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<ct>18.<em>From Ilulissat to Kiruna: managing the Arctic Council and the contemporary geopolitics of the Arctic

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<a>A FOGGY DAY IN MAY

<tfo>In May 2013, a ministerial meeting of the Arctic Council was held in the northern Swedish city of Kiruna, famed as an iron-ore producing centre. The meeting itself was caught up in a spell of bad weather, including icy fog which disrupted delegates’ travel plans. More significantly, perhaps, the meeting itself was also the site of protest from environmental activists (such as Greenpeace) demanding that the Arctic be ‘saved’ from further mineral-based exploitation as well as indigenous, mainly Swedish, Sami protesting against the impact of mining on reindeer-herding communities. Furthermore, Aleqa Hammond, then Premier of Greenland, refused to attend because the Swedish hosts were unwilling to offer three chairs to Denmark around the main table in the public building which was to host the meetings. During the Swedish Chairmanship (2011[en]2013), the Kingdom of Denmark was represented by its three constituent parts: Denmark, Greenland and the Faroe Islands.

 In fact, that ministerial meeting was not really intended to be one dominated by mining and the politics of seats at the tables. At stake, as most international commentators with an interest in the Arctic noted, was the issue of observers (Steinberg and Dodds 2015). Would the Arctic Council admit either the entire list of candidates (six states, one regional organization and seven organizations) or a select group to be determined during the meeting? Created in 1996, the Arctic Council with its eight Arctic states (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States), its six permanent participants (indigenous organizations such as the Inuit Circumpolar Council) and initial observers, comprises an intergovernmental forum designed to promote peace and cooperation in the Arctic region (Arctic Council 1996, 2002; Young 2012; English 2013; Koivurova 2013). The Council has also admitted a series of newer observers, in large part European states with scientific, commercial, logistical, environmental and/or resource-based interests in the Arctic. The grouping includes France, Germany, Poland and the United Kingdom, as well as a host of other intergovernmental and non-governmental organizations such as the United Nations Environment Program (UNEP) and University of the Arctic.

 After weeks of anticipation, the May 2013 ministerial meeting pledged to discuss the applications from new countries seeking observer status, including the most highly profiled one [en] China. In the weeks leading up to the meeting, China’s growing involvement in the Arctic and future possibilities occupied most press attention. Well-known polar commentators and Chinese experts offered their thoughts on what might be driving this northerly interest (see, for example, Chen 2012). Writing in the *Financial Times*, Linda Jakobson (2013) noted,

 <quotation>China’s motives in the Arctic are perfectly comprehensible. First, melting Arctic ice will have a profound effect on northeast Asia’s climate, perhaps harming agriculture. China is one of the most susceptible countries to rising sea levels because of its low lying and vulnerable coast. Second, within twenty years, the Northern Sea Route across the northern coast of Russia could offer an alternative way to transport goods from northeast Asia to Europe during summer. No country dependent on trade can ignore the possibility that traffic along the Arctic sea route will increase sustainability.</quotation>

 Following this Arctic Council ministerial meeting, it was announced that China, India, Italy, Japan, Singapore and South Korea were to be admitted as new observers. With the exception of Italy, the decision to admit five new Asian states marked a decisive shift in the geographical distribution of the state-based observer membership. For the Swedish hosts, and Foreign Minister Carl Bildt in particular, this expansion ‘strengthens the position of the Arctic Council on the global scene’ (Bildt 2013). For others, the members of the Arctic Council had to admit this new constituency of observers [en] otherwise there was the danger that those countries might simply bypass the Council and perhaps create a rival organization (Berkman 2013). The inaugural meeting of the Arctic Assembly, in October 2013, was said to have been a factor in the late-night deliberations (Dodds 2013). Hosted by the Icelandic presidency, the Assembly appeared, in the weeks leading up to the ministerial meeting, to offer a possible alternative where Asian countries and corporations could be brought into contact with Arctic and near Arctic stakeholders.

 Whatever the motivations of the members and permanent participants of the Arctic Council, a collective decision was taken to expand the observer community. All the new entrants could make claims to being actively engaged with the Arctic region and its communities, and all were required to endorse the status of the Arctic Council as the prime intergovernmental forum for working through issues pertaining to the region’s environmental stewardship and economic development mindful of the sovereign (and indigenous) interests of the eight Arctic states. Despite the fog, the protests and the controversies about seats, the delegates contributed something rather significant. If anything, this expansion of the Arctic Council served to make the Arctic region appear *less* exceptional and thus more similar to other parts of the world where institutional structures and groupings exist to manage areas of common concern while also seeking to reconcile commercial, scientific, environmental and sovereign agendas (Steinberg and Dodds 2015).

 In this chapter, I want to make a figurative journey from foggy Kiruna to the two Greenlandic towns of Ilulissat and Nuuk, which hosted a ministerial signing and a ministerial meeting, respectively. Before leaving for Greenland, we need to reconsider the extraordinary impact a Russian flag had, from August 2007 onwards. In so doing I am not offering a detailed institutional history of Arctic Council development (see for instance English 2013 and Koivurova 2013); my concern here is more on how different understandings of the Arctic itself were managed through a series of declarations, public appearances and documents. In essence, the argument presented here is that the ministerial meeting in Kiruna marked the culmination of efforts to re-cast the Arctic away from popular notions that it was an exceptional space, with weak governance, opportunistic corporations and militaries, as well as untold riches (e.g. Borgeson 2008; Blunden 2009; Howard 2009; Kraska 2011), to a notion that emphasized legal frameworks, intergovernmental cooperation and the willingness to engage with external partners and stakeholders in an orderly space carefully managed by territorial states. In other words, considerable administrative and political labour was invested in the re-calibration of what many term ‘Arctic geopolitics’, all the more significant in the context of a ‘global Arctic’ (see Jabour and Weber 2008; Heininen and Southcott 2010; Powell and Dodds 2014). Observer status on the Arctic Council is thus an opportunity to explore in more detail a tension between a rooted Arctic composed of indigenous states and peoples, and a ‘global Arctic’, characterized by interconnection, networks and extra-territorial interest and investment (Kapyla and Mikkola 2013).

<a>TO BE AN OBSERVER (NUUK)

<tfo>The observer is only one type of non-member of the Arctic Council. And within the observer category itself there are permanent and *ad hoc* observers who, together with permanent participants and invited experts, make up the four types of non-members. The 1996 Ottawa Declaration (Article 3) did specify the rights and duties of observers, which were later articulated in the 1998 report of Senior Arctic Officials (SAO). The observer countries that were admitted to the Arctic Council were European allies of the majority of the Arctic states alongside well-established international and non-governmental organizations. The earliest observers to the Arctic Council had already been involved (as *ad hoc* or accredited observers) with earlier initiatives to promote circumpolar cooperation, specifically the Arctic Environmental Protection Strategy (1991). There was no observer manual per se, and over time considerable documentation and what might be termed ‘observant practice’ to be pinned to the body of observers has been developed.

 Strikingly, after the first state and non-state observers were admitted in 1996, the Arctic Council began to consider requests more carefully. In October 2000, France was admitted alongside other organizations such as the International Arctic Social Science Association and the Circumpolar Conservation Union. But by 2002, concern was expressed that the presence of ever-greater numbers of observers might interfere with the business of the Arctic Council (SAO 2002). On the other hand, members also recognized that interest in the Arctic was likely to expand and that new observers might even be invited by the membership. The next decade (2002[en]2012) revealed further interest in expanding the observer community, and in 2007 at the SAO meeting in Tromsø, Norway, it was apparent that China and Italy were interested in becoming observers, as were South Korea and the EU, which sent representatives to the SAO meeting in November 2008. Japan (in July 2009) and Singapore (in December 2011) joined what were often referred to as the ‘observer candidates’ (Graczyk and Koivurova 2014).

 In retrospect, the Senior Officials Report to Ministers in May 2011 was the document that was crucial in establishing further clarification about the role and responsibilities of observers (SAO 2011). The Arctic Council Observer Manual, which was adopted at the ministerial meeting, was intended to provide detailed guidance on those seeking to become permanent observers. The 2011 ministerial meeting in Nuuk used the Observer Manual to ensure that new observers would have to affirm the sovereign authority of the eight member states and demonstrate their willingness to support the work of the Arctic Council itself. For countries such as China and organizations such as the EU who were already *ad hoc* observers, the Manual articulated the price of admission. *Ad hoc* members had to apply each time to be admitted as observers to ministerial meetings and Arctic Council business more generally that was open to observers. By contrast, those accepted as permanent members are not required to seek formal permission to attend each and every meeting of the Arctic Council.

