

ARTICLE

Arctic Governance in the Face of Climate Change: A Case for “Inclusive Regionalism”

Gouvernance de l’Arctique face au changement climatique : plaidoyer en faveur d’un “régionalisme inclusive”

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Abstract

Arctic governance has entered a period of turmoil following the March 2022 Arctic Council pause in operations and, subsequently, the strained relations between the member states. As climate change dramatically alters the Arctic environment, opening the region to new economic possibilities and more global attention, the need for cooperation is greater than ever. This article examines the current geopolitical and environmental pressures that are undermining the Arctic Council’s legitimacy and operations at a critical juncture in Arctic governance. It contends that the Arctic Council must rethink how it engages with Arctic Council observers and the wider global community to ensure that pressing ecological, economic, and social issues are addressed judiciously to prevent potentially irreparable harm in the region. Specifically, the case is made that a shift to “inclusive regionalism” could secure the Arctic Council’s position as the pre-eminent forum to address Arctic issues and to re-establish the spirit of collaboration that reigned for a quarter century.

Keywords: Arctic Council; Arctic governance; *UNCLOS*; regional governance; climate change

Résumé

La gouvernance de l’Arctique est entrée dans une période de crise à la suite de la pause des opérations du Conseil de l’Arctique en 2022 et, par la suite, des relations tendues entre les États membres. Alors que le changement climatique modifie considérablement l’environnement arctique, ouvrant la région à de nouvelles possibilités économiques et à une attention mondiale accrue, le besoin de coopération est plus grand que jamais. Cet article examine les pressions géopolitiques et environnementales actuelles qui minent la légitimité et les opérations du Conseil de l’Arctique à un moment critique de la gouvernance de l’Arctique. Il soutient que le Conseil de l’Arctique doit repenser la manière dont il s’engage avec les observateurs et la communauté mondiale dans son ensemble pour garantir que les problèmes écologiques, économiques et sociaux urgents soient abordés judicieusement afin de prévenir des dommages potentiellement irréparables dans la région. Plus précisément, l’idée d’un “régionalisme inclusif” est proposée, qui pourrait assurer la position du Conseil de

l'Arctique en tant que forum prééminent pour aborder les questions arctiques et rétablir l'esprit de collaboration qui a régné pendant un quart de siècle.

Mots-clés: Conseil de l'Arctique; gouvernance de l'Arctique; CNUDM; gouvernance régionale; changement climatique

1. Introduction

The Arctic, once considered a “frozen desert,” accessible only with specialized marine vessels and ice breakers, is undergoing a radical physical alteration that has far-reaching implications not only for its ecological integrity but also for its future place on the global economic and political stage.¹ Both the landscapes and waterscapes are experiencing rapid transformations, altering shorelines,² and opening previously inaccessible water ways. Each year, the central Arctic Ocean hits new record lows for ice cover.³ Despite international efforts to limit global temperature rise to 1.5 degrees Celsius, the Arctic will likely experience a two degrees Celsius increase by 2040, permitting cargo and supply ships ice-free passage of the Beaufort Sea and parts of the Northwest Passage for more than half the year.⁴ Models further predict that Arctic temperatures could rise by four degrees Celsius by 2100, leaving the Arctic Ocean ice free for two-thirds of the year, allowing private vessels and cruise ships to sail through the Arctic Ocean without ice-breaking equipment.⁵ Arctic scholar Klaus Dodds described the magnitude of this change by noting that “[t]wo hundred years ago European explorers spoke in awe of the elemental power of ice [in the Arctic] and now we have a fisheries agreement confidently speaking of a Central Arctic Ocean.”⁶ Given the slow pace of the international community to abate climate change, an ice-free Arctic seems inevitable. Therefore, it is imperative that regulations and institutions keep pace with the realities of the “new” Arctic to prevent irreparable harm to a fragile ecosystem that is especially sensitive to disturbances.

While, for some, accelerated sea ice loss is a crisis, a growing number of states and businesses alike recognize that an ice-free Arctic will bring new, and highly profitable, economic opportunities, including fishing, oil and gas extraction, mining,

¹Klaus Dodds, “‘Real Interest’? Understanding the 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean” (2019) 10 *Global Policy* 542 at 543; TI Van Pelt et al, “The Missing Middle Central Arctic Ocean: Gaps in Fishery Research and Science Coordination” (2017) 85 *Marine Policy* 79.

²“The Arctic Community Falling into the Ocean” (17 November 2022), online: *CBC.ca* <www.cbc.ca/player/play/2114297411923>.

³Between 1975 and 2012, sea ice thickness decreased by 65 percent. In 2017, scientists recorded the lowest maximum ice extent in thirty-eight years; 2018 saw even greater loss. Christian Prip, “Arctic Ocean Governance in Light of an International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction” (2019), online: *Marine Policy* <doi.org/10.1016/j.marpol.2019.103768>; Michon Scott, “Arctic Sea Ice Extent at 2018 Winter Maximum Second Smallest on Record” (2018), online: *NOAA Climate.gov* <www.climate.gov/news-features/featured-images/arctic-sea-ice-extent-2018-winter-maximum-was-second-smallest-record>.

⁴“Cruise Ships Could Sail Now-icy Arctic Seas by Century’s End” (2021) 595 *Nature* 474. Already, a non-specialized cruise ship made a thirty-two-day voyage through the Northwest Passage, carrying over one thousand passengers, a journey made possible due to the rapid pace of environmental change in the Arctic.

⁵*Ibid.*

⁶Dodds, *supra* note 1 at 551.

bioprospecting, tourism, and shipping. The push by multinational corporations and states to expand their presence in Arctic trade, resource development, and investment will likely characterize the Arctic's future in the coming decades.⁷ The potential for significant economic gains has particularly attracted the attention of non-Arctic states, which insist that Arctic governance should no longer reside in a regional forum dominated by Arctic states since climate change and its impacts on the Arctic are global concerns that require an international response.

Amidst the growing interest in the Arctic has come the greatest challenge to Arctic governance since the end of the Cold War. In March 2022, following the Russian invasion of Ukraine, the seven other Arctic Council member states swiftly moved to suspend all official Council meetings, as well as Working Group operations, impacting 128 projects involving scientific cooperation and outreach.⁸ For months, as the war dragged on, Senior Arctic Officials and Arctic Council observers strove to find a solution to this unprecedented crisis, which was amplified due to Russia serving as the Council chair at that time.⁹ It was unclear how to resume operations without the participation of the largest Arctic state (or even whether doing so was a prudent course of action),¹⁰ or how the chair could effectively transfer to Norway in May 2023. Limited projects by Working Groups recommenced in September 2023, but the possibility of returning to the degree of cooperation and collaboration that was the hallmark of the Arctic Council remains unclear. As current chair of the Arctic Council, Norway is engaged in dialogue with members and actively working on relationship building in all areas of the Council's operations, but it faces significant challenges.¹¹

This article examines the current geopolitical and environmental pressures that are undermining the Arctic Council's legitimacy and future operations at a critical juncture in Arctic governance. As Arctic Council business falters, and arguments intensify that Arctic governance is a common concern of humankind, it is critical that solutions are found to bring the Arctic states back together. This article contends that the Arctic Council must rethink how it engages with Arctic Council observers and the

⁷Douglas C Nord, *The Changing Arctic: Creating a Framework for Consensus Building and Governance within the Arctic Council* (New York: Palgrave MacMillan, 2016) at 144.

⁸US Department of State, "Joint Statement on Arctic Council Cooperation Following Russia's Invasion of Ukraine" (3 March 2022), online: <www.state.gov/joint-statement-on-arctic-council-cooperation-following-russias-invasion-of-ukraine/>; Timo Koivurova et al. "Arctic Cooperation in a New Situation: Analysis on the Impacts of the Russian War of Aggression" (2022) 3 Government Report Finland, online: <VN_Selvitys_2022_3.pdf>; Paul Arthur Berkman, Jenny Baeseman & Akiho Shibata, "Arctic Science Diplomacy Maintains Russian Co-operation" (2022) 604 *Nature* 625 at 625; Astri Evardsen, "Arctic Council Paused: The Search for a Future for Arctic Cooperation Continues," *High North News* (27 April 2022), online: <www.highnorthnews.com/en/arctic-council-paused-search-future-arctic-cooperation-continues>.

⁹Evardsen, *supra* note 8; Trine Jonassen, "The Arctic Council: The Arctic 7 Resume Limited Work without Russia," *High North News* (8 June 2022), online: <www.highnorthnews.com/en/arctic-council-arctic-7-resume-limited-work-without-russia>.

¹⁰Koivurova et al, *supra* note 8; Timo Koivurova & Akiho Shibata, "After Russia's Invasion of Ukraine in 2022: Can We Still Cooperate with Russia in the Arctic?" (2023) 59 *Polar Record* 1.

¹¹Emilie Canova & Paulin Pic, "The Arctic Council in Transition: Challenges and Perspectives for the New Norwegian Chairship" (13 June 2023), online: *Arctic Institute* <thearcticinstitute.org/arctic-council-transition-challenges-perspectives-new-norwegian-chairship/>; "Q&A with Morton Høglund, the New Chair of the Senior Arctic Officials" (15 May 2023), online: *Arctic Institute* <arctic-council.org/news/q-a-with-morten-hoglund-chair-of-the-senior-arctic-officials/>.

wider global community to ensure that pressing ecological, economic, and social issues are addressed judiciously to prevent potentially irreparable harm in the region. To provide context, the following section will outline the history and structure of the Arctic Council, followed by an account of the environmental changes occurring in the north and how they have transformed the narrative of the Arctic and its place on the geopolitical stage. The subsequent section will summarize the arguments for regional or global governance, with a focus on China's Arctic ambitions. Finally, the article will conclude that "inclusive regionalism" could offer the greatest opportunity for successfully governing the Arctic and maintaining the Arctic Council's status as the pre-eminent forum for Arctic issues, with specific attention to the *Central Arctic Ocean Fisheries Agreement (CAOFA)*.¹² In the years since its creation, the Arctic Council has succeeded in bringing greater attention to the fragility of the Arctic and its connection to global ecological systems. The Arctic is facing unprecedented challenges; Arctic governance — whether regional or more globally inclusive — must not disintegrate when robust regulations and transnational peace and cooperation are most urgent.

2. The Arctic Council: a unique "high-level forum"

The Arctic Council arose from the *Declaration on the Establishment of the Arctic Council (Ottawa Declaration)*, signed by the ministers of the United States, Russia, Canada, Norway, Denmark (Greenland), Iceland, Sweden, and Finland on 19 September 1996.¹³ Created as a "high-level forum," the Council is a consensus-based organization, aimed at furthering "cooperation, coordination and interaction among Arctic States."¹⁴ As a forum, it may not impose binding regulations on its member states, an arrangement that aligned with the American desire that the Arctic Council would meet periodically to exchange information and address common concerns, but not be restricted by formal decisions.¹⁵ In addition, the *Ottawa Declaration* specifies that "[t]he Arctic Council should not deal with matters related to military security,"¹⁶ which further solidifies the Arctic Council's status as an organization designed to exclusively address soft power issues, notably environmental protection and sustainable development.¹⁷ The eight member states, all with territory within the Arctic Circle, appoint a Senior Arctic Official to the Council. The Council convenes biennially, during which time the chair of the Council is passed from one member to another.¹⁸ The chair is responsible for facilitating and

¹²*International Agreement to Prevent Unregulated Fishing in the High Seas of the Central Arctic Ocean*, 3 October 2018 (entered into force June 2021) [CAOFA].

¹³*Declaration on the Establishment of the Arctic Council*, 19 September 1996, (1996) 35 ILM 1387 (entered into force 19 September 1996) (comprising Canada, Denmark, United States, Iceland, Norway, Sweden, Finland, and Russian Federation) [Ottawa Declaration].

¹⁴Arctic Council Secretariat, *Arctic Council Rules of Procedure* (17–18 September 1998) at para 7, online: <2015-09-01_Rules_of_Procedure_website_version.pdf> [Arctic Council Rules of Procedure]; *Ottawa Declaration*, *supra* note 13 at para 7.

¹⁵Nord, *supra* note 7.

¹⁶*Ottawa Declaration*, *supra* note 13 at para 1.

¹⁷*Ibid.*

¹⁸*Ibid* at para 5; *Arctic Council Rules of Procedure*, *supra* note 14 at para 17.

coordinating Ministerial Meetings and meetings of the Senior Arctic Officials.¹⁹ The Ministerial Meetings are meant to reaffirm the members' commitment to "maintaining peace, stability, and constructive cooperation in the Arctic."²⁰ They culminate in a declaration that acknowledges accomplishments and sets forth aspirations for future work.

The Arctic Council is unique due its creation of space for "active participation and full consultation" by Indigenous representatives within all Council meetings and activities.²¹ This level of participation by the permanent participants to the Council is possible precisely because it is not a treaty-based organization.²² However, because the United States desired an inter-governmental organization, the permanent participants do not have equal status to the member states,²³ and their number may not exceed the number of member states.²⁴ The inclusion of permanent participants representing Indigenous communities across the member states is widely viewed as a success in the Council's structure. Their involvement within the Council has "led to an institutional culture that values local perspectives, respects traditional knowledge and promotes self-determination."²⁵

Finally, the largest and most diverse group of the Council is the Arctic Council observers, comprised of non-Arctic states, non-governmental organizations, and inter-governmental and inter-parliamentary bodies, which the Arctic Council deems can contribute to its work.²⁶ Observers do not have equal rights to participate in Arctic Council discussions. They are permitted to attend meetings by invitation only, and the chair maintains the final say on whether an observer can make oral statements, present written statements, submit documents, or provide input on agenda items.²⁷ They may not vote or influence agenda setting. Observers can be denied access to meetings or activities at the discretion of the Senior Arctic Officials.²⁸ As Article 38 of the *Rules of Procedure* of the Arctic Council stipulates, "[t]he primary role of observers is to *observe* the work of the Arctic Council."²⁹ Their greatest contributions are to the work of the Working Groups, but they are not permitted to provide more financial project funding than either the member states or the permanent participants.³⁰

¹⁹*Ibid* at para 10. For the first fifteen years of the Council's operation, the chair was also responsible for providing support to the Secretariat to carry out its functions. *Ottawa Declaration, supra note 13* at para 5.

²⁰*Nuuk Declaration on the Occasion of the Seventh Ministerial Meeting of the Arctic Council* (12 May 2011) at 1.

²¹*Arctic Council Rules of Procedure, supra note 14* at 5; *Ottawa Declaration, supra note 13* at para 2.

²²Oran R Young, "Is It Time for a Reset in Arctic Governance?" (2019) 11 *Sustainability* 1, online: <doi.org/10.3390/su11164497>.

²³Nord, *supra note 7*.

²⁴*Ottawa Declaration, supra note 13* at para 2. Currently, there are six permanent participants representing Indigenous communities across the Arctic: the Arctic Athabaskan Council, the Aleut International Association, the Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North, and the Saami Council.

²⁵Heather Exner-Pirot et al, "Form and Function: The Future of the Arctic Council" (5 February 2019), online: *Arctic Institute* <www.thearcticinstitute.org/form-function-future-arctic-council/>.

²⁶*Ottawa Declaration, supra note 13* at para 3; Danita Catherine Burke, *Diplomacy and the Arctic Council* (Montreal and Kingston: McGill-Queen's University Press, 2019).

²⁷*Arctic Council Rules of Procedure, supra note 14* at paras 37 and 38.

²⁸*Ibid* at para 37.

²⁹*Ibid* at para 38 [emphasis added].

³⁰*Ibid* at para 38.

Entities may gain observer status only if all member states accept their application.³¹ Once an entity gains Observer status, it is not guaranteed in perpetuity; if an observer acts against the *Rules of Procedure* or undertakes an activity that is contrary to the *Ottawa Declaration*, the Council may suspend their observer status.³² Furthermore, observer status remains only as long as all the member states are in agreement.³³ The process of admittance can become mired in wider political issues and unstable diplomatic relations. In May 2013, the Council granted observer status to six non-Arctic states — China, Japan, South Korea, India, Singapore, and Italy. Their admittance came after Sweden's hard-fought campaign to add these new observers during its 2011–13 chairmanship. Russia and Canada were particularly reluctant to admit new observers, while the permanent participants were skeptical of bringing in non-Arctic states, especially the European Union.³⁴ For the permanent participants, the concern is that the addition of new (powerful) non-Arctic actors will weaken their voice and influence within the Arctic.

A final grouping, not officially recognized by the *Ottawa Declaration* or the Council's *Rules of Procedure* but which recently exerted greater influence over Arctic governance, is that of the coastal Arctic states — Canada, Russia, the United States, Denmark (Greenland), and Norway — often referred to as the Arctic Five. Following the release of the Arctic Climate Impact Assessment, which brought global attention to the Arctic's unique vulnerability to climate change, calls for an Arctic treaty, similar to the *Antarctic Treaty*, grew.³⁵ The Arctic Five convened in Ilulissat, Greenland, in 2008 to address the physical changes to the Arctic Ocean and to reaffirm their rights and obligations regarding the Arctic's marine environment. For the Arctic coastal states, it was imperative to send the message that the Arctic Ocean was not “unclaimed territory” or a “wild west frontier” without governance structures.³⁶ In the resulting *Ilulissat Declaration*, the coastal states claimed that, “by virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean,” they were in a “unique position” to address the economic possibilities and environmental challenges that would come with a drastically altered Arctic Ocean.³⁷ The *Ilulissat Declaration* was not well received by the remaining Arctic Council member states, which felt excluded, or by the permanent participants and observers, fearing that the declaration would undermine the Council and that the Arctic Five would assert greater influence over the Arctic Ocean. However, for the Arctic coastal

³¹ *Arctic Council Rules of Procedure*, *supra* note 14 (Article 6 outlines the general suitability of applicants. It notably specifies that the prospective Observer must recognize the Arctic States' sovereignty, sovereign rights and jurisdiction over their territories in the Arctic [Annex 2, para 6(b)]. They must also recognize that an extensive legal framework, in particular the United Nations Convention on the Law of the Sea (UNCLOS), applies to the Arctic Ocean [Annex 2, para 6(c)]).

³² *Ibid* at para 37.

³³ *Ibid* at para 37.

³⁴ Nord, *supra* note 7; Rebecca Pincus, “Three-Way Power Dynamics in the Arctic” (2020) 14 *Strategic Studies Quarterly* 40. The European Union (EU) was also given the opportunity to join at a later date, but it still does not hold observer status since it is a supranational body, not an inter-governmental body. *Arctic Council Rules of Procedure*, *supra* note 14 at para 36. However, several EU states have observer status, and the EU helps finance certain projects.

³⁵ *Antarctic Treaty*, 1 December 1959, 402 UNTS 71 (entered into force 23 June 1961).

³⁶ Burke, *supra* note 26 at 117.

³⁷ 2008 *Ilulissat Declaration* (28 May 2008) (comprising Canada, the Russian Federation, Denmark, the United States, and Norway).

states, the declaration successfully dispelled any “misapprehension that the Arctic Ocean was a free-for-all space, open for outsiders to stake claims.”³⁸

3. Arctic geography: the politics of boundaries

The physical and political geography of the Arctic is central to debates regarding the future of Arctic governance and the Arctic Council. The following section will outline the geographical area of the Arctic and how conceptions of geography determine who has a seat at the table when addressing the challenges of the North. The most common designation of the Arctic is the area above the Arctic Circle at 66°33'49.3" North, which covers the land territories of the eight Arctic Council member states. However, the boundaries often shift when addressing specific issues or in relation to ecosystems, weather patterns, or other traits that link various zones. The Arctic is an amorphous environment, where the land and ocean are intertwined, connected through the ice that alters dramatically between the seasons. For months of the year, ice may bridge islands, extending the “land” for Arctic inhabitants and ice-dependent species. The Arctic states have undeniable sovereign rights over their terrestrial zones and may govern them according to domestic laws. However, jurisdiction in the marine environment is less clear, particularly in the Arctic Ocean. Unresolved issues of jurisdiction raise questions regarding rights and obligations, not just for Arctic states but also non-Arctic states, especially as ice cover loss transforms the previously frozen central Arctic Ocean into a key shipping route. For this article, the geographical focus will centre on the Arctic Ocean, and Arctic governance will refer to the governance of the marine environment and not terrestrial areas.

The Arctic Ocean spans fourteen million square kilometres. The five coastal states have “the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles,” measured from determined baselines.³⁹ Beyond and adjacent to the territorial waters lie the coastal states’ exclusive economic zones (EEZ), extending no further than two hundred nautical miles from the baselines.⁴⁰ Within this EEZ, the coastal state has “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone.”⁴¹ Furthermore, they have jurisdiction over “the establishment and use of artificial islands, installations and structures” as well as marine scientific research and protection of the marine environment within the EEZ.⁴² Within the EEZ, other states enjoy the rights noted in Article 87 on the freedom of the high seas,⁴³ including freedom of navigation, fishing, and scientific research.⁴⁴ These rights and obligations, for both the coastal states and other states, gain greater significance as the Arctic Ocean becomes more accessible due to climate change.

³⁸Burke, *supra* note 26 at 123.

³⁹*United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994) at art 3 [UNCLOS].

⁴⁰*Ibid.*, arts 55, 57.

⁴¹*Ibid.*, art 56(a).

⁴²*Ibid.*, art 56 (b).

⁴³*Ibid.*, art 58.

⁴⁴*Ibid.*, art 87(1).

The geographical boundaries of the Arctic Ocean are most impacted by coastal states' right to extend their jurisdiction over the continental shelf, defined as "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory,"⁴⁵ up to 350 nautical miles from established baselines.⁴⁶ Article 81 specifies that "the coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes."⁴⁷ Given that the Arctic seafloor is expected to hold enormous quantities of natural resources, delimitation of the continental shelves in the Arctic holds great national interest for the coastal states. Russia's Arctic territory alone may hold forty-eight billion barrels of oil and forty-three trillion cubic metres of gas.⁴⁸

Canada, Russia, Denmark, and Norway have all submitted claims to the Commission on the Limits of the Continental Shelf (CLCS), the body tasked with determining the outer limits of states' continental shelves in accordance with Article 76 of the *United Nations Convention on the Law of the Sea (UNCLOS)*.⁴⁹ Since the Arctic Ocean is encircled by five coastal states, it is unsurprising that Canada, Russia, and Denmark (Greenland) have overlapping claims that extend into the central Arctic Ocean.⁵⁰ While the CLCS will rule on portions of a states' claim if they are not contested, as recently occurred with its ruling on Russia's claim in the Arctic Ocean, the CLCS "shall not consider and qualify a submission made by any of the States concerned in [a claim] dispute" in accordance with Annex I in its Rules of Procedure.⁵¹ Consequently, efforts to establish the legal limits of the coastal states' claims will remain in limbo a decade or longer, while Canada's and Greenland's (Denmark's) claims await rulings, and as long as the three states each consider the Lomonosov Ridge part of their continental shelves.⁵²

The Central Arctic Ocean (CAO), covering 2.8 million square kilometres, falls in the area beyond the coastal states' EEZs and is often referred to as the "doughnut hole." Until 2011, the Arctic Ocean "doughnut hole" was referred to as the small 'c' central Arctic Ocean in policy documents and studies, denoting a scientifically defined geographic region.⁵³ As economic and political interest in the central Arctic Ocean has grown, a big 'C' has replaced the small one — most notably, in the negotiations leading up to the *CAOFA*⁵⁴ but also in news and policy briefs, signalling

⁴⁵*Ibid*, art 76(1).

⁴⁶*Ibid*, art 76(5).

⁴⁷*Ibid*, art 81.

⁴⁸Rebecca Pincus, "Three-Way Power Dynamics in the Arctic" (2020) 14 Strategic Studies Quarterly 40.

⁴⁹The Commission on the Limits of the Continental Shelf (CLCS) under *UNCLOS*, *supra* note 39.

⁵⁰The United States has not submitted a claim as it has not ratified *UNCLOS*, though the American government has claimed that its continental shelf extends past its designated exclusive economic zone (EEZ). