that the legal status of ice within international law is indeterminate, but existing legal models within international law can be drawn from to establish precedence on how the legal status of ice could be determined. As governance in the Arctic is being developed for the express purpose of managing national interests in the Arctic, this is potentially an issue of governance for the states of the Arctic Council, or those states party to the Antarctic Treaty System, to address placing icebergs within the global commons. By establishing a regulatory system for icebergs, states would provide for themselves clear expectations regarding resources rights for icebergs, preventing future conflict of this valuable resource and will provide an additional facet of environmental protection for the Arctic environment thus fulfilling the mandate of the Arctic Council.

### **Background to the Problem**

The United Nations claims that water scarcity already affects every continent and is one of the main problems that will affect society in the next century.<sup>518</sup> Despite frequent reports from media and the scientific community of global warming and evidence of retreating glaciers and ice shelves, both inside and outside of the Polar Regions, a large percentage of the global fresh water supply is stored in the form of ice. Water being essential, not only to life, but also to economic development, “the fact that more than three-fourths of all the world’s fresh water is locked up in ice formations, principally those in the polar regions, assumes ever-increasing

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<sup>517</sup> To be classified as a mineral, a substance must be: naturally occurring, inorganic, solid, have a limited range of chemical compositions and have an ordered atomic structure, (King, 2013).

<sup>518</sup> (United Nations, 2012)

importance.”<sup>519</sup> The amount of freshwater contained in icebergs is difficult to conceptually explain, not unlike examples of the number of stars in the sky, but scientific measurements do exist. Estimates of the amount of the world’s fresh water contained in ice form (such as glaciers, ice sheets and icebergs) have ranged from 75% in the early 1970s<sup>520</sup> to 68% in recent years<sup>521</sup> although the World Glacier Monitoring Service continues to use the 75% figure as an estimate.<sup>522</sup> Some recent research indicates that the amount of freshwater entering the ocean from ice melt equals that of the total global consumption for each year,<sup>523</sup> and that there is enough water in icebergs to fulfil the consumption of 5 billion persons,<sup>524</sup> with consumption including not only water directly consumed but also water used for sanitation and agriculture. These figures help to give some idea of the quantity of freshwater available in ice form, and why future water security issues might demand that water from icebergs be utilised.

Not only a source of freshwater, ice has previously been utilised as a complex industrial product. As early as the 1850s, business known as the ‘Ice Trade’ for which even trade journals existed, glacier ice was being harvested from Alaska and shipped to California<sup>525</sup> and as far south as Central America. However, the demand for this product declined with the advent of modern refrigeration methods<sup>526</sup> and the commercialisation of natural ice disappeared. The notions of harvesting the freshwater in icebergs, predominately from the Antarctic, saw revivals in the 1950s and 1970s as the problems of waters scarcity in arid areas of the world received the attention of international developers. During this

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<sup>519</sup> (Joyner, 1991, p. 213)

<sup>520</sup> (Schultz, 1974, p. 74)

<sup>521</sup> (Gleick, 2009, p. 6)

<sup>522</sup> See (World Glacier Monitoring Service, 2007)

<sup>523</sup> “The amount of iceberg water that annually dissolves into the sea is 3 trillion m<sup>3</sup>, close to the world’s annual consumption of fresh water (3.3 m<sup>3</sup>),” (Spandonide, 2009, pg 549).

<sup>524</sup> (McCormick, 1988)

<sup>525</sup> (Keithan, 1967, p. 174)

<sup>526</sup> (Joseph & Hopkins, 2002, p. 153)

period several researchers developed models for calculating the costs and benefits of harvesting and transporting icebergs for water and for potential use as an energy resource;<sup>527</sup> however, the transfer of icebergs to water deficient regions has yet to be implemented, in part due to economic inefficiencies and in part due to logistical difficulties.<sup>528</sup>

Some of these early proposals to harvest icebergs for potable water centred on discussions of water scarcity as the water contained within icebergs was sometimes thought of as a universal good with access to clean drinking water having been declared a human right.<sup>529</sup> However, in a return to early periods of ice harvesting in the Arctic, the recent usage of iceberg resources largely appears to centre on economic incentives. This difference would seem to change the nature of the debate on the status of icebergs in international law from a common good to a private good when acquisition and consumption is for profit rather than for the benefit of mankind. Current uses for icebergs include cosmetics for the Asian market, water for the European market, tourism both from land and sea in the North Atlantic, and vodka and beer produced in Canada.<sup>530</sup>

### **Historical Debates on the Legal Status of Ice**

The status of polar ice in international law has been topical for legal scholars since Peary set foot on the North Pole in 1909, and is interesting for at least two reasons. The first is that ice as a substance is of a potentially temporary nature and that by changing its physical properties—by melting—it is no longer ice

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<sup>527</sup> See (Schultz, 1974), (Smakhtin, et al., 2001), (Spandonide, 2009).

<sup>528</sup> (National Oceanic and Atmospheric Administration, 2012)

<sup>529</sup> (UN News Centre, 2010)

<sup>530</sup> For further information see: Ossetra Global at <http://www.ossetra-global.com>, Glace Iceberg Water at <http://www.icebergcanada.com>, Tourism Campaign for Newfoundland & Labrador at <http://www.youtube.com/watch?v=RpShYv184JI> and Iceberg Vodka at <http://www.iceberg.ca>.

but water, and therefore loses its special status as ice. For international law, this ability of ice to change physical properties makes it difficult to handle ice under the same categories as other resources such as minerals or living resources and it has also caused it to be omitted from legal discussions of water. The second point is that ice has eluded codification, due to the varied types of ice and thus their varied use within the polar areas, but more importantly because in earlier eras the necessity to pursue codification failed to climax due to lack of scarcity and conflict. Ice has also avoided a legal status through customary law due to lack of consistent state practice.

At the turn of the twentieth century, knowledge of the Arctic, especially its geography, was in a very rudimentary state. It was still believed that located underneath the ice of the *Mar Glaciale* was more land to be claimed by the states through parties of flag-carrying polar explorers, a misconception perpetuated by the characteristics of geographical formations, now known to be glacial deposits. It is now assumed those apparent geographical characteristics originated in ice calved from *terra firma* and when the ice melted in the Atlantic, the rocks sank to the bottom of the sea. Dominating the period was a near hysteria for Arctic exploration for purposes of territorial expansion through discovery and effective occupation of new lands; this 'evidence' of additional lands fuelled the search for territory.<sup>531</sup> However, this quest for land was not without constraint and respect for the rules of the international system in areas known to be part of the *Mar Glaciale*.

When Admiral Peary acquired the North Pole and in his eagerness to claim a territorial prize for the beloved motherland, a telegram was dispatched to the Associated Press and to the President of the

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<sup>531</sup> As late as the 1930s, states were looking for new islands using aerial surveillance.

United States, William Taft, saying “The stars and stripes are nailed to the north pole.”<sup>532</sup> By placing the flag at the North Pole, Peary was indicating rights of sovereign possession. However, President Taft replied with a ‘Thanks, but no thanks’, dismissing potential U.S. territorial possession of the North Pole as this was contradictory to accepted norms of customary international law, respecting the principle of the *freedom of the seas*. It was accepted that that “title by discovery applies to land, not to water ...as it is universally held that the open seas, beyond the limit of territorial waters, are insusceptible of appropriation.”<sup>533</sup> As the North Pole is positioned well within the limits of the high seas it was not available for appropriation by any state and Taft’s precedent established that the North Pole on the surface of the *Mar Glaciale* would remain outside the territorial jurisdiction of any state.

Even though the United States rejected claims to the icy surfaces at the North Pole, the discussion of the legal status of ice in the Arctic Ocean was not yet over, nor was this the end of territorial claims at the North Pole. In 1925 Canada, followed by Russia in 1926, extended their sovereign territory to the North Pole—though neither country claimed possession of the pole itself, but only claimed jurisdiction of the territory from their landmass continuing up to the North Pole and established their ‘regions of attraction’ through the sector principle.<sup>534</sup> Each state claimed the right to all lands discovered or undiscovered within the areas of these pie shaped wedges,<sup>535</sup> using ideas of the sector principle and regions of attraction to establish spheres of influence. This signalled the end of the era of exploration in the Arctic for purposes of territorial acquisition and heralded the beginning of a

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<sup>532</sup> (Peary, 1910, p. 195)

<sup>533</sup> (Scott, 1909, p. 938)

<sup>534</sup> The sector principle is also used in the Antarctic.

<sup>535</sup> (Rolston, 1988)



new era in Arctic exploration—an era of scientific exploration introducing a new use for polar ice.

When scientists began to use islands of ice in the Arctic Ocean for semi-permanent habitation<sup>536</sup>, an additional scholarly element on the legal status of ice was introduced: should ice, used as land, be treated as land under international law? The ice islands, used predominantly by the United States and the Soviet Union, were of questionable jurisdictional status for several reasons. Under international law, sovereignty of a territory could be claimed if a state were to maintain effective occupation of the territory. But ice islands, not unlike the sea ice over the rest of the Arctic Ocean, are in a constant state of movement. The rotational movement of the ice islands due to the effects of the Beaufort Gyre caused some difficulty in determining their status because, although some ice can be utilised as if it were land, their movement prevents permanent habitation at fixed coordinates and “any habitation fixed upon it would be continually moving. And such possible occupation would be too precarious and shifting to and fro to give any one a good title.”<sup>537</sup> So ice islands formed of multi-year sea ice would not be seen as *terra firma* by virtue of discovery or claimed sovereignty, yet further questions remained.

But what of ice islands originating from land? If state sovereignty could be realised over an ice island birthed from *terra firma*, when did that sovereignty begin? Did sovereignty begin when the ice formed over land, and remain when the ice island calved from a land formation, or did it begin when the island became occupied? The sovereign status of a moving ice island becomes problematic

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<sup>536</sup> “Soviet scientists have been stationed on ice islands in the Arctic since 1937, 50 to which theatrical groups are sent for entertainment. T-3, Fletcher's Ice Island, having a circumference of 31 miles and a breadth of five miles, discovered in 1952, was occupied for some time by U.S. scientists and is still drifting. Peary camped on such an island in 1909 and it was still drifting 45 years later,” (Auburn, 1970, p. 242).

<sup>537</sup> (Balch, 1919, p. 266)

when the island floats into the sector of another state. Does sovereignty remain with the occupant, or does it transfer to the state into whose territory the island is floating? One view determined that “ice islands should be considered property of the State away from which they calved... [and] Permitting an ice island to drift beyond its maritime jurisdiction without occupation clearly would signify forfeiture of exclusive sovereign rights to it.”<sup>538</sup> The prevailing idea proffered was that ice islands should legally be assimilated to ships. However, this posed additional problems because if ice islands were to be legally classified as ships they must be registered with a flag state and maintain insurance—and of course, ice islands do not have navigational abilities, which as an “essential criterion of a floating apparatus qualifying as a ship,”<sup>539</sup> and this technicality made it difficult to gain state consensus on this approach.

The issue of the legal status of ice islands, either with determination as sovereign territory or with designation as ships under the protection of the freedom of the seas, was the cause of considerable concern during the Cold War. This was especially true for the Canadians who were worried by “the presence of Soviet scientists on ice-islands drifting in the Canadian ‘sector’ and territorial waters.”<sup>540</sup> With their semi-permanent nature, ice islands could be used as assault platforms for stationing troops and weapons, creating security concerns. Thus, the decision to make a determination on the legal status of ice islands was neglected, in part to avoid granting of legal rights to those utilising the ice islands.

The lack of the legal status of ice islands in international law developed an additional jurisdictional issue owing to the presence

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<sup>538</sup> (Joyner, 1991, p. 238)

<sup>539</sup> (Pharand, 1973, p. 197)

<sup>540</sup> (Auburn, 1970, pp. 241-42)

of semi-permanent populations of scientists habituating on these moving islands without sovereign status. In 1972, a murder was committed on an island occupied by a member of a science crew from the United States while the ice island was floating in the Canadian sector. Due to the uncertain legal status of the ice island, there was the question over which state held legal authority to prosecute for the homicide case. Known as the *Escamilla Case* on ice island T-3, Canada chose not “to exercise jurisdiction over the incident, even if it was convinced that it had the right to do so.”<sup>541</sup> It instead deferred to allow the United States to treat the ice island as a ship and gave the United States the prerogative to prosecute the accused individual. Meanwhile, the United States maintained that the ice island was part of the high seas and claimed jurisdiction on the basis that the incident occurred between U.S. citizens.<sup>542</sup> Here is an example of both principles (sector sovereignty and designation as ships) being applied by different states, according to their determined interests, which shows the difficulty in reaching international agreement on the classification of the legal status of ice islands.

In addition to the demonstrated difference in state practice regarding the legal status of ice islands, continental ice<sup>543</sup> has also generated discussion among legal scholars. Continental ice<sup>544</sup> has originated from a continental landmass, especially Antarctica, and frequently a large part of the shelf remains lodged on the continent but at times it can also be found floating in the sea in the form of tabular islands or icebergs when it has calved from its point of origin. The academic discussion on the legal status of shelf ice in the Antarctic which has produced a general consensus that

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<sup>541</sup> (Pharand, 1971, p. 84)

<sup>542</sup> (Auburn F., 1973, p. 554)

<sup>543</sup> “Ice can generally be divided into two main categories: continental and sea ice. Continental ice has three types: ice sheets, glacial ice and ice shelves,” (Rothwell, 1996, p. 26).

<sup>544</sup> Also called ‘shelf ice’.

“icebergs may be privately owned in the academic sense,”<sup>545</sup> based on arguments dating back to Grotius that the resources of the water column can be privately owned. Although it is found in both the Arctic and Antarctic Polar Regions, it has not been included within any specific legal regime, however, “the continued specific reference to ice shelves under Antarctic Treaty provisions in fact indicates that the Treaty parties believe that ice falls into a special category, worthy of separate consideration.”<sup>546</sup> This separate condition is generally accepted as “ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory”<sup>547</sup> as “there is not much difficulty in classifying sheet ice or glacial ice as equivalent to *terra firma*.”<sup>548</sup> The only consensus that has been reached is that ice islands do not qualify for their own territorial waters as permitted for land islands. Yet, even this agreement has not led to clear jurisdiction over shelf ice under international law, as there continues to be division between legal opinion, state practice and in differences in jurisdictional frameworks.

This final difficulty lies in the different legal regimes operating in the Arctic and Antarctic regions. In the Antarctic, operating under the *Antarctic Treaty System 1959*, sovereign claims to territory have been suspended and so even though continental ice is generally agreed to hold sovereignty parallel with land, states are not permitted to claim sovereignty over ice originating from Antarctica. The situation is very different within the Arctic not only because it is an ocean surrounded by land, but also because it is surrounded by sovereign states. For example, “since 1979, Greenland has enjoyed home rule from Denmark.... as a result, the sovereign status of the ice sheet covering Greenland is not in

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<sup>545</sup> (Lundquist, 1977, p. 23)

<sup>546</sup> (Rothwell, 1996, p. 268)

<sup>547</sup> (Lakhtine, 1930, p. 712)

<sup>548</sup> (Rothwell, 1996, p. 262)

question. Sovereignty over the ice sheet follows sovereignty over subglacial *terra firma*. The critical quality present in Greenland—and absent in the case of Antarctica—is clear and indisputable title to sovereign jurisdiction over the territory.”<sup>549</sup> This indicates that ice originating from a landmass in the Arctic could retain the sovereignty of the state of origination.

### **Existing Legal Frameworks as Models**

The historical scholarly discussion and state practice on the legal status of ice has disintegrated any claims to the sovereignty over sea ice, but freshwater ice continues to provide a different dilemma against the backdrop of water scarcity. The management of freshwater sources and water scarcity are enormous challenges facing the globe in the twenty-first century and some principles for approaching the issue have been developed, including those in the UN’s Millennium Development Goals.<sup>550</sup> While there are bilateral agreements governing water resources, an agreement on an international legal framework for managing transboundary water resources has eluded international consensus.<sup>551</sup> In addition to other freshwater issues, freshwater ice remains untouched by legal regimes and at present, “International law concerning ice remains incomplete and unclear [and] no international legal regime is yet in place which comprehensively sets out the legal status of ice in its various forms or specifically assigns jurisdictional competence over its use.”<sup>552</sup> However, existing legal models in both domestic and international law can be drawn from to establish precedence on how the legal status of ice could be determined during four conditions freshwater iceberg could hold during its lifecycle.

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<sup>549</sup> (Joyner, 1991, p. 222)

<sup>550</sup> (United Nations, 2000)

<sup>551</sup> In 2012, The Convention on the Law of Non-Navigational Uses of International Watercourses 1997 had insufficient signatories to enter into effect as international law.

<sup>552</sup> (Joyner, 1991, p. 214)

This absence of a legal status for ice extends even to the most principal regime of international law governing the maritime Arctic, the *United Nations Convention on the Law of the Sea 1982*, which makes only provision for the environmental protection of ice-covered waters through national legislation. The only mention that ice specifically receives in *United Nations Convention on the Law of the Sea 1982* is in Article 234, which states: “Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone....”<sup>553</sup> This article, while potentially reducing the possibility of environmental disasters in the Arctic, does not provide any guidance on the designation of a legal status of ice, and in fact this proviso could be determined to only apply to sea ice, the type of ice that forms a continuous ‘crust’ over parts of the Arctic marine environment which creates ‘ice-covered waters’ and not to freshwater ice originating from land. Applying to global ocean bodies, the *United Nations Convention on the Law of the Sea 1982* makes no provision for the legal status of ice inside or outside of the Arctic Ocean, rendering this framework insufficient as a standard for freshwater ice.

