

# When Do Ideas of an Arctic Treaty Become Prominent in Arctic Governance Debates?

Jon Rahbek-Clemmensen<sup>1</sup>

(Received 5 October 2018; accepted in revised form 30 January 2019)

**ABSTRACT.** As climate change and globalization are opening the Arctic to human activities, the debate about how best to organize Arctic institutions in order to facilitate regional governance has been invigorated. One of the most controversial ideas in this debate has been the notion that a comprehensive treaty should govern the Arctic. Depending on its exact design, such a treaty could radically transform regional decision-making procedures and substantial issue areas. It has been opposed by several regional stakeholders, including most regional states. This article examines how specific factors determine the prominence of the idea of an Arctic treaty in governance debates, and whether it is likely to become a crucial feature in future discussions. It argues that there are multiple ideas concerning the content and purpose of an Arctic treaty. Some of its proponents favor radical transformation of the regional order, while others envision more moderate reforms of existing institutions. It maps how the Arctic treaty debate has developed in four phases from 1970 until today, showing that it has been driven by a combination of functional gaps in the regional institutional setup, changing public political discourses about Arctic governance, and the degree of opposition among regional stakeholders. As some of these factors persist, the Arctic treaty will most likely continue to play a role in regional governance debates. In case of a regional crisis, it can once again become a focal point for discussion.

**Key words:** Arctic; governance; Arctic Treaty; Arctic Council; Ilulissat Declaration; European Parliament; NGO; Polar Code; institutions

**RÉSUMÉ.** À mesure que le changement climatique et la mondialisation permettent à l'être humain d'exercer des activités dans l'Arctique, le débat entourant la meilleure façon d'organiser les institutions de l'Arctique dans le but de faciliter la gouvernance régionale a repris de l'ampleur. Dans le cadre de ce débat, l'une des idées portant le plus à controverse a trait à la notion que l'Arctique devrait être gouverné par un traité détaillé. Selon sa formulation exacte, ce traité pourrait avoir pour effet de transformer de manière radicale les procédures de prise de décisions à l'échelle régionale et les enjeux importants. Plusieurs intervenants régionaux s'opposent à ce type de traité, dont la plupart des États de la région. Cet article porte sur la manière dont des facteurs particuliers déterminent l'importance de l'idée d'un traité de l'Arctique dans les débats sur la gouvernance et tâche d'établir si cette idée risque de devenir un aspect fondamental des discussions futures. L'article soutient qu'il existe de nombreuses idées à propos du contenu et de la raison d'être d'un traité de l'Arctique. Certains de ses promoteurs favorisent une transformation radicale de l'ordre régional, tandis que d'autres préconisent une réforme plus modérée des institutions actuelles. L'article illustre la manière dont le débat sur le traité de l'Arctique a traversé quatre phases, de 1970 à présent, et montre qu'il répond à un ensemble d'écart fonctionnels sur le plan de la configuration institutionnelle régionale, des discours politiques publics changeants sur la gouvernance de l'Arctique et du degré d'opposition des intervenants régionaux. Puisque certains de ces facteurs persistent, le traité de l'Arctique continuera vraisemblablement de jouer un rôle dans les débats régionaux en matière de gouvernance. En présence de crise régionale, il pourra, encore une fois, devenir un point de discussion central.

**Mots clés :** Arctique; gouvernance; traité de l'Arctique; Conseil de l'Arctique; déclaration d'Ilulissat; Parlement européen; ONG; Code polaire; institutions

Traduit pour la revue *Arctic* par Nicole Giguère.

## INTRODUCTION

International interest in Arctic governance (the governing that occurs internationally through cooperation between several Arctic states and entities without one sovereign authority in charge [Finkelstein, 1995:369]) has increased significantly over the past decade. Climate change and globalization are opening the Arctic to human activities,

including shipping, mining, fisheries, tourism, and oil and gas extraction. More activity leads to new challenges for Arctic societies and an enhanced need for international institutions addressing these challenges. International institutions are sets “of rules that stipulate the way in which states cooperate with one another,” and they thus include both formal forums and organizations, international conventions and regulation, and informal norms and

---

<sup>1</sup> Institute for Military Operations, Royal Danish Defence College, Ryvangs Allé 1, DK-2100 Copenhagen East, Denmark; [jora@fak.dk](mailto:jora@fak.dk)

agreements (Mearsheimer, 1994/95:8; Simmons and Martin, 2002). The new challenges have thus led to a continuous debate between policymakers and academics about how best to organize Arctic institutions in order to facilitate regional governance.

One of the most controversial ideas in this debate has been the notion that a comprehensive treaty should govern the Arctic, often in a version similar to the Antarctic Treaty system. Depending on its exact design, such a treaty could have wide-ranging consequences for both regional decision-making procedures and substantial issue areas. Some proposed versions of an Arctic treaty would diminish the influence currently held by regional states and by organizations representing Indigenous and local communities, while banning or limiting several activities, including the exploitation of natural resources. Between 2007 and 2013, academics and political actors, such as Members of the European Parliament (MEPs) and several non-governmental organizations (NGOs), pushed such ideas. Many regional stakeholders who benefit from the current setup, most importantly the majority of the Arctic states, have gone out of their way to oppose such fundamental reforms, arguing that an Arctic treaty would be a redundant distraction, which would take up diplomatic energy that could be used for other, more concrete initiatives. In the 2008 Ilulissat Declaration, a document in which some of the principles of current Arctic governance were reaffirmed, the five coastal states (Canada, Denmark, Norway, the Russian Federation, and the United States) explicitly emphasized that they saw “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean” (Arctic Ocean Conference, 2008:1)

This article examines how specific factors determine the prominence of the idea of an Arctic treaty in governance debates (focusing specifically on the period from 1970 to 2017), and whether it is likely to become a crucial feature in future discussions. The article is based on analysis of original documents, reports, and the existing academic literature, as well as 12 semi-structured interviews with politicians, civil servants, NGO representatives, and experts. The interviews were conducted in person or over the phone in 2016, 2017, and 2018 and included both proponents and opponents of an Arctic Treaty. Some of the interviews were used for other research projects as well. As some of the interviewees are still involved in Arctic governance, they were promised anonymity in order to ensure that they could express themselves candidly.

The article progresses in five steps. The first section defines the Arctic treaty and provides an analytical framework for analyzing its prominence in regional governance debates. The following four sections present the history of the idea of an Arctic treaty in four phases: 1970–96, 1996–2007, 2007–13, and 2013–17.

## ANALYTICAL FRAMEWORK

This first section defines the Arctic treaty by setting it apart from the current regional order and outlines how to analyze the coherence of the movement behind it and the causes that determine its momentum in the governance debate. I understand order to be the totality of relationships and principles as defined by the most powerful actors in the region. Following Koivurova (2015), an Arctic treaty can be defined as an overarching, legally binding treaty that applies only to the Arctic and covers several regional policy areas and at least a substantial geographical part of the region. Existing legal arrangements do not satisfy this definition. The UN Convention on the Law of the Sea (UNCLOS; IUCN, 1982), to name one example, also applies to other regions, while specific Arctic arrangements, such as the 1973 Agreement on the Conservation of Polar Bears (IUCN/SSC PBSG, 1973) or the recent agreements negotiated under the auspices of the Arctic Council, only address one specific issue (Koivurova, 2015).

Oran Young argues that the Arctic order consists of a variety of multilateral and bilateral agreements and relationships that is moving towards becoming a regime complex, that is, “a set of elemental regimes or elements that pertain to the same issue domain or spatially defined area, that are related to each other in a non-hierarchical manner, and that interact with one another in the sense that the operation of each affects the performance of others” (Young, 2012:394, 2016b). Such orders can be categorized on a continuum between two ideal types: complete integration to complete fragmentation. In a completely integrated order, all issues within a geographical space or a set of related issues are connected through one well-defined arrangement. In a completely fragmented order, issues are handled by specific institutions in complete isolation from one another (Young, 2011). The Arctic order is located between these extremes. Most issue domains are covered by specific institutions and regulation, such as the IMO Polar Code that regulates shipping (IMO, 2015) or the aforementioned Agreement on the Conservation of Polar Bears. While no overarching arrangement exists for the entire region, several global and regional arrangements facilitate cooperation across issue domains. Of these, UNCLOS and the Arctic Council warrant special attention in order to understand the debates about an Arctic treaty (cf. Molenaar, 2014:79–80). Even though only seven of the eight Arctic states are parties to UNCLOS (the United States has not signed UNCLOS), the convention still functions as a framework for maritime governance, as the United States recognizes most of it as customary law. UNCLOS provides a legal foundation for specific maritime issue areas that are then regulated by more specific arrangements (Young, 2011:327–328, 2012:396).

Similarly, the Arctic Council provides solutions within specific issue domains, while also facilitating governance across issue areas (Molenaar, 2014). While the Council’s working groups, task forces, and expert groups address

specific issues, the biennial ministerial and biannual Senior Arctic Official meetings allow the states and Permanent Participants to discuss cross-sectoral issues and to establish new working groups, task forces, and expert groups. The two-year chairmanship permits states to push specific agendas, including cross-sectoral governance.

The Arctic treaty is not a uniform category. In the following, I show how Arctic treaty proposals can be categorized based on two ideal types: radical and moderate proposals. These terms are not meant to have normative connotations. Instead, I follow the Oxford English Dictionary, which defines them based on how extensive are the changes they envision for the existing regional order. Radical proposals want to break with the fundamental principles of the existing order and suggest that extensive new institutions must be established. By contrast, moderate proposals focus on incremental reform of existing institutions and principles. Of course, some proposals only recommend that some existing principles be disregarded, and they therefore fall in between these ideal types.

The regional order has undergone significant changes over the period, which must be taken into account when categorizing proposals as moderate or radical. Institutions have come into being through political compromises between regional stakeholders, and over time the regional order has become more dense and complex. In the 1970s and 1980s, the regional order consisted of a few agreements and arrangements that covered specific issue areas. As there were few regional institutions, it is difficult to categorize Arctic treaty proposals in this period as radical or moderate.

Several new institutions, most importantly the Arctic Council, were created around the end of the Cold War and in the decade that followed, solidifying a specific regional order (Young, 2005). From then on, it becomes possible to categorize Arctic treaty proposals as radical or moderate using as indicators four key principles that had come into being by the mid-1990s. These principles can be derived from the Ottawa Declaration (AC, 1996) and from subsequent Arctic Council declarations and other regional governance initiatives that have reaffirmed them as pillars of regional governance. First, moderate proposals accept UNCLOS and the Arctic Council as overarching regional institutions, and they find a role for these institutions within the Arctic treaty. Second, the 1996 Ottawa Declaration that created the Arctic Council solidified the position of Arctic states and Indigenous peoples as regional stakeholders by making the former group Members and the latter Permanent Participants in the Council. As Council Members, the states have decision-making power and a *de facto* veto over decisions. While Indigenous peoples do not have formal veto power as Permanent Participants, they still have significant informal influence as vocal protests from these organizations could challenge the legitimacy of regional decisions and organizations. States and other actors are therefore often (but not always) careful to ensure that Indigenous peoples are heard in regional decision-making. Moderate proposals acknowledge these stakeholders' right

to make regional decisions. Third, the dual principles of sustainable development and environmental protection were also written into the Ottawa Declaration. Moderate proposals accept that local and Indigenous communities and states have a right to industrial development and resource extraction in the region, as long as it does not lead to significant environmental degradation. Consequently, they do not seek to ban these activities or turn the Arctic into a nature reserve. Finally, the Ottawa Declaration (AC, 1996: footnote 1) specified that the Arctic Council "should not deal with matters related to military security," and such issues have since then remained outside the purview of regional forums and organizations. Moderate proposals maintain that dividing line between military security issues and other issues.

The success of Arctic treaty proposals depends on three factors: functional gaps in the institutional setup, changes in public political discourses, and opposition and support from regional stakeholders. First, *functional gaps* in the Arctic order emerge when institutions are unable to provide effective solutions to regional challenges. Analyzing functional gaps entails answering three questions. What type of challenges is the Arctic order facing? Why and to what extent are current institutions incapable of handling these challenges? And how would an Arctic treaty improve the ability of regional institutions to address these challenges? Arctic treaty proponents argue that the Arctic order faces large functional gaps that an overarching treaty can best address, while their opponents claim that a less integrated order (such as the status quo) will be more efficient, contending that a more modest approach is more achievable, flexible, and adaptable. It is easier for states to agree on the creation of a specific institution for a specific issue or sector than to create comprehensive arrangements for an entire region. Furthermore, regime complexes allow the creation of arrangements that are tailored to specific issues and sectors, which allows them to address new challenges and political conditions. While change in one sector within a completely integrated order could necessitate costly renegotiation of the entire order, in a regime complex such change can be kept within the specific sector (Keohane and Victor, 2010:16–19). An Arctic treaty, its opponents argue, would be too difficult to negotiate, and it would be unnecessary, as the existing order has managed to adapt to the new challenges and conditions facing the region (Young, 2011, 2012).

Arctic treaty proposals focus on addressing functional gaps when they identify palpable governance gaps in the order as well as describe the content of the envisioned treaty and how it would facilitate effective solutions to these issues compared to the alternatives. By contrast, proposals that do not focus on addressing functional gaps merely point to limitations in the current setup (and in some cases even this diagnosis misunderstands the challenges facing the region) and jump to the conclusion that a treaty is needed without outlining its content and explaining how it would improve regional governance.

Second, changes in *public political discourses* can also strengthen or weaken a cause significantly. Public political discourses are shared ways of debating and understanding common goals and strategies for achieving those goals. While public political discourses can reflect actual circumstances, such as the existence of functional gaps, they also have their own dynamics that work independently of realities. These dynamics can come to influence the susceptibility of different political causes (Joachim, 2003; Shenhav, 2006). Certain events can trigger changes in existing discourses that create windows of opportunity for specific causes, especially if an issue can be framed as a security threat. Political actors can actively attempt to shape public political discourses as part of their political strategies by seeking to highlight security threats that make their cause more attractive (Buzan et al., 1998). Events and framing by political actors can pressure existing stakeholders to give them enhanced influence or create coalitions by convincing other actors to join their cause (Joachim, 2003). As the analysis below demonstrates, before 2007, proponents of Arctic reform mainly highlighted environmental, economic, social, and political threats facing the region. Following the Russian flag-planting in 2007, these public political discourses began to portray the region as facing national security threats with potential implications for global peace, which in turn caught the attention of media and political actors outside of the Arctic and fertilized the ground for calls for more radical reforms of regional governance structures.

Finally, *opposition or support* by regional stakeholders may also influence how Arctic treaty proposals fare. The regional states sit at the apex of the current regional order, and they have historically been the main opponents of an Arctic treaty, which many of them believe would diminish the effectiveness of regional institutions. Of course, the Arctic states do not share the same interests, and their attitudes to the Arctic treaty differ at certain points in time, depending on their priorities. The Arctic states maintain their position within the regional order by combining reforms to enhance institutional legitimacy with initiatives that increase the cost of challenging the status quo. Legitimate institutions provide effective solutions to regional problems (output legitimacy), while giving relevant actors a chance to influence decision-making (input legitimacy). By making regional institutions more legitimate, the Arctic states diminish the incentive of actors to contest the existing order. They can simultaneously deter potential contestation by demonstrating that they will form a united front against them, thus showing that changing the regional order will be costly, if not impossible (Rahbek-Clemmensen and Thomasen, 2018).

The organizations representing Indigenous communities have been potential partners for both proponents and opponents of an Arctic treaty. Like the Arctic states, they have an interest in maintaining the overall status quo that gives them a privileged position compared to other actors, such as non-regional actors. They have therefore at times

been skeptical of giving non-regional actors influence in institutions that could undermine their own position (Graczyk and Koivurova, 2014; Willis and Depledge, 2015). However, at the same time, they have less influence than the Arctic states (Olsen and Shadian, 2016) and can therefore potentially ally with actors that want to upset the status quo, insofar as it will enhance their regional position.

In the following sections, I show that radical and moderate proposals depend on different factors. Radical proposals typically do not provide coherent solutions that address functional gaps in the Arctic order, and they contest the position of regional stakeholders, such as the regional states and Indigenous and local communities. They therefore become salient when public political discourses become detached from the challenges facing the region. Moderate proposals, by contrast, more often address the functional gaps facing the regional order and envision changes that do not necessarily contest the position of Arctic stakeholders. They are therefore less dependent on specific public political discourses, as they can aim to convince expert audiences representing regional stakeholders.

The history of the Arctic treaty proposals can roughly be divided into four phases based on the functional gaps they aimed to address and the dominant public political discourses. In the first phase from the early 1970s to the mid-1990s, the Arctic treaty was part of a mainly academic debate about whether an overarching regional forum (what eventually became the Arctic Council) should be founded. In the second phase from 1996 to 2007, the Arctic treaty continued to be debated in expert circles, now as a possible solution to the functional gaps that still existed after the creation of the Arctic Council. In the third phase from 2007 to around 2013, new public political discourses paved the way for wider interest in the idea of an Arctic treaty. In the final phase after 2013, public interest in an Arctic treaty dampened significantly and proposals only appeared occasionally.

#### 1970–96: ACADEMIC DEBATES ABOUT THE CREATION OF THE ARCTIC COUNCIL

The idea of an Arctic treaty emerged within academia in the 1970s and 1980s as part of a debate about whether region-wide institutions should be developed; a debate that continued until the Arctic Council was created in 1996 (AC, 1996). These proposals were pushed by academics and targeted at an expert audience. They had limited political impact, as they were too ambitious for the Arctic states who struggled just to establish the less comprehensive Arctic Council. These Arctic treaty proposals cannot be said to be radical or moderate, as there were very few institutions and principles with which they could break.

The first coherent proposal for an Arctic treaty was Maxwell Cohen's suggestion to create an Arctic Basin treaty among the states surrounding the Arctic Ocean (Cohen, 1971). Cohen, a Canadian professor of law, responded to a set of legal and political challenges facing



Canada in the Arctic, which he believed were indicative of a larger regional problem that necessitated new multilateral institution-building and a reform of international law. Cohen argued that Canadian sovereignty over its part of the Arctic was tenuous and contested, in part because the existing law of the sea did not provide a common standard for limiting the breadth of the territorial sea in which states could exert their authority. The third UN Conference on the Law of the Sea, where these issues were settled as UNCLOS was finalized in 1982, only commenced two years later. Furthermore, the law of the sea did not sufficiently address the status of ice-covered waters and the polar ice cap. New commercial and political developments, such as discoveries of possible mineral and petroleum deposits in the Canadian Arctic, increased environmental awareness and concern for living resources, which pressed Ottawa to address these issues by expanding Canadian jurisdiction in the Arctic. This, of course, caused criticism from other regional states. Cohen saw these issues as a symptom of a larger institutional failure, as the law of the sea did not provide the adequate mechanisms for any state to handle issues related to economic development, environmental protection, scientific activities, and the conditions of Indigenous peoples. The solution, he argued, was to create “a body of Arctic basin and international opinion through conferences, in the private and public sectors, that will help bring about an Arctic basin consensus, perhaps an Arctic basin treaty, and all ultimately lead to a new law of the sea conference” (Cohen, 1971:79). The Arctic Basin treaty was thus but an intermediate step toward the ultimate goal: a reformed law of the sea that addressed the specific issues facing Canada and the other Arctic littoral states.

Although motivated by the functional gaps in the Arctic, Cohen’s proposal was not only about the Arctic; it was a response to gaps in international law in general at the time. His goal was not to create an Arctic treaty proposal that could solve regional challenges, but rather to create a platform that could facilitate fundamental reform of international law. Consequently, he did not provide details about the content of his envisioned Arctic Basin treaty or indeed the new intergovernmental body (which can be considered a prototype of the Arctic Council), and there was therefore no discussion of whether alternative, less comprehensive arrangements could address the challenges facing the region.

The idea of an Arctic treaty was not raised again until the late 1980s. The Arctic had undergone significant change since 1971. The current version of UNCLOS was completed in 1982 and it settled several of the issues that had marred the existing law of the sea, including a framework for settling maritime boundaries and an article (234) authorizing coastal states to create special regulation for ice-covered waters (IUCN, 1982). In spite of these improvements, several legal issues were left open. As mentioned in the previous section, UNCLOS did not provide specific regulation for a host of Arctic issues. Furthermore, the United States had not signed UNCLOS.

Agreements regarding specific issue areas had begun to appear around the time Cohen’s piece had been published (the first was the Agreement on the Conservation of Polar Bears in 1973) and several other sectoral institutions had been proposed, including for military and environmental issues (Griffiths, 1979; Keskitalo, 2004:45; English, 2013:122).

The Arctic was also undergoing significant political and institutional shifts that paved the way for debate on an Arctic treaty. The de-escalation of the Cold War and the general increase in environmental awareness following the Chernobyl and Bhopal disasters increased interest in the Arctic environment (Keskitalo, 2004:36–39; Nord, 2015:12–14). In 1987 Mikhail Gorbachev held his famous Murmansk speech in which he called for enhanced cooperation in general and strengthened control of military activities, including a nuclear-weapon-free zone in the Arctic (Gorbachev, 1987; Purver, 1989; Åtland, 2008). Shortly after, a group of academics proposed the idea of an Arctic Council at a conference in Tromsø, Norway (Pharand, 1992:166–167).

The Murmansk speech also led to several government initiatives. Finland proposed an environmental dialog among the eight Arctic states with an inaugural meeting held in Rovaniemi, Finland in September 1989 (Young, 1998:58; English, 2013:105–140). As part of this process, the countries mapped the existing institutions and declarations and discussed how regional governance could be strengthened. At the Rovaniemi meeting, the possibility of creating a regional treaty that could cover environmental and economic development issues was briefly discussed, although no thorough proposal was made. While Finland and Canada were especially positive, other nations were more skeptical. In the end, the process focused on the narrower goal of creating a structure for cooperation on environmental issues, which would become the Arctic Environmental Protection Strategy (AEPS) in 1991 and was later subsumed under the Arctic Council (Government of Canada et al., 1989; Tennberg, 2000:16–20; Keskitalo, 2004:55).

Shortly after the Rovaniemi meeting, Canada began to push for the creation of an Arctic Council, which sparked several government and think tank policy reports and working groups (English, 2013:125–26, 141–251). Donat Pharand, a Canadian law professor who had taken part in the Tromsø conference, was involved in this work. Inspired by Cohen, he became interested in developing an Arctic treaty (Pharand, 1992:166–67; Lalonde and MacDonald, 2007; Bartenstein, 2015:55). Compared to Cohen’s proposal, Pharand’s proposal was much more tangible and offered a commented draft treaty. Furthermore, while Cohen’s treaty had focused on the Arctic Basin (and implicitly concerned the five coastal states only), Pharand’s (1992) proposal would include Finland, Iceland, and Sweden.

Pharand also offered different justifications for why these schemes were needed. While Cohen had seen a regional council and treaty as a step toward reforming

the law of the sea as such, Pharand did not consider international law to be flawed *per se*. Instead, he argued that new environmental, political, and social challenges necessitated enhanced international cooperation (Pharand, 1992:169–183). Furthermore, though military security was not an imminent threat for Pharand, he believed that the end of the Cold War had created a window of opportunity that the regional states should use to demilitarize the Arctic, making it a “[z]one of peace or a nuclear-free-zone” (Pharand, 1992:183). He also argued that some of the new elements in UNCLOS (articles 122 and 123) might instill on the states an obligation to cooperate, which they could discharge through an Arctic Council (Pharand, 1992:187–190). His proposal thus demonstrated that the reformed UNCLOS had closed the most perilous legal gaps of the old law of the sea and created new obligations.

Pharand viewed the Arctic Council as necessary for the states to cooperate, while the Arctic treaty would provide the legal foundation for the Council. His ideal council was more muscular than the institution that was created in 1996: it would be able to address military matters (which is prohibited by the Ottawa Declaration), give membership and more influence to Indigenous peoples’ organizations, NGOs, territorial governments, and non-Arctic states (the Ottawa Declaration made the Indigenous peoples’ organizations Permanent Participants, while NGOs and non-Arctic states are Observers only), and include a permanent secretariat with stable funding (the Arctic Council did not get a permanent secretariat until 2011). Basing the Council on a treaty meant that the commitments made by states would be legally binding. At worst, failure to honor commitments could be brought before the International Court of Justice, as specified in article 33 of the UN Charter (Pharand, 1992; Bartenstein, 2015; Charron, 2015). Unlike Cohen’s ideas, Pharand’s treaty was thus part of an ongoing debate about the creation of an overarching institution in the region and his treaty was meant to support that institution.

Even though the decade that followed Gorbachev’s Murmansk speech was an era of change within Arctic governance, the time was not ripe for Pharand’s detailed Arctic treaty program, which largely remained an academic exercise with little political momentum. Agreeing to a less ambitious Arctic Council was already a tall order for the regional states and the Indigenous peoples’ organizations; Pharand’s more extensive proposal was a step too far. The main thrust for the Arctic Council came from Canada, which had to create a compromise between the Arctic states (especially the United States) and the Indigenous peoples’ organizations (mainly the Inuit Circumpolar Conference [ICC]) in order to achieve a result. On the one hand, Washington feared that the Arctic Council would be a vessel for an overly environmentalist preservation agenda inhibiting economic activities, that it would limit its ability to use the Arctic for military purposes, that the list of Arctic issues was too short to warrant the establishment of a cross-sectoral Council that would only

undermine existing institutions, and that the Council would give too much influence to Indigenous groups (English, 2013:171–712, 187–193). On the other hand, the ICC envisioned an Arctic Council that was much closer to Pharand’s vision: a strong regional council covering a broad portfolio of issue areas (including military security) with emphasis on environmental preservation and with the Indigenous peoples as Members. The ICC (1992) favored the creation of national and international legal regimes and treaties for specific sectors and issues (such as nuclear pollution, oil spills, and nuclear weapons) as well as general cross-sectoral governance through a strong Arctic Council. However, a cross-sectoral Arctic treaty was not a policy priority for the Inuit, who struggled just to get permanent representation in the Council (ICC, 1992; Shadian, 2014:106–122). As the states met to establish the Arctic Council in Ottawa in 1996, the notion of an Arctic treaty was not on the mind of many policymakers.

#### 1996–2007: EXPERT DEBATES AFTER THE CREATION OF THE ARCTIC COUNCIL

The creation of the Arctic Council in 1996 did not eliminate the Arctic treaty debate. In the following decade, the idea of an Arctic treaty was debated within academic circles, and some political actors began considering it as a viable option for regional governance (for an overview of this debate see Koivurova, 2008). As significant regional institutions had appeared, it is possible to categorize these proposals as either radical or moderate.

Several changes occurred within regional governance. The regional states began the process of delimiting the continental shelf in the Arctic Ocean. Under UNCLOS, the coastal states would have 10 years from ratification to claim the right to harvest certain resources on the continental shelf. Norway ratified UNCLOS in 1996, Russia in 1997, Canada in 2003, and Denmark in 2004 (as noted previously, the United States has yet to sign the convention). The coastal states therefore began to make their claims in the first decade of the new millennium, adhering to the process established by UNCLOS (Byers, 2013:92–127).

Furthermore, critics argued that the Arctic Council lacked the necessary tools to truly handle the challenges facing the region (Nord, 2015:25–31). As mentioned above, without a founding treaty, commitments made by the states in the Council would not be legally binding. Furthermore, the Council did not have a permanent secretariat or stable funding. Indeed, it did not produce many concrete initiatives in the first decade of its existence. What it did produce, however, was several large analyses on the impact of climate change (Arctic Climate Impact Assessment, 2004) and human development (Arctic Council, 2004) that helped place polar issues on the international agenda. Especially the former helped direct international attention to the changes occurring in the Arctic, as it illustrated that climate change had more severe consequences in that region with

temperatures increasing twice as fast as global temperatures (Koivurova and Vanderzwaag, 2007). Paradoxically, as Koivurova (2008:22) has noted, the Council's work thus illustrated its weaknesses, as the increased attention to the challenges wrought by climate change also made the impotence of the Council more obvious.

The imminent environmental, economic, social, and political implications of climate change and the impotence of regional institutions spurred academics to suggest regional reform, including both radical and moderate proposals for an Arctic treaty. The ideas of Barry Hart Dubner, an American law professor, exemplify the radical approach. Dubner (2005) highlighted that climate change and pollution paved the way for new environmental, social, and political challenges, which the regional order was not equipped to handle. Regional resource exploitation, including on the continental shelf, would exacerbate these problems. The environmental crisis was so severe, he argued, that economic activities with environmental impact would be illegitimate, as would institutions that furthered such activities, such as the Arctic Council (Dubner, 2005). The delimitation of the continental shelf was also problematic, because "if mining occurs on the continental shelf, the contaminants may seep into the Arctic food chain" (Dubner, 2005:2). Consequently, Dubner envisioned a radical solution to these problems: through an Arctic treaty, the Arctic should be turned into an international environmental reserve, where only limited activities related to science and tourism were allowed, and where the Arctic coastal states were banned from claiming and exploiting resources on the continental shelf (Dubner, 2005:11). Whether the regional stakeholders would accept such a setup was considered irrelevant. Instead, he believed that the international community could create a new Arctic order by fiat, overruling the protests and wishes of the Arctic states and Indigenous peoples. As he put it, "the impending question is whether the international community will allow the Arctic to be spoiled by various mining activities and oil and gas extraction" (Dubner, 2005:1).

Dubner's proposal failed to provide tangible connections between challenges and solutions. Although he found climate change to be the main threat facing the Arctic, he overlooked the fact that the bulk of global emissions are produced outside of the Arctic and that his proposals would therefore not address the root cause of climate change. He also refrained from considering that existing institutions could provide solutions to some of the challenges facing the region, and he did not discuss how an Arctic treaty would improve regional governance compared to these institutions.

Several moderate proposals were also developed during this period. One proposal by Linda Nowlan (2001) exemplifies this approach. Like Dubner, Nowlan viewed climate change and pollution as threats that necessitated regional reform in the form of an Arctic treaty. However, her envisioned treaty was much more moderate than Dubner's, and she emphasized that "the intent is not to make the Arctic a nature reserve but to allow for

sustainable use and development" (Nowlan, 2001:58). Pursuing a more radical approach would be problematic because it would undermine the right of the states and local and Indigenous communities of the Arctic to determine the balance between environmental protection and economic development (Nowlan, 2001:50, 63). Furthermore, it should not discard existing regional institutions, such as the Arctic Council, but rather "incorporate the innovations that have been adopted to date" and strengthen them by giving them a legal foundation (Nowlan, 2001:62). The Arctic Council should continue to be the main regional institution, yet the Arctic treaty would strengthen the Council by giving it legal tools, such as dispute settlement procedures and clear jurisdictional boundaries vis-à-vis other institutions (echoing Pharand's [1992] arguments from the decade prior), and providing it with a steady income stream and a permanent secretariat.

Unlike Dubner, Nowlan acknowledged that the existing order had significant advantages over an Arctic treaty. An Arctic treaty would not necessarily add much to regional governance, as many of the policy areas it would address were already covered by existing programs. A legally binding treaty could also be less effective if it was poorly designed or contained significant legal loopholes (Nowlan, 2001:58–60). Furthermore, Nowlan took into account the need for convincing the Arctic states and other stakeholders. A treaty, she argued, would be cumbersome to achieve, and it would be difficult to convince the states to invest time and energy in this endeavor. However, having weighed the advantages and disadvantages, Nowlan (2001:58) still concluded that "the arguments favouring a new legally binding treaty are convincing, considering the value of the Arctic, the serious nature of the environmental threats, and the lack of a comprehensive framework in which to address these threats."

These ideas appeared not only in the academic community. The idea of an Arctic treaty was picked up by political actors at the margins of Arctic decision-making (NGOs, international organizations, and MEPs), who began to explore whether there was a need for a new regional order (Koivurova, 2008, 2015). Nowlan's (2001) analysis, to name one example, was published by the International Union for Conservation of Nature (IUCN), an international network of government and civil society organizations. Similarly, the Arctic parliamentarians, an informal collaboration between Members of Parliament from the eight Arctic states and the European Parliament (EP), solicited academic input about Arctic governance and debated the pros and cons of an Arctic treaty, a debate that inspired Diana Wallis, a Liberal MEP, to make a soft push for the idea in the EP (Arctic Parliamentarians, 2004:6; Wallis, 2005; Palm, 2007:16–18; Raspotnik, 2016:194–195; Interview with former MEP, 2018). In 2005, the World Wildlife Fund (WWF) floated the idea of an Arctic treaty at an expert seminar (Koivurova, 2008:20). While these efforts were sparse and largely exploratory, they in some way laid the foundation for the politicization of the issue that was about to happen.



## 2007–13: NEW PUBLIC POLITICAL DISCOURSES

Around 2007, several events increased public interest in Arctic affairs by facilitating the creation of a new public political discourse. The challenges in the Arctic were not only environmental, social, and political, this discourse argued; the region could also potentially be heading toward a military conflict that could have global implications. This reframing of public political discourses allowed political actors to push radical Arctic treaty proposals publicly. However, over time their internal inconsistencies and active pushback from academics, the regional states, and Indigenous communities eventually deflated the momentum of these proposals.

Of the events that pushed the debate about an Arctic treaty from the margins to the center stage, perhaps the most important was when a Russian scientific expedition left a small titanium flag on the ocean floor near the North Pole in August 2007 (Parfitt, 2007). Playing into traditional great game discourses of geopolitical competition, exploration, and conflict, the flag-planting caught the attention of global media and increased interest in Arctic affairs manifold. For some actors, the fear was no longer just that the Arctic environment was under threat, but also that a lack of institutions and regional solutions would spark a regional military conflict that could spread globally. Suddenly most existing issues and ongoing disputes could be seen as signs of geopolitical competition. For example, the delimitation of the continental shelf was occasionally cast as an illegitimate land grab by the Arctic states and a competition for resource-rich territory that could spark a regional conflict. Long-standing legal disputes, such as the Norwegian-Russian border dispute in the Barents Sea and the Canadian-Danish dispute over Hans Island, exacerbated these concerns (Dodds, 2010, 2013; Steinberg et al., 2014; Rahbek-Clemmensen and Thomasen, 2018). They were strengthened further when a 2008 United States Geological Survey resource appraisal estimated that 25% of global undiscovered oil and gas resources were found in the Arctic (Bird et al., 2008).

The framing of the Arctic as a nascent national security and environmental policy issue and the Arctic treaty as a solution was perhaps most evident in a controversial academic essay published in *Foreign Affairs* by Scott Borgerson (2008), a fellow with the influential Council on Foreign Relations. Borgerson painted a picture of a region facing rapid change, as sea ice was melting quickly, causing environmental degradation and uncovering regional resources and shipping lanes. The Arctic countries were “likely to unilaterally grab as much territory as possible and exert sovereign control over opening sea-lanes,” leading to “a new scramble for territory and resources among the five Arctic powers” (Borgerson, 2008:63, 73–74). Existing institutions offered no remedy for these risks, Borgerson argued. The Arctic Council was of little use, he claimed, as it did not address security issues, and UNCLOS could not be easily applied to address regional challenges.

Consequently, the U.S. should enhance its involvement in the Arctic and push for institutional reform, including proposing “an imaginative new multilateral treaty” (Borgerson, 2008:77).

Political actors also began to make public statements to push Arctic treaty proposals with radical elements. Though they did not necessarily subscribe to Borgerson’s entire argument, many of them used his perception of an imminent national security threat and environmental security crisis to further their agenda. The WWF, to name one example, quickly issued a public statement in which Neil Hamilton, the director of its International Arctic Program, argued that the combination of environmental and military threats necessitated a radical Arctic treaty that would break with UNCLOS and create a new body to replace the Arctic Council:

The political and symbolic gestures of recent expeditions asserting territorial claims and rights to unrestricted exploitation lead to nowhere and could revive conflicts that have affected the region in the past.

With the melting of Arctic sea ice, which allows the opening of new shipping routes and makes possible the exploration of potentially vast reserves of minerals, oil and gas, WWF believes that the international Law of the Sea Convention (UNCLOS) — the UN body regulating these activities — is no longer adequate for the Arctic.