 After a hiatus of a decade or more, international interest in the Arctic was much altered. The rationale for the ‘Nuuk criteria’ pertaining to new permanent observers in 2011 was designed to facilitate the 2013 ministerial meeting and decision-making on new applicants (some of whom had already expressed their interest in gaining permanent status). Those aforementioned criteria made clear that observer status can be open to review [en] so the idea that observers are truly permanent is misleading. The Arctic Council Observer Manual for Subsidiary Bodies notes, ‘Observer status continues for such a time as consensus exists among Ministers. Any observer that engages in activities which are at odds with the Ottawa Declaration or with the Rules of Procedure will have its status as an observer suspended’ (SAO 2011).

 The primary reason for the review clause is that observers must demonstrate their support for ‘the work of the Arctic Council including through partnerships with member states and Permanent Participants bringing Arctic concerns to global decision making bodies’ (SAO 2011). In other words, observers are not expected to simply ‘observe’: they are expected to work constructively and cooperatively to support and promote the work of the Arctic Council in the Arctic and beyond. The category of *ad hoc* observer has now been abandoned, but there is still scope for experts and organizations to be invited to attend relevant Arctic Council business.

 Observers, therefore, have to undertake a series of promises and commitments. They must affirm their support for the Ottawa Declaration, they must recognize the sovereignty and sovereign rights of the Arctic states, acknowledge that an ‘extensive legal framework’ applies to the Arctic Ocean, and respect the values, practices and traditions of Arctic indigenous peoples. Other relevant areas include showing a genuine willingness to provide financial support to the work of the Council, and contributing to the knowledge-based economy surrounding the Arctic Council. Observers may propose projects and may be allowed to speak at meetings, but the documentation that exists on observers clearly specifies: ‘Decisions at all levels in the Arctic Council are the exclusive right and responsibility of the eight Arctic states with the involvement of the Permanent Participants’ (SAO 2011).

 Graczyk and Koivurova (2014) explain that the longevity of observers depends on continued consensus about their membership amongst the Arctic states. So while preparations were afoot to prepare for a new era of state observers, the Nuuk criteria were also intended to clarify further the rules of observer engagement. The SAO report makes clear that observers are allowed to engage with Arctic states and permanent participants and present oral evidence and submit documentation on issues and themes being formally considered. However, during ministerial meetings observers are allowed only to submit written statements and may be involved in supplementary briefings and consultations on the margins of the meetings. As Graczyk and Koivurova conclude, ‘To some extent, Arctic states’ anxiety over observers’ engagement may be perceived as justified with regard to their respective national interests as they seek to maintain control over the situation in the AC and the region in general’ (2014, p. 10).

 What was striking about the ministerial meeting in Kiruna was not that the six countries, including China, were admitted. Anything else would have been genuinely surprising, given the level of established interest amongst the candidate states and the associated publicity. The application of the EU was not approved, largely because of Canadian discontent at the persistence of an EU export ban on seal products, and this was not unexpected. Perhaps more intriguing was the decision not to consider applications from non-state candidates. After the Kiruna ministerial meeting, Greenpeace and the Association of Oil and Gas Producers found themselves in an unlikely alliance of groups that had not been accepted as observers to the Arctic Council (Steinberg and Dodds 2015). If anything, the Arctic Council had reinforced the perception that it was most comfortable dealing with other states and their governments.

 While a case can clearly be made that the admission of those six observers was the result of a series of applications, consultations and engagements within and beyond the Arctic Council, we might also consider whether the 2013 ministerial meeting was also designed to disrupt the reproduction of a particular form of Arctic geopolitics. Shaped and empowered by highly visual events such as the Russian flag-planting incident of August 2007, the geopolitical discourse surrounding it appeared to take nourishment from an idea of the Arctic Ocean as thinly governed and thickly resourced.