Although the *United Nations Convention on the Law of the Sea 1982* is silent on the treatment of ice, there are several other legal regimes with potential to provide guidance on establishing the legal status of ice in the Polar Regions. These include the Argentine *Ley de Protección de Glaciares 2010*, the U.S.-Mexico *Rio Grande Treaty 1906*, the *North Pacific Fur Seal Convention 1911* and finally, the work of the International Law Association culminating in the *Berlin Rules* applied in the *Convention on the Law of Non-*

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<sup>553</sup> (United Nations, 1982)

*Navigational Uses of International Watercourses* 1997.<sup>554</sup> Like the *United Nations Convention on the Law of the Sea* 1982, none of these legal frameworks provide an absolute remedy for the issue due to the complexities of the properties and location of freshwater ice in the exclusive economic zones of sovereign states and in the high seas of the oceans. However, cumulatively these instruments provide guidelines for a remedy for settling the legal status of ice near and within the Polar Regions with potential application for the status of freshwater ice within the Arctic as they address many of the issues surrounding freshwater ice, including its value as water resource, the fugacious nature of icebergs and deliver principles on the equitable appropriation of freshwater.

The first condition in the lifecycle of an iceberg begins at the point of origin, in a glacier or continental shelf on *terra firma* and in the Arctic, on sovereign territory. If sovereignty over ice resources, such as shelf ice were applicable in the Antarctic in absence of the *Antarctic Treaty System*, then the principles that provide that status would also apply to similar ice features in the Arctic. This would mean that a state, such as Denmark, could utilise any and all the multiple freshwater resources of Greenland while they are within their territorial boundaries because “the natural wealth and resources located within the territorial jurisdiction of a sovereign state belong to the community, i.e. the people themselves.”<sup>555</sup> The State of Argentina has recently exercised this concept over glaciers within its territory. In the *Ley de Protección de Glaciares 2010*, the Argentine government has mandated that glaciers are public property in order “to preserve as strategic reserves of water resources and water providers charging watersheds.”<sup>556</sup> Due to

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<sup>554</sup> In a paper on Swiss glaciers, Michael Bütler claims that the Kyoto Protocol protects glaciers even though glaciers are not specifically mentioned in the treaty, (Bütler, 2007).

<sup>555</sup> (Hossain & Chowdhury, 1984, p. 1)

<sup>556</sup> (Ley de Protección de Glaciares, 2010)

the *Antarctic Treaty System*, a regime of international law and the *Ley de Protección de Glaciares*, a piece of domestic law, it appears that freshwater ice in a glacier or periglacial environment would qualify as a resource eligible for permanent sovereignty.<sup>557</sup>

This is pertinent, as the principle of permanent sovereignty does not make exceptions for specific types of resource and rate at which a state is allowed to use the resource, and permits the state to requisition resources in the national interests. From the passing of the legislation declaring glacial ice a public resource in Argentina, and the arrest of a man for stealing glacial ice in Chile,<sup>558</sup> it is clear that freshwater ice is considered to be a sovereign resource within geopolitical boundaries. Applying the principle of permanent sovereignty, any ice originating on sovereign territory would establish permanent ownership by that state until the end of the lifecycle of the iceberg, regardless of its location. For ice resources located within a single state this designation is unproblematic. However, glaciers are flowing and frozen rivers and in the Arctic this leads to icebergs crossing geopolitical boundaries.

This leads to the second condition in the lifecycle of an iceberg—the point at which it leaves land and joins with the sea and introduces another problem with the legal status of ice. Ice is a natural resource and thus permanent sovereignty applies, however, it is also a fugacious resource belonging to a watershed. Within the *United Nations Convention on the Law of the Sea 1982* is a second concept, the exclusive economic zone, which provides some answer as to who can exploit the frozen resources before they enter the high seas<sup>559</sup> and from where those resources can be exploited. Application of this legal principle is the method that

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<sup>557</sup> See (United Nations, 1962)

<sup>558</sup> (British Broadcasting Corporation, 2012)

<sup>559</sup> (Geon 1997, p. 278)



states are currently using to apply sovereignty over iceberg resources. Article 56 establishes “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living.”<sup>560</sup> With regards to the exploitation of freshwater ice, it would also seem that Article 56 of the *United Nations Convention on the Law of the Sea 1982* grants full rights of exploitation of the resource within the limits of a state’s territorial waters. While providing a temporary method for determining a legal status of ice, this article fails to address first, the potential ownership of glacial ice from its location of origin, the fugacious and transboundary nature of icebergs and also fails to address issues around the sustainability and equitable sharing of water resources.

The third condition of an iceberg relates to its fugacious or transboundary nature. Over the last century, international law has developed an alternative approach to fugacious resources, such as oil, water and fish, beyond the notions of permanent sovereignty. The sovereign right of a state to use its natural resources within its own territory is not in dispute, albeit with caveats, including transboundary resources and *fugacious*<sup>561</sup> resources (such as oil, water and sometimes animals) where often the ‘rule of capture’<sup>562</sup> has been applied.<sup>563</sup> This is evident in the case regarding the use of water in the Rio Grande between the United States and Mexico in the early twentieth century. Here, US Supreme Court Justice Harmon applied the principle of sovereign immunity or the absolute sovereignty of every nation within its own territory—and thus the absolute right to dispose of the water as it will.<sup>564</sup> This dispute culminated in the *Rio Grande Treaty 1906*, with the US

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<sup>560</sup> (United Nations, 1982)

<sup>561</sup> Defined as “Apt to flee away”, (Oxford English Dictionary, 2012).

<sup>562</sup> The ‘rule of capture’ “provides that ownership is granted to any party who ‘captures’ the natural resources by bringing it within its dominion and control” (McLaughlin, 2009, p. 210).

<sup>563</sup> (McLaughlin, 2009, p. 210)

<sup>564</sup> (Korwa & Check, 2011, p. 190)

conceding that although it was the upper riparian, Mexico could claim prior appropriation of the water resource—as Mexico it was first to use the resource due to their farmers having used the Rio Grande long before U.S. territorial expansion had reached the region. The U.S. was required to use water with consideration to those downstream depending on this water for their livelihood.

In the Arctic, the difficulty of legislating for fugacious resources for arguments of economic sustainability and environmental protection already has some history, although the application to freshwater ice is a new extension of the problem. The complexity of jurisdiction over fugacious resources first surfaced in the Arctic over the issue of the migratory fur seals introducing the idea of environmental stewardship into international law, following the *Alaska Treaty 1867* when entrepreneurial individuals from various states took advantage of the lack of effective administration and policy of the United States in Alaska, and engaged in extensive hunting and killing of fur seals, which had breeding grounds located in the Alaskan Archipelago. When Washington learned of impact on the fur seal population and on the economic revenues of the Alaska Commercial Company, they moved to prevent indiscriminate destruction of the species with an 1870 Act<sup>565</sup> prohibiting the activity by unauthorised individuals. While the United States never tried to prevent the freedom of navigation or the right of other nations to fish upon the high seas, but had only attempted to protect the fur seal from extinction, an international arbitration court found the United States in violation of the principles of the freedom of the seas. Thus, the United States lost their moral appeal to the international community in their fur seal stewardship claims with Canada winning the arbitration on the basis of economic injustice caused when the U.S. confiscated the equipment of their citizens. However, within a few years the

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<sup>565</sup> (Sanger, 1869, p. 241)

maritime nations around the north Pacific entered into the *North Pacific Fur Seal Convention 1911*, creating a regulatory regime for fur seals, including hunting moratoriums to allow the population to regenerate.

While 'stealing from glaciers' in the Arctic is not yet a significant problem, this parallel issue reflects the need to protect glacial ice from those who would practice ruthless business practices, resulting in the degradation of the resource. The fur seal issue demonstrates two different difficulties in the management of fugacious resources that could be applied to freshwater ice. These include the difficulty of managing a fugacious resource from unsustainable predatory practices and the difficulty of protecting these resources from degradation, even if under the guise of the 'protection of the common heritage of mankind', while simultaneously abiding by principles of international law. In this case of protecting fur seals, the freedom of the sea was the principle of international law under consideration and in the case of freshwater ice, it is the provision of exclusive economic zones under the *United Nations Convention on the Law of the Sea 1982*, the notion of permanent sovereignty over natural resources and notions of equitable sharing for fugacious resources. In addition, a potential framework for the protection and management of freshwater sea ice would be developed in an entirely different political and legal climate. This includes the notions of rights of exploitation found in the *United Nations Convention on the Law of the Sea 1982*, which did not exist in the early twentieth century and also ideas of equitable distribution, environmental sustainability and economic efficiency.