We need a new approach, which includes thinking about a solid Arctic Treaty and a multilateral governance body.... This is the only way to ensure the implementation of sustainable development regimes and help the Arctic adapt to the severe impact of climate change and ultimately stabilize the world’s climate.

(World Wildlife Fund, 2007)

Similarly, MEPs spearheaded a push for an Arctic treaty in the EP. In October 2008, the parliament passed a resolution on Arctic governance with broad support from both sides of the aisle. Herein the Arctic was portrayed as a legal and institutional vacuum that was “currently not governed by any specifically formulated multilateral norms and regulations,” and which faced both environmental and military threats. The resolution outlined several concrete policy recommendations, including the development of an Arctic treaty:

[T]he Commission should be prepared to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty, as supplemented by the Madrid Protocol signed in 1991, but respecting the fundamental difference represented by the populated nature of the Arctic and the consequent rights and needs of the peoples and nations of the Arctic region; believes, however, that as a minimum starting-point such a treaty could at least



cover the unpopulated and unclaimed area at the centre of the Arctic Ocean.

(EP, 2008)

The envisioned Arctic treaty was relatively moderate: the resolution acknowledged the principle of sustainable development and the importance of the Arctic Council, and it stressed that “any international decisions relating to [Arctic issues] must fully involve and take account of all peoples and nations of the Arctic.” Less than six months later, however, the EP debated a more radical resolution that did not acknowledge the difference between the Arctic and Antarctica, but instead proposed “the adoption of an international treaty for the protection of the Arctic, along the lines of the existing Antarctic Treaty, in order to make the Arctic a zone of peace and cooperation reserved only for peaceful activities and free of disputes over sovereignty.” While the resolution accepted the energy industry in the Arctic, it also proposed a 50-year moratorium on mineral exploitation in the Arctic (EP, 2009a).

Like prior radical Arctic treaty ideas, these proposals did not provide thorough analyses of how to address functional gaps. Instead, they were very short and focused on justifying why something had to be done based on incomplete analyses of the challenges facing the region, while refraining from explaining why this something had to be a treaty and how it could be achieved. Borgerson’s (2008) essay, to take one example, cherry-picked sources that supported its argument, ignoring data and issues that could contradict it. When describing the impact of climate change, Borgerson (2008:66–67) highlighted models that “anticipated an ice-free Arctic in the summer as early as 2013,” disregarding more cautious estimates by authoritative sources, such as the Intergovernmental Panel on Climate Change, which projected that this would happen in the second half of the 21st century (in 2017 summer sea ice still covered 4.6 million km<sup>2</sup>) (Solomon et al., 2007; NSIDC, 2017). Similarly, his analyses of the shipping and energy prospects ignored the substantial obstacles facing those industries in the Arctic, such as the presence of sea ice in the Arctic passages, the lack of infrastructure and ports along the routes, the volatility of global energy prices, and the high break-even costs of off-shore energy in the Arctic (Blunden, 2012). Furthermore, as the subsequent development demonstrates, Borgerson’s claims that the regional states were competing for territory and that the existing institutions were insufficient to handle these challenges were also exaggerated. More generally speaking, even if one assumes that the threats described were real, the radical proposals were reluctant to explain the content of the envisioned treaty. Just like Dubner (2005), they typically did not clarify why a treaty would provide a better solution than the status quo.

The era of the broad public push for an Arctic treaty was short-lived, and many of its proponents moderated or abandoned their proposals in the following years. In a 2013 *Foreign Affairs* article, Borgerson (2013:80) walked

back from his previous alarmism, instead highlighting that regional cooperation had not “required a single new overarching legal framework.” Similarly, the WWF stopped actively pushing an Arctic treaty and instead focused its efforts on other goals (Interview with official from environmental NGO, 2018). The tide also began to turn against the Arctic treaty in the EP. The aforementioned radical 2009 proposal faced strong opposition from the commission, and several MEPs spoke out against it. The vote was postponed and the resolution eventually abandoned (EP, 2009b, c). In 2011, the EP adopted a resolution on the Arctic, based on a report about the EU’s role in the Arctic, authored by MEP Michael Gahler (2010), which all but extinguished the idea of an Arctic treaty. Instead, the EU should take on a more restrained role as a regional stakeholder that did not try to push its own vision for Arctic governance (Gahler, 2010; EP, 2011; Raspotnik, 2016:191–226). Since then, radical Arctic treaty proposals have not been pushed forcefully in the EP.

A combination of opposition by regional stakeholders, reforms that diminished functional gaps, and political framing explains the rapid descent of the Arctic treaty’s political momentum. First, several actors began to actively highlight the weaknesses of the unsophisticated proposals. One example of this could be Borgerson’s (2008) essay, which was highly controversial and met fierce criticism from the academic community (see Lathrop, 2008; Young, 2009). Another example is the aforementioned Gahler report from 2010, which specifically pushed against the idea of an Arctic treaty. Gahler (2010:12) argued “that the Arctic is not regarded as a legal vacuum, but as an area with well developed tools for governance,” meaning that the proponents of an Arctic treaty would have to explain exactly how a treaty would improve regional governance. An Arctic treaty would also be normatively problematic, as it would disregard the wishes of the local and Indigenous peoples, who in many cases wanted to pursue economic development through resource exploitation. Finally, Gahler also argued that the EU lacked the regional clout and status necessary to push initiatives through, and he highlighted that all the Arctic states opposed an Arctic treaty (Gahler, 2010; EP, 2011).

Proponents of more moderate views of an Arctic treaty also helped deflate the more radical proposals. An example of this could be the WWF, which solicited two expert reports that advocated for a more moderate approach (Huebert and Yeager, 2008; Koivurova and Molenaar, 2010). Unlike their more radical counterparts, these moderate proposals disregarded the potential military threats facing the Arctic and mainly emphasized environmental, social, and political challenges. Current regional institutions, they argued, could not address these issues adequately in their present form. For example, the Arctic Council, which could not impose legally binding obligations on its members, was unable to evaluate the implementation of common decisions, and lacked a permanent secretariat and funding. While UNCLOS could function as an

overarching framework for regional governance, more specific regulation was needed to address issues such as fisheries and shipping. The reports recommended reform of existing institutions and the creation of new institutions, yet the optimal solution would be, in the words of one of the reports, “a new international framework agreement covering the entire Arctic” (Koivurova and Molenaar, 2010:6). These treaty proposals had all the hallmarks of a moderate view: they would be built upon existing institutions, including UNCLOS and the Arctic Council (which would be reformed and given permanent funding and an independent secretariat), recognize the principle of sustainable development and the right of Arctic states and local and Indigenous communities to make decisions regarding the future of the region, and leave military issues unregulated. By specifically contradicting the assertions of the more radical proposals, these moderate authors carved out a middle position between radical reform and acceptance of the current order, demonstrating that it was possible to favor an Arctic treaty without believing that the region was facing imminent geopolitical catastrophe. With the publication of these reports, the WWF moved to a more moderate position.

Second, multilateral initiatives by the Arctic states did much to diminish the prospects of an Arctic treaty by showing that they could in fact cooperate on handling most regional challenges within the existing institutional setup and that fundamental reform would meet fierce opposition. The Arctic Council underwent significant reforms that enabled it to facilitate concrete policy results. At the 2011 Arctic Council ministerial meeting in Nuuk, the Council got a permanent secretariat, and the first of three legally binding agreements between the Arctic states was negotiated within the auspices of the Council (Kankaanpää and Young, 2012; Nord, 2015; Wilson, 2016). These initiatives thus countered the points of criticism that had previously been raised by Arctic treaty proponents. Furthermore, from 2009 the International Maritime Organization (IMO, 2015) began developing a legally binding Polar Code for maritime vessels operating in the Arctic to replace existing non-binding guidelines. The Polar Code was finalized and adopted in 2015, and it went into effect for new ships in 2017 and for existing ships in 2018 (Jensen, 2016). In 2008 the five coastal states agreed to the Ilulissat Declaration that specified that existing international law would suffice as a framework for handling new challenges arising in the Arctic Ocean and that they would adhere to existing international law when delineating the outer limits of the continental shelf. Furthermore, they cast themselves as stewards of the Arctic Ocean, promising to address the challenges facing it and de facto creating a new regional forum (the Arctic 5) in which to discuss these issues. This new regional forum was highly controversial, as many saw the Arctic 5 as a potential competitor that could undermine the Arctic Council and strengthen the coastal states at the expense of other state and non-state actors (Nord, 2010; Pedersen, 2012; Dodds, 2013;

Kuersten, 2016; Jacobsen and Strandsbjerg, 2017; Rahbek-Clemmensen and Thomasen, 2018).

The governance initiatives would have different effects on the idea of an Arctic treaty. The former two initiatives (Arctic Council reform and the Polar Code) simply improved existing institutions, thus countering the claim that the Arctic was characterized by functional gaps that an Arctic treaty was needed to close. By contrast, the Ilulissat initiative could have both positive and negative effects on the idea of an Arctic treaty. The coastal states simultaneously signaled that they would handle governance problems related to the Arctic Ocean under existing international law (making an Arctic treaty superfluous) and that they would create a common front to oppose fundamental reform of regional institutional structures (making an Arctic treaty more difficult to achieve). Both of these aspects thus worked to deflate the momentum behind the Arctic treaty. However, the fact that the Arctic 5 could exclude Indigenous peoples’ organizations, NGOs, the other Arctic states, and non-Arctic states and entities from decision-making about Arctic Ocean issues and undermine the Arctic Council meant that it could cause regional tensions. This exclusion could justify a fundamental reform of Arctic institutions and thus motivate proponents to push even harder for an Arctic treaty (Rahbek-Clemmensen and Thomasen, 2018).