<a>NEUTRALIZING A *TERRA NULLIUS*?

<tfo>In August 2007, two submersibles piloted by a multi-national team descended to the bottom of the central Arctic Ocean. While this event in itself would have been impressive, given the depth and inaccessibility of this part of the Arctic Ocean, it became altogether more noteworthy when photographs taken of the dive revealed that a Russian flag was gently deposited on the seabed. Once photographs of that Russian flag attached to a titanium pole began to circulate, headlines warning of a new scramble for the Arctic proliferated. Unwittingly, perhaps, the former Canadian Foreign Minister Peter MacKay added further frisson to the framing of this event by retorting, ‘This isn’t the fifteen century. You can’t go around the world and just plant flags and say, “We’re claiming this territory”’.1

 In fact, of course, you can. There is a rich twentieth-century visual archive of explorers, mountaineers and even astronauts planting national flags [en] on the polar continent, North Pole, South Pole, mountain peaks and the moon. While the Apollo 11 expedition took care not to claim the moon as US territory in July 1969, the symbolism of planting a national flag was not lost in an era when exploration, science and geopolitics were Cold War bedfellows. But was there something about a Russian flag on the remote polar seabed that proved rather unsettling. International lawyers were swift to dismiss the gesture as baseless. There was nothing to worry about, legally speaking. The flag-planting incident was inconsequential: thus the Canadian Foreign Minister was guilty of rhetorical excess, possibly confusing long-standing sensitivities over the international legal status of the Northwest Passage with that of the central Arctic Ocean.

 Russian officials and senior ministers, however, varied in their interpretation of the event itself. Four explanatory factors were cited at various times [en] technical/scientific, territorial consolidation, technological highpoint, and cultural/symbolic. The first, and most reassuring from the point of view of others, was that this high-profile descent was merely one small element in a scientific expedition designed to collect further geophysical and oceanographic data pertaining to a Russian submission to a UN body, the Commission on the Limits of the Continental Shelf (CLCS), outlining Russia’s belief that its continental shelf extended all the way to the North Pole, via the Lomonosov Ridge. Thus, the underlying rationale was technical-scientific and in line with the demands of Articles 76 and 77 of the United Nations Convention on the Law of the Sea (UNCLOS) [en] the implication being that Russia was seeking to convince the CLCS that there might be a possibility that its sovereign rights to the seabed extended beyond 350 nautical miles from the coastline. The second factor, encouraged by the commentary of one member of the Russian expedition, Artur Chilingarov, went beyond the technical-scientific requirements of UNCLOS and CLCS. For this Russian MP and polar oceanographer, the flag-planting was more like a ceremony of possession. As he noted, ‘The Arctic is Russian. We must prove the North Pole is an extension of the Russian land mass.’2 Others made reference to the US flag-planting on the moon and the technological aspects involved in both the lunar and subterranean missions: in the Arctic case, a submersible had descended and ascended some 10 000 feet in remote and challenging waters.

 Of greatest interest is another dimension. It nourished a geopolitical imagination which saw this flag-planting episode as akin to aggressive polar nationalism. In other words, highlighting both a longer Russian tradition of spectacular events designed to ‘excite’ domestic audiences of the country’s Arctic exploratory heritage but also warn others that Russia believed its sovereign territory extended all the way to the North Pole. One reason why the Canadian Foreign Minister criticized the flag-planting incident was that it touched on a particular Canadian nationalist nerve [en] the idea of the Arctic as a *terra nullius*. Both Canada and Russia have, at various moments in the twentieth century and beyond, articulated visions of their country enjoying sovereignty over territorial sectors extending all the way to the North Pole [en] thus, not a no man’s land. While the ‘sector’ theory has been formally abandoned, this sectorial territorial imagination has remained a feature of Canadian and Russian public cultures.3 Foreign Minister MacKay stated, ‘The question of sovereignty of the Arctic is not a question. It’s clear. It’s our country. It’s our property. It’s our water.’4 The Arctic was, in his eyes, ‘Canadian’. Maps produced by Natural Resources Canada still use this sectorial projection in order to colonize vast swaths of the Arctic Ocean north of Canadian land territory, even though the country’s Department of Foreign Affairs and Trade no longer cites the sector principle.