Freshwater ice has been discussed as the property of a state within its territory, and it has also been discussed as a resource available for exploitation within the exclusive economic zone, but

there is one more angle to consider. It is entirely possible that freshwater ice deserves not only status as a natural resource, but that it also must be considered as a fugacious water resource, with all the characteristics of a transboundary water resource, including a watershed. The *United Nations Convention on the Law of Non-Navigational Uses of International Watercourses* 1997 defines a watershed as “a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.”<sup>566</sup> Ordinarily, the terminus of the watershed would be located at the point where both the surface and ground waters flow into sea. This is because at this intersection of fluids, freshwater and oceanic, it becomes impossible for man to physically separate freshwater from seawater and thus the ocean becomes the natural boundary for the watershed.

However, this is not the case with ice from ice shelves or glaciers, which even when in the ocean, retains its freshwater form. Unlike water, freshwater ice does not lose separate identity from oceanic water at the moment that the ice of the glacial watershed enters the sea, but retains it until the point where the sea reaches sufficient temperature to melt it. This creates another problem for determining the legal status of ice: if ice is part of a watershed, does this watershed terminate at the point where it flows into the ocean, or does it terminate at the point where the ice melts? And does sovereignty of the natural freshwater ice, as designated by the principle of permanent sovereignty, continue until the edge of the exclusive economic zone or international border, or until the finality of the watershed is reached—providing that the definition of the terminus of the watershed is considered as the melting point of glacial ice?

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<sup>566</sup> (Convention on the Law of Non-Navigational Uses of International Watercourses, 1997)

At this point, additional principles of international law, which have developed over the last century, must be considered, including notions of prior use, equitable appropriation and responsibility for injury across frontiers. In the case which eventually led to the *Rio Grande Treaty 1906*, even though the United States did enjoy sovereign and exclusive right to the resources within its territorial boundaries, it also had the duty under international law to “prohibit riparian states from causing harm to other states, and call for cooperation and peaceful resolution of disputes.”<sup>567</sup> Applying this to freshwater ice, because Canadian industries have been established utilising ice resources that may have originated from Greenland, it would be against principles of international law for Denmark to cause injury to those industries from Danish overuse of freshwater ice, even though it originated from within their sovereign territory. The same would hold true for any other non-Polar State also utilising polar ice for economic gain. But as “we can see how rising demand and real or threatened water scarcity are shaping ideas of equitable appropriation and leading to new arrangements for sharing,”<sup>568</sup> we turn to apply the principle of efficiency in international law to the sharing of this transboundary water resource beyond the notions of sovereignty over both territory and resources.

In international law, the principle of efficiency is “a norm that offers an optimal allocation of global or transnational resources among states.”<sup>569</sup> It likely the efficiency principle should apply to freshwater ice even with the constraint of customary law that “state sovereignty – as it is understood today – entails the authority of states to use resources under their sole ownership at

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<sup>567</sup> (Salman, 2007)

<sup>568</sup> (Schachtner, 1977, p. 37)

<sup>569</sup> (Benvenisti, 2002, p. 204)

their discretion, even inefficiently.”<sup>570</sup> This prompts the question: If there is sovereignty over ice, then does the state ever lose it when the resource crosses a boundary and does it then become the sovereign resources of the next state? Ordinarily, a state can utilise or waste a resource as desired, but the problem in this instance is that glacial ice, representing a scarce resource, will eventually melt into the ocean.<sup>571</sup> Therefore, the lack of utilisation will eventually mean total loss of the resource to the state of origination and also to any other states that could utilise the water resource further ‘downstream’, likely representing a complete opportunity loss for the use of this resource to mankind.<sup>572</sup>

The final condition of the lifecycle of an iceberg involves the potential condition as part of the global commons. The idea of designating freshwater ice as the ‘common heritage of mankind’ as a remedy for the inefficient maximisation of the resource by states who could claim *a priori* rights introduces a final idea to consider regarding the legal status of ice. This is the notion of the principle of *res communis*, which is applicable because many other resources in the ocean, especially those in the high seas are considered as a collective good. So perhaps ice, under conditions of water scarcity, should also be considered as a collective good?<sup>573</sup> There are some implementation difficulties with this concept, as seen in the debates on the possibilities of transporting polar ice to drought stricken areas of Africa.<sup>574</sup> Due to the finite quantity of ice available in the sea at any given time, it is clear that

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<sup>570</sup> (Benvenisti, 2002, p. 204)

<sup>571</sup> Polar scientists are currently monitoring the problem of the freshening of the oceans due to permafrost and glacier melt. This freshening likely has extreme implications for weather patterns and climate across Europe and North America. A large part of this freshening is from melting permafrost in Russia, which is largely uncontrollable. However, there is potential to diminish contributions to this freshening by harvesting glacial ice.

<sup>572</sup> It is possible that the freshwater lost from glacier melt will return to earth in the rain cycle?

<sup>573</sup> “A collective good is non-appropriable and freely accessible to all,” (Schachtner, 1977, p. 38).

<sup>574</sup> See (Vladimir Smakhtin, 2001), (Spandonide, 2009), (Czarra, 2002), etc.

consumption by some will undoubtedly result in less opportunity for others. As many icebergs will be located inside of the exclusive economic zone, there is clearly some jurisdictional difficulty with designating all ice as *res communis*, especially given that this could cause economic injury to those in prior use of the resource.

This discussion presents the continuing problems in concluding a legal status for ice, which for this generation are different to those faced in earlier discussions of the legal status of ice. Four legal conditions possible during the lifecycle have been identified including: consideration as permanent resources, as being part of the jurisdiction of the exclusive economic zone, a condition fugacious or as a transboundary resource and finally, as part of the global commons. However, there are existing legal models such as those on glacial ice in delimited political boundaries, on fugacious resources, principles of transboundary water providing example on how a legal status of ice could be determined. Although it appears that Article 56 of the *United Nations Convention on the Law of the Sea 1982* provides there dominant organisation for sovereignty over ice, the section has shown that this condition could become problematic as the commercial value of icebergs increase or become the source of conflict in an era of water scarcity.

### **Overlapping Legal Codes of Iceberg Harvesting Regions**

Within the Arctic, there are several overlapping legal codes, both national and international, that are in effect in marine waters containing icebergs thus complicating the arrival at a solution to the potential conditions of icebergs without a distinct management framework created specifically for icebergs. The advancing problem of a lack of a legal regime for the harvesting of icebergs is illustrated through the example of the Davis Strait (See

Figure 1), a region where nearly 10,000 icebergs are calved each year.<sup>575</sup> It is here that icebergs begin as a glacial water resource of either Canada or Greenland and then finally exit into the North Atlantic (See Figure 2), some eventually escaping into the high seas. The regimes depicted here are the International Iceberg Patrol and the Polar Code, both international mechanisms and the Canadian *Arctic Waters Pollution Prevention Act 1972*, a piece of domestic legislation.<sup>576</sup> While each of these is positive in the context of their individual aims and can provide ample guidance for polar safety and environmental standards, none has jurisdictional authority to cover all northern hemisphere marine areas containing icebergs, including the subarctic areas between Russia and the United States. In addition, it must be remembered that the exclusive economic zones of Greenland (Denmark) and Iceland extend for 200nm beyond the landmass, but are not depicted in this illustration.

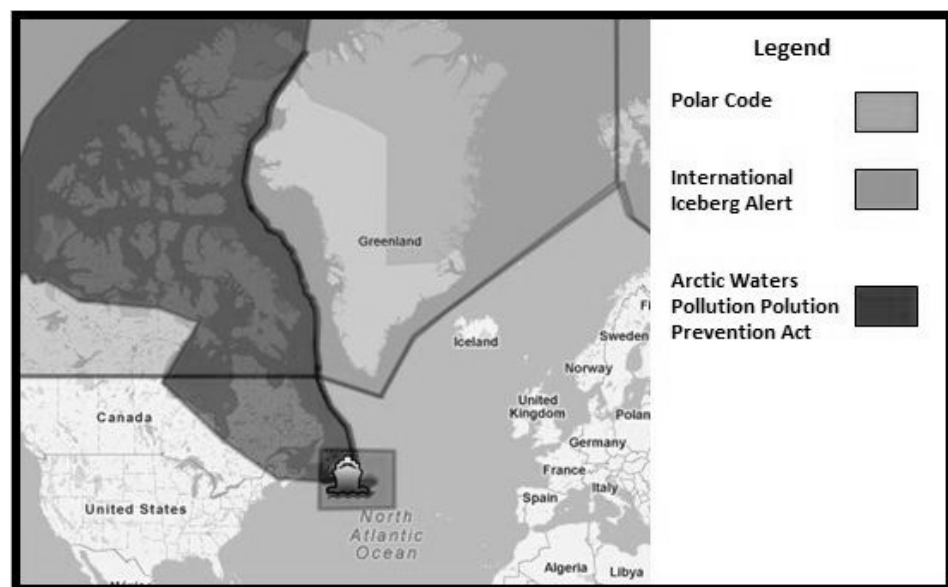


Figure 1: Overlapping Legal Codes in the Arctic Maritime

<sup>575</sup> (A. Mosbech, 2000)

<sup>576</sup> The boat icon on the Figure 1 is located at the geographic coordinates for the sinking of *Titanic* on 15 April 1912.



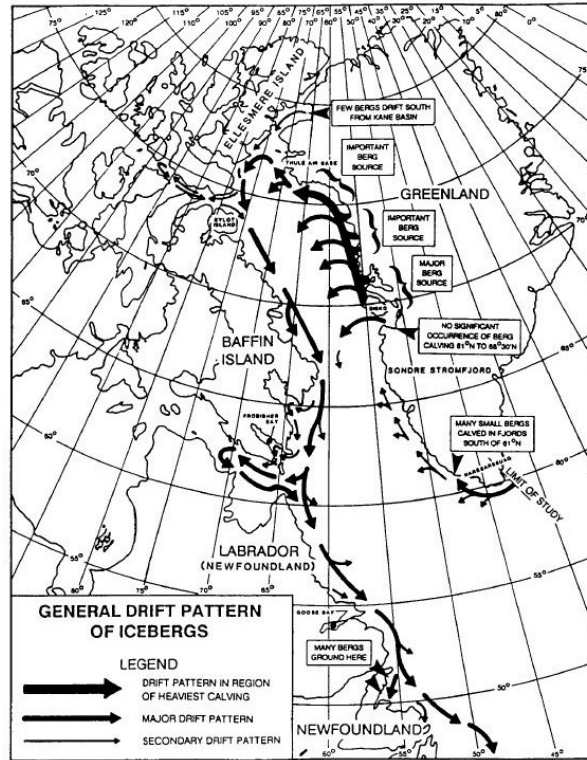


Figure 2: International Ice Patrol: General Drift Pattern of Icebergs<sup>577</sup>

The International Ice Patrol (IIP) was established in response to the Titanic tragedy by the *International Convention for Safety of Life at Sea* (SOLAS) in 1914, giving the United States responsibility for the “study and observation of ice conditions, and ice patrol.”<sup>578</sup> Its primary function is to report the location and number of icebergs present in the North Atlantic on any given day and also monitors the directional flow of the larger icebergs originating in the far north through satellite tracking and from ship reports on sightings. While the IIP is not a legal mechanism, it demonstrates not only the ability and potential for the international community of Arctic states to cooperate regarding the management of icebergs, but it also provides already existing machinery to monitor the quantity and location of icebergs (See Figure 3) that

<sup>577</sup> (A. Mosbech, 2000, pp. 8-44)

<sup>578</sup> (International Maritime Organization, 1914)

are available for harvesting. An additional benefit could also be that iceberg harvesting could reduce the threat of icebergs to passing container and passenger vessels.

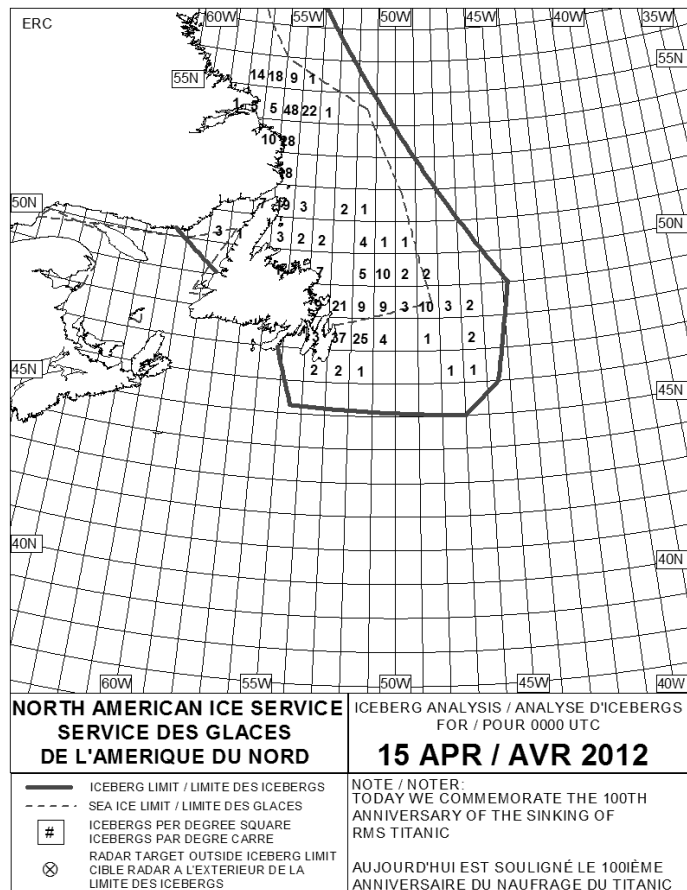


Figure 3: Iceberg Frequency and Locations on 15 April 2012<sup>579</sup>

The Polar Code is a recent mechanism developed through the International Maritime Organization for the protection of the maritime environment of the Arctic Ocean. It intended to address the shortfalls of the *United Nations Convention on the Law of the Sea 1982* and the International Convention for the Protection of Pollution from Ships,<sup>580</sup> which exists due to the extreme conditions of the Arctic. As witnessed by Arctic explorers in the nineteenth century, sea ice provides a formidable hazard for polar seafaring,

<sup>579</sup> (International Ice Patrol, 2012)

<sup>580</sup> Aims of MARPOL include "preventing and minimizing pollution from ships," (International Maritime Organization, 2011).

with many ships becoming stuck fast in the ice and eventually crushed by its forces<sup>581</sup>, marooning crew on the ice and sending the ship's cargo to the bottom of the ocean. Some of these dangers have been mitigated as the Arctic Council addressed the problems of coordinating for search and rescue missions in the Arctic with the *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue 2011*. However, of equal concern are the environmental effects of the spillage of ship cargo, often including fossil fuel extracts, nuclear materials and other hazardous chemicals, which could wreak havoc on the Arctic Ocean ecosystem. As demonstrated by the *Exxon Valdez* 1989 and the *Deepwater Horizon* 2010 disasters, ocean oil spills are difficult to clean up and in the Arctic this would be compounded due to the presence of sea ice.

Additionally, sea ice is a hazard to vessels attempting to traverse through the polar and subarctic seas, as observed by the loss of the many ships including the *Titanic* in 1912 and the *MS Explorer* in 2007, and in order to avoid becoming trapped in the ice in the Arctic Ocean, ships are escorted by ice breakers. The hazards to shipping found in the polar environments creates a gap which is not addressed by the legal mechanisms of *International Convention for the Safety of Life at Sea 1974* or *International Convention for the Prevention of Pollution From Ships 1973*, as greater precautions are needed to ensure physical safety of the vessels and passengers as well as the protection of the Arctic and sub-Arctic environments. The Polar Code addresses this need by requiring additional structural, safety equipment and even training for vessels and crews entering the polar seas, however, as Figure 1 illustrates, the jurisdiction of the Polar Code does not extend into the subarctic marine areas in which iceberg harvesting occurs. A management

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<sup>581</sup> The problem of ships being crushed by ice led to the design of the *Fram*, a ship designed to be able to float on the Beaufort Gyre.

regime for the harvesting of icebergs could address this gap in order to prevent potential environmental hazards due to increased traffic of vessels sailing in iceberg infested waters.

The Canadian *Arctic Waters Pollution Prevention Act 1972* played an instrumental role in influencing the insertion of Article 234 into the *United Nations Convention on the Law of the Sea 1982*, providing retroactive justification through international law for Canada's restrictive controls over the Northwest Passage, an international strait that Canada deems as internal waters. The Canadian *Arctic Waters Pollution Prevention Act 1972* provides that "no person or ship shall deposit or permit the deposit of waste of any type in the Arctic waters"<sup>582</sup> and like *International Convention for the Prevention of Pollution From Ships 1973* provides environmental protection for some of the ocean areas from where icebergs are harvested. However, the jurisdiction extent of Canadian *Arctic Waters Pollution Prevention Act 1972* only reaches to the borders of the Canadian exclusive economic zone and thus is insufficient to protect all the marine areas where icebergs linger.