Third, these multilateral efforts were supplemented with several bilateral initiatives. In 2010, Norway and Russia reached an agreement to settle their ongoing dispute in the Barents Sea. The agreement demonstrated that the Arctic states were capable of settling complex border disputes, thus calming fears that the ongoing delimitation process could lead to regional conflict (Henriksen and Ulfstein, 2011). Furthermore, bilateral diplomacy by the Arctic states helped convince the European Commission and the Council that they should oppose the EP’s Arctic treaty resolutions. The EU institutions lacked a fine-tuned understanding of Arctic issues, and the Arctic states thus helped facilitate a learning process through which the Commission and Council came around to their position. Following the EP’s first Arctic resolution in 2008, senior Norwegian diplomats participated in extensive bilateral consultations with their EU counterparts to the extent that one senior commission official exclaimed that he felt “surrounded by Norwegians” (Wegge, 2012:7; see also Offerdal, 2011; Rahbek-Clemmensen and Thomasen, 2018).

Finally, the Indigenous peoples’ organizations made it obvious that governance structures could not be imposed or changed without respecting the rights of local communities. In 2009, the ICC released a declaration on Arctic sovereignty that defined the Inuit as a people with rights, including “the right to self-determination... to freely determine our political status, freely pursue our economic, social, cultural and linguistic development, and freely dispose of our natural wealth and resources.” Consequently, “Inuit inclusion as active partners is central to all national and international deliberations on Arctic sovereignty and

related questions” (ICC, 2009). Though the declaration was primarily a reaction to the Ilulissat Declaration, which the ICC believed ignored their right to inclusion and self-determination, the message also applied to the proponents of an Arctic treaty: regional governance structures could not be imposed without including Indigenous peoples (ICC, 2009; Shadian, 2014).

### 2013–17: THE ARCTIC TREATY TODAY

After its brief time in the spotlight, the Arctic treaty once again became a marginal idea around 2013. The strengthening of regional governance that has happened over the past decade has diminished many actors’ interest in a treaty, but the Arctic order still contains functional gaps and the region is at times cast as facing both environmental and military threats. Consequently, the idea of an Arctic treaty still lives on, albeit at a much lower level.

The regional order still contains significant functional gaps, thus allowing the Arctic treaty to be one model in a wider governance debate. Some critics argue that the Arctic Council still lacks the tools and will to provide optimal solutions to regional challenges. Although the Arctic Council has been strengthened over the past decade, it is still not a treaty-based organization, which means that some of the gaps that Pharand (1992) highlighted in the early 1990s still mar the Council today. Instead of making legally binding decisions within the Council, the states have conducted negotiations within the Council and then made the actual legally binding agreements outside of the Council. Although this has proven to be a pragmatic solution, it can be argued that an organization with a legal foundation would provide a better framework for legally binding agreements (Koivurova and Molenaar, 2010). Furthermore, some critics argue that the Council is too beholden to the agendas of the regional states, which prevents it from creating truly effective solutions to the environmental problems facing the region (Interviews with officials from environmental NGOs, 2017, 2018).

Finally, certain specific issues require the development of new legal mechanisms. For example, the central Arctic Ocean is not covered by coastal state jurisdiction, which means that fisheries in these waters will be unregulated in lieu of new international legal mechanisms. An agreement between the five coastal states and five stakeholders (China, the EU, Iceland, Japan, and South Korea) banned fisheries by vessels from these nations for 16 years or until a new legal arrangement, such as a regional fisheries management organization or a regional seas agreement, is created (Molenaar, 2015; Kramer, 2017). Similarly, as Young (2016a) has argued, there is currently a need for a body for discussing overarching issues related to the Arctic Ocean and for ensuring that different agreements and institutions coordinate with one another to avoid overlapping mandates and uncovered issue areas. In their current form neither the Arctic Council nor the group of coastal states is an optimal

forum for handling these tasks. Although an Arctic treaty is not necessarily the optimal way to close these gaps, it remains one model that can be raised in the governance debate. In its 2013 Arctic strategy, Finland stated that it supported a moderate Arctic treaty to make “the Arctic Council ... a treaty-based international organisation” (Government of Finland, 2013:14).

Public political discourses simultaneously enable political actors to portray the Arctic as facing both environmental and military threats. A 2015 article by former four-star admiral James Stavridis, one of the most respected voices within the American military community and former supreme allied commander of NATO’s forces in Europe (SACEUR), exemplifies this. In this article, Stavridis (2015) highlighted that:

in the Arctic, we see increasing tension between NATO and Russia; military activity at a robust level (although, thankfully, not yet at Cold War levels); competition over territorial claims; large-scale exploitation of natural resources; disagreements about shipping lanes; and a host of other troubles.

The solution to these challenges would be a somewhat radical Arctic treaty. Stavridis did not provide many details, but only suggested that a treaty should be based on the lessons from the Antarctic Treaty System (but acknowledge the differences between the regions), be based on existing institutions, including the Arctic Council and UNCLOS, and limit (but not ban) military activity. Even then, he cautioned, it would be a difficult endeavor, “probably close to the challenge of the UNCLOS process, which lasted over nine years” (Stavridis, 2015). Similarly, in 2017, an editorial in *Scientific American* warned that climate change and human activity were destroying the Arctic environment with

nations with Arctic coasts scabbling, like aggressive crabs, to establish territorial rights. Ice loss caused by climate change is opening up the Arctic, and it looks like the competition to take advantage has the potential to destroy the region and affect the entire planet.

(*Scientific American* Editors, 2017)

Consequently, “the world needs a treaty that governs how we use this valuable region” (*Scientific American* Editors, 2017). Like Stavridis, the editorial did not provide many details about the content of the treaty, but simply outlined that it should be built on top of existing institutions, including the Arctic Council and UNCLOS, and it should create quotas for certain resources. Neither of the proposals explained how an Arctic treaty would be able to address any of these challenges, or how it would improve the effectiveness of regional governance compared to the existing order.



## CONCLUSION

The idea of an Arctic treaty has evolved as a response to functional gaps in Arctic governance. Maxwell Cohen originally devised the idea in the early 1970s as an attempt to push reform of the law of the sea. His Arctic Basin treaty would be part of a wider regional institution-building effort that would highlight the inconsistencies and weaknesses of the existing law of the sea. UNCLOS III (completed in 1982) addressed many of the issues raised by Cohen (1971). The idea of an Arctic treaty was picked up again in the late 1980s, when policymakers began debating whether the Arctic needed overarching institutions (which eventually resulted in the Arctic Council in 1996). Without a treaty to give it a legal foundation, it was argued, the Arctic Council would not be capable of addressing regional challenges forcefully. Indeed, the Council did not produce binding decisions in the first 15 years of its existence, and academics and eventually a few political actors began to argue that an Arctic treaty was needed to strengthen the Council and address the challenges facing the region. Some of these proposals were radical, pushing for a complete transformation of the regional order that would turn the region into a nature reserve. More moderate voices argued for reform of existing regional institutions, providing more detailed descriptions of the gaps in the order and how a moderate Arctic treaty could close these gaps. Today, the idea of an Arctic treaty continues to exist as a possible response to functional gaps in the regional order, albeit at the margins of the governance debate.

Public political discourses have also been influential. This influence is particularly visible from 2007, when Arctic issues attracted public attention, and public political discourses portrayed the region as facing both environmental and military threats with potential global impact. This combination of increased public attention and new political discourses paved the way for radical Arctic treaty proposals that were pushed by both academics and political actors. Pushback from the regional states and more moderate voices in the form of public reports and statements as well as tangible reforms of regional institutions and other government initiatives eventually deflated this momentum.

The history of the idea of an Arctic treaty offers important lessons about the Arctic order. First, it illustrates that the idea of an Arctic treaty is not likely to disappear anytime soon. As long as the regional order contains functional gaps and is cast as threatened by imminent environmental and military challenges, an Arctic treaty is likely to be seen as a viable solution by at least some political actors. Although it currently exists at the margins of the regional governance debate, it is not impossible to imagine that an unexpected event akin to the Russian flag-planting in 2007, such as a major oil spill, the sinking of a commercial ship, or a military confrontation caused by a misunderstanding, can push it back into the limelight.

Second, regional governance reforms and public diplomacy help states maintain their privileged position

in the regional order. The real challenge facing state policymakers is not the idea of an Arctic treaty as such, but rather radical versions of this idea that could fundamentally transform the regional order, causing the Arctic states to lose their privileged position in regional institutions. The radical approach becomes most viable when public political discourses portray the region as threatened environmentally and militarily. States can prevent the development of such discourses by ensuring that major functional gaps are addressed, either through capable regional institutions or through unilateral policies, and through an active diplomatic effort.

## REFERENCES

- AC (Arctic Council). 1996. Declaration on the establishment of the Arctic Council. Ottawa.  
<http://hdl.handle.net/11374/85>
- . 2004. Arctic human development report. Akureyri: Stefansson Arctic Institute.  
<http://www.svs.is/en/projects/arctic-human-development-report>
- ACIA (Arctic Climate Impact Assessment). 2004. Impacts of a warming Arctic. Cambridge: Cambridge University Press.  
<https://www.amap.no/documents/doc/impacts-of-a-warming-arctic-2004/786>
- Arctic Ocean Conference. 2008. Ilulissat Declaration. 28 May 2008  
<https://cil.nus.edu.sg/wp-content/uploads/2017/07/2008-Ilulissat-Declaration.pdf>
- Arctic Parliamentarians. 2004. 6th Conference of Parliamentarians of the Arctic Region – Conference statement, September 5. 3–6 September, Nuuk, Kalaallit Nunaat (Greenland).  
[http://www.arcticparl.org/files/static/conf6\\_statement.pdf](http://www.arcticparl.org/files/static/conf6_statement.pdf)
- Åtland, K. 2008. Mikhail Gorbachev, the Murmansk Initiative, and the desecuritization of interstate relations in the Arctic. *Cooperation and Conflict* 43(3):289–311.  
<https://doi.org/10.1177/0010836708092838>
- Bartenstein, K. 2015. The Arctic Region Council revisited: Inspiring future development of the Arctic Council. In: Lalonde, S., and McDorman, T.L., eds. *International law and politics of the Arctic Ocean: Essays in honor of Donat Pharand*. Leiden: Brill. 55–75.  
[https://doi.org/10.1163/9789004284593\\_003](https://doi.org/10.1163/9789004284593_003)
- Bird, K.J., Charpentier, R.R., Gautier, D.L., Houseknecht, D.W., Klett, T.R., Pitman, J.K., Moore, T.E., et al. 2008. Circum-Arctic resource appraisal: Estimates of undiscovered oil and gas north of the Arctic Circle. Fact sheet 2008–3049. Menlo Park: U.S. Geological Survey.  
<https://doi.org/10.3133/fs20083049>
- Blunden, M. 2012. Geopolitics and the Northern Sea Route. *International Affairs* 88(1):115–129.  
<https://doi.org/10.1111/j.1468-2346.2012.01060.x>
- Borgerson, S.G. 2008. Arctic meltdown: The economic and security implications of global warming. *Foreign Affairs* 87(2):63–77.

- . 2013. The coming Arctic boom: As the ice melts, the region heats up. *Foreign Affairs* 92(4):76–91.
- Buzan, B., Wæver, O., and de Wilde, J. 1998. *Security: A new framework for analysis*. Boulder, Colorado: Lynne Rienner Publishers.
- Byers, M. 2013. *International law and the Arctic*. Cambridge: Cambridge University Press.  
<https://doi.org/10.1017/CBO9781107337442>
- Charron, A. 2015. Lessons learned and lost from Pharand's Arctic Regional Council Treaty Proposal. In: Lalonde, S., and McDorman, T.L., eds. *International law and politics of the Arctic Ocean: Essays in honor of Donat Pharand*. Leiden: Brill. 76–86.  
[https://doi.org/10.1163/9789004284593\\_004](https://doi.org/10.1163/9789004284593_004)
- Cohen, M. 1971. The Arctic and the national interest. *International Journal* 26(1):52–81.  
<https://doi.org/10.1177/002070207102600105>
- Dodds, K. 2010. Flag planting and finger pointing: The Law of the Sea, the Arctic and the political geographies of the outer continental shelf. *Political Geography* 29(2):63–73.  
<https://doi.org/10.1016/j.polgeo.2010.02.004>
- . 2013. The Ilulissat Declaration (2008): The Arctic states, “Law of the Sea,” and Arctic Ocean. *SAIS Review of International Affairs* 33(2):45–55.  
<https://doi.org/10.1353/sais.2013.0018>
- Dubner, B.H. 2005. On the basis for creation of a new method of defining international jurisdiction in the Arctic Ocean. *Missouri Environmental Law and Policy Review* 13(1):1–23.
- English, J. 2013. *Ice and water: Politics, peoples, and the Arctic Council*. Toronto: Allen Lane.
- EP (European Parliament). 2008. Arctic governance. European Parliament Resolution of 9 October on Arctic governance.  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P6-TA-2008-0474+0+DOC+XML+V0//EN>
- . 2009a. European Parliament resolution on the international treaty for the protection of the Arctic. Joint motion for a resolution. 30 March 2009.  
<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P6-RC-2009-0163&language=EN>
- . 2009b. Opening of international negotiations in view of adopting an international treaty for the protection of the Arctic (debate). *Debates*, 1 April 2009.  
<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090401&secondRef=ITEM-013&language=EN&ring=B6-2009-0172>
- . 2009c. Opening of international negotiations in view of adopting an international treaty for the protection of the Arctic (vote). *Debates*, 2 April 2009.  
<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090402&secondRef=ITEM-009-23&language=EN&ring=B6-2009-0172>
- . 2011. European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North. Texts adopted, 20 January 2011.  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P7-TA-2011-0024+0+DOC+XML+V0//EN>
- Finkelstein, L.S. 1995. What is global governance? *Global Governance* 1(3):367–372.  
<https://doi.org/10.1163/19426720-001-03-90000007>
- Gahler, M. 2010. Report on a sustainable EU policy for the High North. Brussels: European Parliament.  
<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0377&language=EN>
- Gorbachev, M. 1987. Speech in Murmansk at the ceremonial meeting on the occasion of the presentation of the Order of Lenin and the Gold Star to the City of Murmansk, 1 October 1987.  
[https://www.barentsinfo.fi/docs/Gorbachev\\_speech.pdf](https://www.barentsinfo.fi/docs/Gorbachev_speech.pdf)
- Government of Canada, Government of Denmark, Government of Finland, Government of Iceland, Government of Norway, Government of Sweden, Government of the United States of America, and Government of the Union of Soviet Socialist Republics. 1989. Consultative meeting on the protection of the Arctic environment, 20–26 September 1989. Rovaniemi: Finnish Ministry of Foreign Affairs.
- Government of Finland. 2013. Finland's strategy for the Arctic region 2013: Government resolution on 23 August 2013. Helsinki: Finnish Prime Minister's Office Publications.
- Graczyk, P., and Koivurova, T. 2014. A new era in the Arctic Council's external relations? Broader consequences of the Nuuk observer rules for Arctic governance. *Polar Record* 50(3):225–236.  
<https://doi.org/10.1017/S0032247412000824>
- Griffiths, F. 1979. *A northern foreign policy*. Toronto: Canadian Institute of International Affairs.
- Henriksen, T., and Ulfstein, G. 2011. Maritime delimitation in the Arctic: The Barents Sea Treaty. *Ocean Development & International Law* 42(1-2):1–21.  
<https://doi.org/10.1080/00908320.2011.542389>
- Huebert, R., and Yeager, B. 2008. *A new sea: The need for a regional agreement on management and conservation of the Arctic marine environment*. Oslo: WWF International Arctic Programme.
- ICC (Inuit Circumpolar Conference). 1992. *Principles and elements for a comprehensive Arctic policy*. Montreal: Centre for Northern Studies and Research, McGill University.
- . 2009. A circumpolar Inuit declaration on sovereignty in the Arctic.  
<https://www.inuitcircumpolar.com/wp-content/uploads/2019/01/declaration12x18vicechairsigned.pdf>
- IMO (International Maritime Organization). 2015. International code for ships operating in polar waters (Polar Code). Marine Environment Protection Committee (MEPC) 68/21/Add. 1, Annex 10.  
<http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>
- IUCN (International Union for Conservation of Nature). 1982. *United Nations Convention on the Law of the Sea of 10 December 1982*. Division for Ocean Affairs and the Law of the Sea.  
[https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/UNCLOS-TOC.htm](https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm)

- IUCN/SSC PBSG (International Union for Conservation of Nature/Species Survival Commission Polar Bear Specialist Group). 1973. Agreement on the conservation of polar bears. Oslo, 15 November 1973.  
[http://pbsg.npolar.no/en/agreements/agreement\\_1973.html](http://pbsg.npolar.no/en/agreements/agreement_1973.html)
- Jacobsen, M., and Strandsbjerg, J. 2017. Desecuritization as displacement of controversy: Geopolitics, law and sovereign rights in the Arctic. *Politik* 20(3):15–30.  
<https://doi.org/10.7146/politik.v20i3.97151>
- Jensen, Ø. 2016. The international code for ships operating in polar waters: Finalization, adoption and law of the sea implications. *Arctic Review on Law and Politics* 7(1):60–82.  
<https://doi.org/10.17585/arctic.v7.236>
- Joachim, J. 2003. Framing issues and seizing opportunities: The UN, NGOs, and women's rights. *International Studies Quarterly* 47(2):247–274.  
<https://doi.org/10.1111/1468-2478.4702005>
- Kankaanpää, P., and Young, O.R. 2012. The effectiveness of the Arctic Council. *Polar Research* 31(1), 17176.  
<https://doi.org/10.3402/polar.v31i0.17176>
- Keohane, R.O., and Victor, D.G. 2010. The regime complex for climate change. Cambridge, Massachusetts: The Harvard Project on International Climate Agreements.  
[https://www.belfercenter.org/sites/default/files/legacy/files/Keohane\\_Victor\\_Final\\_2.pdf](https://www.belfercenter.org/sites/default/files/legacy/files/Keohane_Victor_Final_2.pdf)
- Keskitalo, E.C.H. 2004. Negotiating the Arctic: The construction of an international region. Abingdon: Routledge.  
<https://doi.org/10.4324/9780203508114>
- Koivurova, T. 2008. Alternatives for an Arctic treaty – Evaluation and a new proposal. *Review of European Community & International Environmental Law* 17(1):14–26.  
<https://doi.org/10.1111/j.1467-9388.2008.00580.x>
- . 2015. Can we conclude an Arctic treaty? Historical windows of opportunity. *The Yearbook of Polar Law* 7:410–425.  
[https://doi.org/10.1163/2211-6427\\_016](https://doi.org/10.1163/2211-6427_016)
- Koivurova, T., and Molenaar, E.J. 2010. International governance and regulation of the marine Arctic: Three reports prepared for the WWF International Arctic Programme. Oslo: WWF International Arctic Programme.
- Koivurova, T., and VanderZwaag, D.L. 2007. The Arctic Council at 10 years: Retrospect and prospects. *University of British Columbia Law Review* 40(1):121–194.
- Kramer, A.E. 2017. Russia, U.S. and other nations restrict fishing in thawing Arctic. *The New York Times*, 30 November.  
<https://www.nytimes.com/2017/11/30/world/europe/russia-arctic-ocean-fishing-thaw.html>
- Kuersten, A. 2016. The Arctic Five versus the Arctic Council. *Arctic Yearbook* 5:389–395.  
<https://arcticyearbook.com/arctic-yearbook/2016/2016-briefing-notes/205-the-arctic-five-versus-the-arctic-council>
- Lalonde, S., and MacDonald, R.St.J. 2007. Donat Pharand: The Arctic scholar. *Canadian Yearbook of International Law* 44:3–94.  
<https://doi.org/10.1017/S0069005800009000>
- Lathrop, C.G. 2008. The road to the Arctic. *Foreign Affairs* 87(3):169–170.
- Mearsheimer, J.J. 1994/95. The false promise of international institutions. *International Security* 19(3):5–49.  
<https://doi.org/10.2307/2539078>
- Molenaar, E.J. 2014. Adapting governance and regulation of the marine Arctic. Chapter 5. In: Powell, R.C., and Dodds, K., eds. *Polar geopolitics? Knowledges, resources and legal regimes*. Cheltenham: Edward Elgar Publishing. 74–90.  
<https://doi.org/10.4337/9781781009413.00012>
- . 2015. The Oslo Declaration on high seas fishing in the central Arctic Ocean. *Arctic Yearbook* 4:426–431.
- Nord, D.C. 2010. The shape of the table, the shape of the Arctic. *International Journal: Canada's Journal of Global Policy Analysis* 65(4):825–836.  
<https://doi.org/10.1177/002070201006500413>
- . 2015. *The Arctic Council: Governance within the Far North*. Abingdon: Routledge.
- Nowlan, L. 2001. Arctic legal regime for environmental protection. Gland, Switzerland: International Union for Conservation of Nature and Natural Resources.
- NSIDC (National Snow and Ice Data Center). 2017. Arctic sea ice at minimum extent. *Arctic Sea Ice News & Analysis*, 19 September.  
<http://nsidc.org/arcticseaicenews/2017/09/arctic-sea-ice-at-minimum-extent-2/>
- Offerdal, K. 2011. The EU in the Arctic: In pursuit of legitimacy and influence. *International Journal: Canada's Journal of Global Policy Analysis* 66(4):861–877.  
<https://doi.org/10.1177/002070201106600414>
- Olsen, I.H., and Shadian, J. 2016. Greenland & the Arctic Council: Subnational regions in a time of Arctic Westphalianisation. *Arctic Yearbook* 5:229–250.
- Palm, M. 2007. The 7th Conference of Parliamentarians of the Arctic Region, 2–4 August 2006, Kiruna, Sweden. Conference report. Stockholm: Swedish Parliament.
- Parfitt, T. 2007. Russia plants flag on North Pole seabed. *The Guardian*, August 2.  
<https://www.theguardian.com/world/2007/aug/02/russia-arctic>
- Pedersen, T. 2012. Debates over the role of the Arctic Council. *Ocean Development & International Law* 43(2):146–156.  
<https://doi.org/10.1080/00908320.2012.672289>
- Pharand, D. 1992. The case for an Arctic Region Council and a treaty proposal. *Revue Generale de Droit* 23:163–195.
- Purver, R.G. 1989. Arctic security: The Murmansk Initiative and its impact. In: Jacobsen, C.G., ed. *Soviet foreign policy: New dynamics, new themes*. London: Palgrave Macmillan. 182–203.  
[https://doi.org/10.1007/978-1-349-11341-5\\_11](https://doi.org/10.1007/978-1-349-11341-5_11)
- Rahbek-Clemmensen, J., and Thomassen, G. 2018. Learning from the Ilulissat Initiative: State power, institutional legitimacy, and governance in the Arctic Ocean 2007–18. Copenhagen: Centre for Military Studies.
- Rasputnik, A. 2016. The European Union and its northern frontier: EU European geopolitics and its Arctic context. PhD thesis, University of Cologne, Cologne, Germany.
- Scientific American Editors. 2017. Ice under siege. *Scientific American* 317(6):7.  
<https://doi.org/10.1038/scientificamerican1217-7>



- Shadian, J.M. 2014. The politics of Arctic sovereignty: Oil, ice, and Inuit governance. Abingdon: Routledge.  
<https://doi.org/10.4324/9781315851419>
- Shenhav, S.R. 2006. Political narratives and political reality. *International Political Science Review* 27(3):245–262.  
<https://doi.org/10.1177/0192512106064474>
- Simmons, B.A., and Martin, L.L. 2002. International organizations and institutions. In: Carlsnaes, W., Risse-Kappen, T., and Simmons, B.A., eds. *Handbook of International Relations*. Thousand Oaks, California: Sage. 192–211.  
<https://doi.org/10.4135/9781848608290.n10>
- Solomon, S., Qin, D., Manning, M., Marquis, M., Averyt, K., Tignor, M.M.B., Miller, H.L., Jr., and Chen, Z. 2007. *Climate change 2007: The physical science basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge: Cambridge University Press.
- Stavridis, J.G. 2015. Lessons from the white continent. *Foreign Policy*, 23 February.  
<https://foreignpolicy.com/2015/02/23/lessons-from-the-white-continent-arctic-antarctica-nato-russia-north-pole-arctic/>
- Steinberg, P., Tasch, J., Gerhardt, H., Keul, A., and Nyman, E. 2015. *Contesting the Arctic: Politics and imaginaries in the circumpolar North*. London: I.B. Tauris & Co.
- Tennberg, M. 2000. *Arctic environmental cooperation: A study in governmentality*. Aldershot: Ashgate.
- Wallis, D. 2005. Resolution on northern dimension (Arctic governance). Written question to the Commission, 22 December 2005.  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bWQ%2bE-2005-4860%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>
- Wegge, N. 2012. The EU and the Arctic: European foreign policy in the making. *Arctic Review on Law and Politics* 3(1):6–29.
- Willis, M., and Depledge, D. 2015. How we learned to stop worrying about China's Arctic ambitions: Understanding China's admission to the Arctic Council, 2004–2013. In: Jensen, L.C., and Hønneland, G., eds. *Handbook of the politics of the Arctic*. Cheltenham: Edward Elgar Publishing. 388–407.  
<https://doi.org/10.4337/9780857934741.00029>
- Wilson, P. 2016. Society, steward or security actor? Three visions of the Arctic Council. *Cooperation and Conflict* 51(1):55–74.  
<https://doi.org/10.1177/0010836715591711>
- World Wildlife Fund. 2007. New rules needed for the Arctic. August 17.  
<http://wwf.panda.org/?111440/New-rules-needed-for-the-Arctic>
- Young, O.R. 1998. *Creating regimes: Arctic accords and international governance*. Ithaca: Cornell University Press.
- . 2005. Governing the Arctic: From Cold War theater to mosaic of cooperation. *Global Governance* 11(1):9-15.  
<https://doi.org/10.1163/19426720-01101002>
- . 2009. Whither the Arctic? Conflict or cooperation in the circumpolar North. *Polar Record* 45 1):73–82.  
<https://doi.org/10.1017/S0032247408007791>
- . 2011. If an Arctic Ocean treaty is not the solution, what is the alternative? *Polar Record* 47(4):327–334.  
<https://doi.org/10.1017/S0032247410000677>
- . 2012. Building an international regime complex for the Arctic: Current status and next steps. *The Polar Journal* 2(2):391–407.  
<https://doi.org/10.1080/2154896X.2012.735047>
- . 2016a. Governing the Arctic Ocean. *Marine Policy* 72:271–277.  
<https://doi.org/10.1016/j.marpol.2016.04.038>
- . 2016b. The shifting landscape of Arctic politics: Implications for international cooperation. *The Polar Journal* 6(2):209–223.  
<https://doi.org/10.1080/2154896X.2016.1253823>