 The visual is critical to the exercise of geopolitical power as states and their leaderships attempt to frame and demarcate (which includes hiding from sight) events, sites and processes. The image of a Russian flag on the central Arctic Ocean attached to a rustproof flagpole proved durable, a stubborn material presence. Its existence served to fuel stories about Arctic sovereignty rivalries, resource and territorial intrigue, and even a return of Cold War-era Soviet/Russian opportunism. Something had to be done: how could the flag-planting incident be defused?

 This issue became all the more important after the 2007 SAO meeting in Norway, which had revealed that China and Italy were interested in becoming permanent observers on the Arctic Council.

<a>TWO DAYS IN MAY

<tfo>Part of the background to the 2008 Ilulissat Declaration is rooted in the Russian flag-planting incident. But the Danish invitation to convene a meeting in Greenland has more local origins in Danish[en]Greenlandic politics as well. The Danish government of the time, with Foreign Minister Per Stig Møller, was heavily involved in climate-change diplomacy, having been active in launching a ‘Greenland dialogue’ in August 2005, which sought to draw ministerial-level attention to the implications of climate change for Arctic environments. In June 2007, Møller warned an audience in London that Arctic sea-ice thinning and polar-cap melting were geopolitically significant, with implications for Arctic resource extraction, shipping, maritime policing and territorial ownership. Two months later, ‘evidence’ for possible dispute and tension seemed to materialize in the form of that Russian flag. The ‘scramble for the Arctic’ had begun in earnest. That same year, it was announced that Denmark would host the next UN Climate Conference (COP 15).

 The Danish Foreign Minister hoped, by convening a conference of the five Arctic coastal states, to reinforce a consensus that the parties were committed to the orderly management of the Arctic Ocean.5 Far from being a *terra nullius*, the Arctic Ocean was, just like any other regional ocean, subject to the existing provisions of international law. While the eventual invitation to the four other coastal states included references to sustainable development and environmental protection, the foundational reference to UNCLOS was significant, without which the meeting might not have been possible. It avoided giving the idea that the meeting was ‘blaming’ Russia for generating speculation about the lack of governance in the Arctic. Rather, the plan was to use the meeting to reinforce a consensus that the provisions of UNCLOS applied to the Arctic Ocean.

 This focus on UNCLOS also explicitly addressed the contention of some commentators that the Arctic was caught up in a legal void. Within the European Parliament, for example, some parliamentary figures called for the development of an Arctic Treaty modelled on the 1959 Antarctic Treaty [en] a treaty which emphasized that the Arctic was a global common where sovereignty politics might be placed to one side in favour of a moratorium on resource exploitation and scientific collaboration. That, however, was not a vision of Arctic governance shared by the Arctic 5. The Danish initiative was designed explicitly to challenge any notions that the Arctic should be internationalized. Here it is worth noting that environmental groups such as Greenpeace continue to campaign for the Arctic to be ‘saved’, and have recently put forward the idea that the central Arctic Ocean should be a global commons free from any form of exploitation.6

 The meeting in May 2008 was positioned as an initiative that would highlight the obligation of the Arctic 5 to act responsibly and cooperatively in the Arctic Ocean. The statement that ensued from the meeting, which came to be known as the Ilulissat Declaration, argued:

 <quotation>By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials. Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.

 This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures.7</quotation>

<tfo>In view of the non-ratification of UNCLOS by the United States, the Declaration made reference to the ‘law of the sea’, but the inference was clear. The Arctic 5 [en] notwithstanding criticism from other Arctic states such as Iceland for being excluded from the meeting [en] positioned themselves as coastal states which enjoyed sovereign rights and responsibilities, and which were committed to following the established procedures for delimiting their outer continental shelves.

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

 The exact extent of sovereign rights over the Arctic seabed is still to be determined by the CLCS but is likely to extend at least 350 nautical miles beyond the coastal baseline, and possibly further as a consequence of rules governing such matters.8 One area of the Arctic Ocean seabed of great interest to Canada, Denmark and Russia is the Lomonosov Ridge, which extends around 1000 nautical miles from north of Greenland across the Arctic Ocean to Siberia, and which all three view as a natural extension of their continental shelves. The CLCS will not adjudicate in this issue but will review any materials submitted by coastal states. Russia was the first to do so, in 2001, but was advised that its submission needed further technical details, especially regarding the relationship between underwater ridges and the continental shelf.

 The USA, as a non-party to UNCLOS,9 cannot submit any materials to the CLCS; and other states such as Canada, Denmark and Russia have been involved with the collection and collation of relevant materials. Denmark and Canada made their submissions to the CLCS in the period between 2012[en]2014; in Canada’s case it was a partial submission (December 2013). A follow-up to the 2001 Russian submission is expected following a request from the CLCS for further scientific information regarding the Arctic Ocean. Norway is the only member of the Arctic 5 to have settled its outer continental shelves.10 The seabed beyond those outer continental shelves becomes ‘The Area’ whereby the resources of the area (on the seabed and below) are the common heritage of humankind. The International Seabed Authority manages ‘The Area’ throughout the world’s oceans and seas. The Area is open to use by all states, provided this is done in a peaceful manner. So far, there is no evidence to indicate that the Arctic 5 have not followed the rules and procedures as set down in Article 76 of UNCLOS.

 While the Arctic 5 acknowledged that more remained to be done in terms of environmental stewardship of the Arctic Ocean, the intent of the Ilulissat Declaration was to reject the idea that a new, comprehensive Arctic Treaty was needed. The Arctic 5 further noted other issues that needed to be addressed, such as navigation in the Arctic Ocean. While Article 234 of UNCLOS acknowledges the rights of coastal states to impose more stringent measures to ensure higher standards of shipping safety and environmental protection,11 other organizations such as the International Maritime Organization have undertaken to provide new guidance and binding rules for ships working in ice-covered waters. The Polar Code, which should enter into force in January 2017, will co-exist alongside coastal state intervention by Canada and Russia to regulate shipping through the Northwest Passage and the Northern Sea Route (NSR), respectively.12

 Coastal states such as Canada and Russia have used Article 234 to intensify their sovereign authority over ice-filled areas through legislative, constabulary and surveillance-based initiatives and interventions. Some countries, including the United States, had misgivings about Article 234 at the time of the UNCLOS negotiations, precisely because of concerns that coastal states would use ‘environmental protection’ as a pretext to impinge upon freedom of navigation. For example, Canada passed its Arctic Waters Pollution Prevention Act (extended in 1985 to cover 200 nautical miles from the Canadian baseline) designed to impose greater restrictions on those seeking to navigate through the Northwest Passage. It has also insisted that foreign vessels participate in NORDREG, a database of all vessels entering Arctic waters in the proximity of Canada. The Canadian government is also investing in a Northern Watch project designed to help the country ‘listen’ for users of Canada’s ‘internal waters’ via a network of underwater sonar devices. In the context of the NSR, Russia has insisted on ‘controlling all maritime traffic within 200 nautical miles of its Arctic coastline’ (Flake 2013, p. 45). Russia requires all vessels transiting the NSR to obtain prior permission from Moscow and to follow a series of regulations that include escorting. In 2012/2013, the Putin government issued several directives that reinforced these requirements, and established a new NSR administrative body to oversee this regulatory structure. Both Canada and Russia are committed to monitoring and where possible administering the movement of commercial shipping. With further predictions of an ice-free Arctic in the coming decades, the relevance and applicability of Article 234 are likely to come under closer scrutiny. Navigation rights in the Arctic Ocean might well become a far more divisive issue than resource rights, which grabbed the global headlines in 2007 and 2008.13

<a>AFTER ILULISSAT

<tfo>The Ilulissat Declaration was divisive, and other Arctic states [en] Finland, Iceland and Sweden [en] were aggrieved at not being invited alongside indigenous peoples’ organizations (permanent participants in the Arctic Council).14 Iceland, which considers itself an Arctic Ocean coastal state, deepened its relations with non-Arctic states, especially China, and promoted itself as a trans-shipment centre between the Arctic and East Asia. In April 2013, the Icelandic President was involved in creating an ‘Arctic Circle’, which has explicitly assumed the mission of promoting an ‘open tent or public square’ regarding Arctic governance, especially as regards business and commerce.15 Under the auspices of the Nordic Council, Sweden organized a conference in September 2008 called ‘Common Concern for the Arctic’. Finland has worked closely with the EU and encouraged the EU’s candidature for permanent observer status on the Arctic Council. These three states continue to emphasize that the Arctic 5 cannot assume that they alone will determine how this ‘orderly framework’ might be applied to the Arctic Ocean. Hackles were raised further when Canada convened a second Arctic 5 conference in Chelsea, Quebec [en] without inviting the other Arctic states and indigenous peoples’ organizations. US Secretary of State Clinton was publicly critical of the exclusion of indigenous peoples in particular, fuelling further debate about whether Aboriginal and First Nation communities were being systematically excluded from discussions on Arctic sovereignty and resource management.16

 This divisiveness between the Arctic 5 and the remaining Arctic states (Finland, Iceland and Sweden) was ultimately tackled by re-focusing on the institutional development of the Arctic Council. As the main intergovernmental forum for the Arctic region, it could provide a common cause.

 Three noteworthy developments followed: first, expansion in the number of observer states, which in May 2013 came to include China, India, Italy, Japan Singapore and South Korea. As noted, all the new observers had to acknowledge as part of their application process the collective sovereignty of the Arctic states (including their sovereign rights as coastal states). The EU application was deferred because of ongoing anger in Canada over the ban on seal products, as well as residual irritation at earlier proposals for an Arctic Treaty.17 Because of time constraints, non-state organizations like Greenpeace were simply not considered at the ministerial meeting in May. Second, the member states of the Arctic Council concluded their first legally binding agreements, the most notable being the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (the Search and Rescue Agreement) at the 2011 Arctic Council ministerial meeting. Notably, the portions of the Arctic assigned to each of the Arctic 5 and Iceland appeared to follow sector-like from the outermost borders of each country.18 Finally, the Arctic Council has undergone further institutional strengthening with the creation of a permanent Secretariat based in northern Norway. This has helped to consolidate claims pertaining to ‘orderly management’ of the Arctic region.

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

 Notwithstanding the tensions at the time of the Declaration, the notion that the Arctic Ocean coastal states were cooperating with one another, respectful of the Law of the Sea, was hugely significant. If the Nuuk criteria were to demand that observers be respectful of the member states and their sovereignty, then the coastal states in particular needed to observe (one might say) the ‘rules’ of the Law of the Sea. Arctic states remain deeply sensitive, as do permanent participants, to any suggestion that a vision of a ‘global Arctic’ would dislodge a view of the Arctic as still shaped by the territorialized interests of the member states. Hence the administrative efforts at the 2013 Arctic Council ministerial meeting, which were in part about reinforcing the notion that the Arctic region was a space bubbling over with rules and regulations affecting extra-territorial parties. Rules of procedure were updated, the Observer Manual was published, and although the term ‘permanent observer’ is no longer in official Council terminology, there are many more caveats and rules in place regarding their role and presence.

<a>CONCLUSION

<tfo>Images of a Russian flag being planted on the bottom of the central Arctic Ocean in August 2007 unleashed a tsunami of commentary about ‘Arctic scrambles’. At the most extreme, there were dire warnings about the future of the Arctic. The flag became a powerful signifier of unclaimed space and unruly behaviour. The Arctic states, whatever their protestations to the country, are perfectly capable of mobilizing their own populations with their own images (including maps often conveying a sense of coastal states enjoying full sovereignty over the continental shelf) and stirring rhetoric (Canadian Prime Minister Stephen Harper’s ‘Use it or lose it’ speech being one example) while all the time reassuring international audiences that they will comply with international law (Dodds 2013). The 2008 Ilulissat Declaration was one of those moments in international politics when a document, an inter-state gathering and accompanying photographs were designed both to reassure and to remind global audiences that the Arctic Ocean was not any *terra nullius*. All of this mattered at a time when the EU and others, including China, were highlighting the global common features of the Arctic (the high seas, The Area and rights of innocent passage) and/or advocating alternative governance arrangements and political forums.

 Much work still remains to be done. UNCLOS/Law of the Sea provides a framework, but the Arctic states and others recognize that there are substantial knowledge and governance gaps when it comes to protecting the marine environment from the hazards of oil/gas exploration and exploitation as well as shipping. The Canadian chairmanship of the Arctic Council (2013[en]2015) will face some challenging contradictions: encouraging economic development in northern communities, while recognizing that the Arctic continues to undergo profound geophysical change.

 As acknowledged in the Ilulissat Declaration, ‘The Arctic Ocean stands at the threshold of significant changes. Climate change and the melting of ice have a potential impact on vulnerable ecosystems, the livelihoods of local inhabitants and indigenous communities, and the potential exploitation of natural resources’. But, as this chapter has shown, the positioning of observers within the Arctic Council is also complicit in an attempt to reshape the Arctic geopolitics of 2007/2008 that depicted the Arctic region as some sort of resource-rich *terra nullius.*

<a>NOTES

1.<em>*The Guardian*, (2 August 2007), ‘Russia plants flag on North Pole seabed’, www.guardian.co.uk/world/2007/aug/02/russia.arctic, accessed 10 November 2014.

2.<em>*BBC News*, (1 August 2007), ‘Russia ahead in Arctic “gold rush”’, http://news.bbc.co.uk/1/hi/6925853.stm, accessed 10 November 2014.

3.<em>M. Byers (2009), *Who Owns the Arctic?*, Vancouver, Canada: Douglas & McIntyre.

4.<em>The former Danish Foreign Minister Per Stig Møller also asserted, ‘We will soon have to discuss and decide: who owns the North Pole. That, by the way, I think we do.’

5.<em>I am inferring motivation here, but based on Foreign Minister Møller’s statement in June 2007 and awareness that the Norwegian Ministry of Foreign Affairs planned to convene a meeting in October 2007 to discuss the Arctic Ocean and International Law. Regional rivalries might also have played their part in accelerating the Danish initiative, in other words. The Norwegian MFA issued a press release after the meeting: www.regjeringen.no/en/dep/ud/press/News/2007/The-Arctic-Ocean--meeting-in-Oslo-.html?id=486239, accessed 10 November 2014.

6.<em>Greenpeace ‘Save the Arctic’ campaign, www.greenpeace.org.uk/arctic, accessed 10 November 2014.

7.<em>Kingdom of Denmark, The Ilulissat Declaration, www.oceanlaw.org/downloads/arctic/Ilulissat\_Declaration.pdf.

8.<em>Delimitation of the outer continental shelves of the Arctic 5 will involve bilateral and multilateral negotiation. The UN Commission on the Limits of the Continental Shelf (CLCS) is a technical body and issues ‘recommendations’ on the limits of the outer continental shelf but it is not a body invested with legal competence. Articles 76 and 77 set out the rules for OCS delimitation which include the stipulation that within a ten-year period post accession to the Convention, states submit materials to the CLCS to those parts of the continental shelf which stretch up to 150 nautical miles beyond their exclusive economic zones or [en] depending on various technical details [en] up to 100 nautical miles beyond the 2500 metre isobath.

9.<em>The United States observes the provisions of the Convention as part of customary international law but cannot, for example, submit materials to the CLCS.

10.<em>Coastal states will have the exclusive right to resources on and below the outer continental shelf, but the revenues derived are subject to ‘tax’ by the International Sea Bed Authority.

11.<em>Article 234 of UNCLOS provided extra reassurance for Arctic coastal states such as Russia, with its provision for coastal states to ‘adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone … Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.’

12.<em>This is an area of dispute; the United States believes the Northwest Passage and Northern Sea Route to be international straits (with associated rights of innocent passage) and not the ‘internal waters’ of Canada and Russia respectively.

13.<em>The United States will be particularly mindful of coastal states attempting to restrict the movement of commercial traffic such as oil tankers if and when the Alaskan exclusive economic zone and outer continental shelf regions are further exploited.

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

15.<em>The Arctic Circle website details this mission, www.arcticcircle.org.

16.<em>A point made in the release of the 2009 Circumpolar Declaration Sovereignty in the Arctic, www.itk.ca/publication/circumpolar-declaration-sovereignty-arctic.

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

18.<em>Article 3.2 of the Search and Rescue Agreement notes, however, that ‘the delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States or their sovereignty, sovereign rights or jurisdiction’.

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