### **Regulatory Framework for Freshwater Ice: A Legal Duty?**

Although the legal status of ice has been neglected by the policy makers of individual states, it is important for scholars to proffer a discursive framework for a legal regime for the management of freshwater ice as it is not only a potential source of freshwater, but is increasingly being used as a commodity. A legal regime could provide guidelines for finally determining what sovereignty and thus what rights, if any, can be held over ice in both the Arctic and Antarctic regions, preventing potential conflict between States and industries utilising icebergs for economic gain. A legal regime also could provide for the protection of ice sheets and glacial features

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<sup>582</sup> (Government of Canada, 1970)

protruding into the ocean, and could provide for the prevention of pollution of the environment in which these features exist. This could be achieved through a regulatory framework, that through licensing determines who has access to the areas in which icebergs exist, what type of equipment is allowed into these areas<sup>583</sup> and finally, how much ice one is permitted to harvest.

As outlined, many of the early debates on the legal status of ice revolved around the notion of establishing sovereignty, or sovereign ownership over the ice. However, it can be clearly seen that there is no apparent desire by states to establish such sovereignty over ice used for habitation, nor at present does there appear to be an impetus for establishing sovereignty over ice as a natural resource. However, as ice is a potentially much needed source of freshwater, and with its increasing use as a commodity, there are compelling reasons to establish some jurisdiction over freshwater icebergs, beyond the provisions of the exploitation rights found in the law of the sea as this does not address earlier identified provisions of international law such as permanent sovereignty over water resources, notions of transboundary water law and finally, the problems created through economic inefficiencies of exploitation assumed without a legal framework for allocation.

Without regulation, ice, as with other fugacious resources, could be affected by the creation of economic inefficiencies as “no-one owns the resource, there is nothing to stop anyone from capturing the benefits of a resources, which leads to an unproductive race to capture as much of the resources as possible...eventually a point will be reached when resource exploitation is saturated and no

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<sup>583</sup> This is an area currently being developed for the Arctic Ocean through the IMO and the Polar Code. However, many icebergs and ice shelf features exist in areas outside of the Arctic Ocean, such as in the Davis and Bering Straits. The Polar Code also does not apply to ships entering the Southern Ocean.

rent is gained,"<sup>584</sup> as was seen with the competition over Fur Seals in the early part of the twentieth century. Applying the problems of inefficiency to the capture of freshwater icebergs, if icebergs continue to remain an unregulated resource, as their benefits and scarcity are realised the competition for harvesting these resources will intensify, likely causing degradation to the environment, despite attempts of international law to prevent the harming of the ocean environments.<sup>585</sup>

The use of icebergs as an economic resource in itself is not a problem. The problem lies in the fact that often ice that is incorporated into one nation's economic activity originated from another state's territory, and there is no clear indication from international law if there are rights to do so. As freshwater ice originates from *terra firma* it is the resource of a state, which thus holds both sovereign rights and property rights over the resource. The sovereignty of ice originating from land has been assumed to belong to the territory of origin by the *Antarctic Treaty System 1959*.<sup>586</sup> The trouble with this 'probably' status in the *Antarctic Treaty System 1959* is the lack of sufficient title to territory for any state to be able to make a claim to exclusive rights over a resource. In an examination of the legal status of ice in the Antarctic before the development of the *United Nations Convention on the Law of the Sea 1982* and the addition Conventions of the *Antarctic Treaty System*, Lundquist held that, in all likelihood, principles of international law dictated that shelf ice held the status of *glacia firma*, the same sovereign status as *terra firma* and that "international law points toward open access for reasonable iceberg harvesting for all nations on the high seas."<sup>587</sup>

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<sup>584</sup> (Barnes, 2009, pp. 2-3)

<sup>585</sup> Such as with the *International Convention for the Prevention of Pollution from Ships 1973/1978*.

<sup>586</sup> (Rothwell, 1996, p. 258)

<sup>587</sup> (Lundquist, 1977, p. 29)

In addition to the sovereign status of ice likely granted in the *Antarctic Treaty System 1959*, which sets some precedent for determining the treatment of all freshwater ice, the United Nations has established principles of permanent sovereignty over resources in a resolution by the General Assembly in 1952, saying that “The right of peoples to use and exploit their natural wealth and resources is inherent within their sovereignty.”<sup>588</sup> As a natural resource, freshwater ice, no matter its form (glaciers, ice shelves, icebergs, etc.), would thus be the resource of a state with that state retaining rights to permanent sovereignty. So, should territorial claims ever be an option in the Antarctic, the freshwater resources of the ice shelves would belong to the claimant states.

A key issue in the lack of a framework for the legal status is that this ice is harvested from the ocean and used by coastal communities, providing revenues to groups who hold no recourse for the protection of an industry based solely around freshwater icebergs. While ice has been harvested as a commodity for over a century, harvesting from icebergs and iceberg tourism are relatively young industries providing substantial economic revenues to isolated economies.<sup>589</sup> The lack of a regime to date can be attributed to two factors: state avoidance in pursuing a regime on the status of ice islands and ice shelves for fear of losing potential use of the resource, and due to the “absence of resource users who are already owners or holders of conventional rights under common law which has translated into an absence of the chief means by which uses of other resources have exercised demand for modifications of their rights.”<sup>590</sup> Because there has been no overall designation on the legal status of freshwater ice it is difficult for those who use it to pursue a regime which

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<sup>588</sup> (United Nations, 1952)

<sup>589</sup> In 2004, Iceberg tourism was considered a substantial part of Newfoundland’s \$620 million dollar industry (Hudson, 2004, p. 161) and was considered “one of the few new growth industries in Newfoundland,” (Cartier & Lew, 2005, p. 16).

<sup>590</sup> (Scott, 2008, p. 57)

establishes rights over the resource, which, for example, makes it impossible for the iceberg tourists to make a legal complaint regarding the destruction of their iceberg by an iceberg harvester.

A licensing system for harvesting icebergs in the Antarctic was suggested as a possible solution during the 1970s to rectify the problems of these economic inefficiencies, but at the time there was not an available regulatory body to manage the system.<sup>591</sup> However, this obstacle has been overcome for the Arctic with the advent of the Arctic Council and its development in 2011 to include a permanent secretariat. For the Antarctic, legal addenda have been created for the region prohibiting the exploitation of living resources and for mineral/hydrocarbon resources and provided for environmental protection.<sup>592</sup> However, these additions still do not provide guidance on the exploitation of ice, which is neither living nor mineral resource.

While to date, there appears to have been little impetus for states to make explicit claims to the sovereignty of ice, this does not mean that this non-status for ice should continue indefinitely especially as it appears that under international law there is a legal duty to provide regulation for water resources in order to prevent conflict and to provide environmental protection. The legal duty is a two-step process beginning at domestic level; "Individual states, as a first measure, are expected to adopt adequate legislative and administrative provisions to regulate and control frontier water pollution within their jurisdiction."<sup>593</sup> In the Arctic, some of these environmental legislative protections are already in place, but this has led to overlapping legal protection systems. The second step of the process of fulfilling legal duty to cooperate in development of

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<sup>591</sup> See (Lundquist, 1977, pp. 32-3)

<sup>592</sup> Convention for the Conservation of Antarctic Marine Living Resources (1980), Convention on the Regulation of Antarctic Mineral Resources (1988) (not in force), and the Protocol on Environmental Protection to the Antarctic Treaty (1991).

<sup>593</sup> (Caponera, 1987, p.8)



“long-term, systematic planning of the use of shared water resources,”<sup>594</sup> something that to date is absent in reference to glacial icebergs in the Arctic.

The creation of a regulatory framework for the harvesting of ice in the Arctic and providing the settlement of its legal status would ideally come under the auspices of the Arctic Council whose aim as an intergovernmental organisation is to “promote cooperation, coordination and interaction among the Arctic States.”<sup>595</sup> A mandate for any regulatory framework would necessarily need to have establishment in a realm with supra-jurisdiction beyond the realm of the state as no state individually has the authority to legislate for the resources found in the high seas.<sup>596</sup> As the Arctic Council is the primary forum for intergovernmental activity between Polar states it is the logical administrative location for an iceberg harvesting regulatory system and for incorporating the overlapping environmental codes found in the domestic and international Arctic areas into a comprehensive regulatory regimes that both adheres to the codes individually and also addresses the existing deficiencies of harvesting ice without a regulatory system.

## **Conclusions**

Ice, in both its freshwater and saltwater forms, holds an uncertain legal status under international law for historical political and legal reasons, but it may be the time has come to remedy this status. It is clear that the economic value of ice increasing due to its life-giving properties in a world with growing freshwater needs; ice is also increasing in interest as an economic commodity. Although ice has no real legal status, despite

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<sup>594</sup> Ibid, p.7

<sup>595</sup> (Arctic Council, 2011 a)

<sup>596</sup> (Fisheries and Oceans Canada, 2010)

indication in the *Antarctic Treaty System 1959* that it should have a legal status, ice in the oceans could be treated as a fugacious resource within the confines of the Exclusive Economic Zone provided under the *United Nations Convention on the Law of the Sea*—although because of the preciousness of freshwater, it should not be considered as a sovereign resource but should instead be considered as a transboundary water resource. Thus, there is a need to provide a regulatory system for the harvesting of ice to prevent conflict between those who would process the ice into commercial products and those who enjoy admiring its beauty as an experience.

Additionally, the sources of icebergs-- glaciers and ice shelves, need to be protected from those who would engage in predatory practices in order to acquire this resource and there is also a need to prevent the degradation of the environment from pollution and industrial accidents caused by shipping traffic in the area. It has been demonstrated that there are mechanisms in both international and domestic law that aim to provide for some of these problems, but none of them are sufficient to protect the entire extent of the seas from which icebergs are harvested or to account for the hazards of operating in the subarctic environment. Therefore, this paper proposes that a regulatory system be established through the authority of the Arctic Council to establish licensing for iceberg harvesting, including designation of the fields from which it can be harvested and to extend the guidelines of the Polar Code by specifying the types of equipment that must be used when operating in the subarctic environment in order to protect the valuable resource of freshwater ice and to protect integrity of its surroundings.

## Conclusions

The aim of this thesis has been to develop a meta-narrative of the *longue durée* of Arctic sovereignty in order to provide a better understanding of how Arctic policy is situated within the domestic structures of the Arctic states and within the framework of the international system. In developing this narrative, this thesis has argued that in the process of establishing Arctic sovereignty, the Arctic states have always acted in accordance with the rules of the international system in given eras, but that these rules have changed over time. Arguing that the international system changes through the introduction of rules to the system by states acting as the primary agents within this system it posits that the rules currently situating the Arctic within the international system are the result of imperial practices as states have continued to reinforce an asymmetric relationship with the people and with the territory. It also argued that the Arctic foreign policy of the United States, Canada and Russia is reactive to these changes within the system but that the pursuit specific national interests can be identified in each of these periods. Finally, it argued that governance in the Arctic is a method whereby the Arctic states project control over the Arctic outside their sovereign territorial borders with the intent to the exclude of non-Arctic states, in order to pursue their national interests in the Arctic.

*Chapter 1: The Case of the Melting Arctic: Sovereignty, Imperialism and the International System* introduced the conceptual framework by describing the character and structure of the international system in which Arctic sovereignty is being established. It argued that sovereignty is a socially constructed rule that designates state 'ownership' of the Arctic, providing them with security to exploit the resources of the region. States are currently in the process of

establishing sovereignty over the maritime territories within the current construction of the international system, with sovereignty over the *terra firma* of the Arctic having been established under a previous construction of the international system. The international system, which is socially constructed on a conceptual foundation of the sovereignty of states, has been created through the layering of rules and codes, which in the condition of anarchy guides the behaviour of states. These rules give security and when broken are the cause of insecurity between states. When new rules are added to the international system it causes the system to change shape, with some rules adding turning points in the overall character of the system. During the years of state engagement with the Arctic, four eras of the international system can be identified in which states have applied the rules of the system to the Arctic in an imperialist relationship.

*Chapter 2: A Genealogy of the Rules and Codes of Arctic Sovereignty* presented the rules and codes of the international system that have been legitimised through state practice, advancing state interests in the Arctic in four different eras. This chapter argued that the rules and codes that frame the Arctic were introduced due to national interests of territorial expansion for security through resource exploitation as states engaged with new territory opportunities beginning in the Age of Discovery. The lineage of these socially constructed rules and codes reveals the evolving structure of the international system and the absorption of Arctic territory (both terrestrial and maritime). This lineage also demonstrates the establishment of sovereignty through imperial expansion as the territory has been divided between the littoral states. As new interests are identified, states will introduce new rules and codes to acquire international legitimisation permitting the pursuit of their policy in the international realm.

*Chapter 3: United States Arctic Policy 1867-2013* analysed the Arctic foreign policy of the United States from the *Alaskan Purchase Treaty* in 1867 to the publication of the National Strategy of the Arctic Region 2013. It argued that U.S. Arctic policy continuously aligns itself with the broader grand strategy of U.S. national interests, exemplified in their dedication to the freedom of the seas in order to maintain their ability to pursue their maritime security strategy. Although U.S. Arctic policy generally reflects their adherence to rules of the international system, as a dominant state, they are willing to test the strength of these rules, for example in the attempt to implement protectionist legislation towards fugacious fur seals outside of their territorial boundaries, and are willing to introduce new rules to the system in order to pursue their national interests, as seen in the Truman Proclamation of 1945. Finally, U.S. practice in the Arctic acts as a stabiliser in Arctic international relations against the backdrop of the more exhibitionist policies of Canada and Russia, as seen both in their refusal to claim sea ice as sovereign territory and in their application of the rule of the continental shelf in spite of their non-ratification of the *United Nations Convention on the Law of the Sea 1982*.

*Chapter 4: Canadian Arctic Foreign Policy 1867-2013* analysed the Arctic foreign policy of Canada from the *1870 Transfer of the Northwest Territories and Rupert's Land* from Great Britain to the 2010 Statement on Canada's Arctic Foreign Policy and subsequent diplomatic statements. The chapter argued that Canadian Arctic policy reflects an uncertainty in their possession of Arctic sovereignty, which was acquired through transfer from Great Britain, as it was uncertain of its own sovereign position over these territories. To secure this sovereignty, Canada has claimed that indigenous inhabitants have been Canadians since time immemorial, when the relationship of the central government with

the Canadian Inuit continuously exhibits the asymmetry of their imperial relationship. As Canada has only been responsible for its foreign policy since the end of the Interwar Years it has exhibited an immaturity in Arctic foreign policy, relying on its southern neighbour for Arctic security during the Cold War Period. In its engagement with the rules of the international system it attempts to promote their domestic 'indigenous rule' at the international level and in their representation of borders in the Arctic, which have remained contrary to the rules of the international system for almost a century. Finally, it argued that in order to secure international recognition, Canada is rebranding its identity as a 'northern country' by informally changing its national motto, making the Inuit Inuksuk the symbol of the 2010 Vancouver Olympics, presenting a nationalist narrative of Canada originating in the Arctic at the Canadian Museum of Civilization, amongst others.

*Chapter 5: Russian Arctic Foreign Policy 1619-2013* analysed the Arctic foreign policy of Imperial Russia, the Soviet Union and the Russian Federation beginning with the territorial expansion into Siberia through to the 2008 publication of the Principles of State Policy of the Russian Federation in the Arctic up to 2020 and Beyond and subsequent diplomatic activity. The chapter argued that although Russia has not formally contradicted the principle of the freedom of the seas, in practice, its Arctic policy has always treated the Russian Arctic maritime as a *mare clausum*, an approach that will be difficult to relinquish as the sea routes in the Arctic become more accessible. The opening of the Arctic provides impetus for Russia to cooperate with the other Arctic states, forming an Arctic cartel and thus still maintaining control of the Arctic within the counties of the Far North. It also holds that Russia's Arctic policy has always been based on the premise that Russian domestic legislation maintains priority over international

rules, causing insecurity within Russian international relations. Finally, it argued that every transition in the Russian domestic political structure has forced Russia to redefine its relationship with the Arctic in tandem with the rules of the international system, but there are inherited Russian identities that have remained constant. Contemporary Russian Arctic policy represents the cumulative effect of this inherited identity and the myth of the Arctic with the development and economic goals of the Russian Federation.

*Chapter 6: Arctic Governance: Transformations, Rules and Doctrine* introduced the rule of governance within the international system as a method by which states pursue their national interests outside the realms of sovereign territories. It argued that transformation in both the Arctic and in the structure of the international system has resulted in the creation of governance, and that states are using governance to project their Arctic policy and to promote their Arctic interests in the international realm. Although indigenous groups have been included in the governance hierarchy, it is not a new rule added to the structure of the international system that reduces the primacy of states as the dominant agents of power. Finally, it argued that the creation of a governance mechanism in the Arctic Council, rather than the establishment of an Arctic Treaty constitutes the creation of an Arctic Doctrine, whereby non-Arctic States are eliminated from the decision making process of the Arctic region in effect creating an Arctic cartel.

*Chapter 7: A Political Assessment of the Arctic Search and Rescue Agreement: Text, Framing and Logics* analysed the politics of the *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic 2011*, signed by the eight states with membership in the Arctic Council. It argued that as search and

rescue obligations have already been addressed through other international mechanisms of hard law, this SAR agreement facilitates a means whereby the Arctic states are able to project their security interests in the region through cooperative joint military manoeuvres in the Arctic while still maintaining the image of the Arctic as a zone of peace. As the first instrument of hard law negotiated through the Arctic Council, the agreement serves as solidification of the Arctic Doctrine through the continued exclusion of non-Arctic states. Additionally, although some Arctic states use indigenous people to assist with search and rescue capabilities, their exclusion as signatories to the agreement represents the continued asymmetric nature of the international system and signals the continuance of the imperial relationship between the Arctic states and the indigenous inhabitants.

*Chapter 8: A Pending Governance Issue: The Legal Status of Ice* postulated that there is a regulatory gap within polar law on the status of ice within international law. It argued that because freshwater ice can be scientifically classified as a mineral, that it qualifies for claims to sovereignty due to the rule of permanent sovereignty over resources. However, because freshwater ice originates in glaciers and ultimately converts into water losing its status as a mineral, the fugacious nature of the resource causes some difficulty in its treatment under existing water legislation. After a discussion of the gaps in the legal regimes of the Arctic, the chapter argued that the creation of a mechanism for the regulation of ice harvesting. Freshwater ice is growing in importance as a commercial commodity, but as water scarcity becomes a global issue, it falls within the remit of the Arctic Council to create a legal status for freshwater ice to preserve the resource interests of the Arctic states, potentially preventing environmental damage to the fragile Arctic ecosystem.



To complete this research, this thesis employed process-tracing, beginning with contemporary rules of the international system to which the Arctic states are proclaiming adherence, including the *United Nations Convention on the Law of the Sea 1982*, to develop a lineage of international law that creates the legal framework for the establishment of terrestrial and maritime sovereignty in the Arctic. This method served to identify transitions within the international system that frames these rules, dividing them into four discrete eras as state practice with territorial expansion and the pursuit of Arctic policy changed tack with these evolving rules in order to achieve their national interests. To analyse the Arctic policy of the United States, Canada and Russia in comparative analysis, this research engaged with empirical data including: treaties, policy statements and legislative materials—such as congressional records and policy documents—as well as other official documents such as maps, postage stamps and national museum exhibitions and archives. It also used information from other government agencies, newspaper archives and historical accounts, when available. To analyse how Arctic governance is situated within international relations, this research relied on not only the materials of the rules and policy sections of this thesis, but used official documents from the Arctic Council, treaties and other diplomatic statements relating to Arctic international relations.

While it is unlikely that this research has used empirical data never before seen, the way in which it is collated and synthesised in this thesis presents an empirical and theoretical angle on Arctic sovereignty different to other materials produced on the topic. Throughout, it has raised questions concerning the development of the rules and the structure of the international system and the way in which states engage with this system as they pursue their national interests in the Arctic region through domestic policy and

governance. And while it might not provide a complete solution to future issues, challenges and conflicts facing policy-makers engaging in Arctic international relations, it does provide a framework for analysing the Arctic different to the mainstream *realpolitik* or liberal institutionalist approaches.

Throughout this research, the position of the researcher on the topic has also evolved. Beginning with an approach similar to other Realist conceptions of Arctic international relations, this project began from the premise that states act only in their national interests and would pursue their interests of territorial sovereignty in the Arctic contrary to the rules of the international system. As empirical sources were collated and analysed within the Constructivist research framework, this position was tested and what has been discovered instead, is that states are not prone to absolute disregard for the rules because it is states that have socially constructed these rules and that these rules are in themselves a form of security, causing insecurity when ignored in the pursuit of state policy. Thus for the Arctic, its surrounding states are compelled to follow these rules, but when their interests are restricted by existing rules, they introduce new rules to the system which furthers the scope of their policy. The rules are created by states in their interests and thus rather than ignore the rules in the pursuit of their national interests, they create opportunities to extend the rules through international consensus.

Furthermore, during the course of this research that developed a meta-narrative of the *longue durée* of Arctic policy, the impact of the approach of this thesis is that it might benefit decision-making within foreign policy by those who are willing to employ this research strategy. It appears that often, foreign policy decisions are based on information and interests in a given episodic event, in some cases leading to military engagement in order to realign the

situation with a state's national interests. Although drawing heavily on contemporary examples from U.S. foreign policy, these include the Cuban Missile Crisis (analysed by Graham Allison), the Iraq War, and Operation Enduring Freedom, amongst many others. In each of these examples, should policy makers have taken the opportunity to turn an episodic analysis into a meta-narrative of the *longue durée*, they would have discovered more nuances of interests and identity inlaid with the forces of empire in ages past.

Policy makers would have discovered that countries, such as Iraq and Afghanistan, now legally classified as states within the international system, gained their condition of statehood by designation upon the disintegration of empire, and responsibility for institutions of the state that Europe has taken centuries develop were suddenly thrust upon these political units. Many of these states tenuously cling to the façade of statehood, which sometimes crumbles when challenged by domestic forces or outside infringements (such as in the case of Somalia). Empires drew territorial boundaries in convenient lines on imperial maps and issued new 'states' with contiguous territory that should never have rationally been joined into a single political unit. In addition to weak institutions of domestic government, the drawing of these dubious territorial boundaries amalgamating ethnic and religious factions has ultimately resulted in civil conflict within these states. As these factions are ignited by passions--or the chains of society that Rousseau deplored--it is exceedingly difficult for the project of democracy to succeed in these states. Given more nuanced knowledge of these situations, perhaps states would have either reconsidered engagement or used different methods to achieve their policy objectives.

In addition to the limitations identified during the introduction, such as the inability to access materials written in different

languages and some difficulty in accessing archival materials due to funding or restricted permissions, the concluding of this research has revealed further theoretical and empirical limitations. This research has focused on the application of the rule of sovereignty through a Constructivist research framework and the development of Arctic foreign policy as states engage with the rules of the international system. However, this approach is conceptually limited in that it classifies 'interests' generally, and does not place priority on one interest over another, except through the patterns of state practice. When empirical samples revealing patterns of state practice are accumulated, they appear to focus on the national interest of security through territorial integrity, buffer zones and international cooperation. Yet, although these security motives for the acquisition of territory in the Arctic are important for the early stages of empire, in an era of advanced military hardware, they are not completely rational for the change of rules that have allowed the Arctic states to acquire maritime territory in the Arctic.

The reason for the introduction of the rule changes that allows this absorption of territory in the Arctic is to permit states to pursue security through resource sovereignty. During the development over the *longue durée*, the theme of economic benefits of the Arctic continuously reappears throughout the entirety of state engagement with the Arctic. In fact, it is the economic benefits of the Arctic sea routes during the early stage of capitalism that is the initial impulse drawing empires to the region. Thus, it is the position of this researcher, that this subject matter, while still employing the methodology of the creation of a meta-narrative of Arctic sovereignty, would be advanced if analysed through the lens of classical Marxism, including the collation of empirical data that focuses on the economic earnings that have been gained through exploitation of the Arctic. The use of classical Marxism would

allow for a continuation of the theme of asymmetry between the core of imperial governments and the fringes of Arctic territory, including the alienated relationship with indigenous people, but more importantly, it would allow for a focus on the use of the Arctic as an economic base for the empires absorbing the Arctic to fulfil their national interest of economic security as they engage with the capitalist structure of the international system.

Finally, there are implications that the development of this research has for the future of the Arctic. First, this research could be expanded beyond the limited scope of the project to apply this strategy to case studies of the littoral Arctic states not explicitly included as case studies in this thesis. Secondly, this research could be expanded to include all the states with membership in the Arctic Council, analysing their Arctic policies and their pursuit of governance against the background of their engagement with the rules of the international system. The expansion of this scope would ideally not only reproduce the findings of this thesis, but it would also result in the completion of a complete account of the development of sovereignty around the Arctic Ocean, providing policy makers both within Arctic and non-Arctic states with a complete picture of international relations between the Arctic states, expanding adding to episodic analysis (in relation to the already developed *longue durée*) of governance and treaty mechanisms as they continue to increase in quantity.

Additionally, this research strategy could be applied to data sets outside of the Arctic states, including considering questions on how the development of Arctic sovereignty and governance mechanisms affect non-Arctic states with interests in Arctic resources and shipping. Secondly, a comparative analysis between the Arctic and the Mediterranean, both enclosed seas, could be made questioning the economic and infrastructural implications

for the Mediterranean as trade is drawn away due to the opening of sea routes in the Arctic. Thirdly, the implications of an independent Scotland for the status of the United Kingdom within the Arctic Council could be assessed. And finally, as discussed earlier, this research strategy could be applied to other situations of interest in foreign policy to policy makers, both past and future.

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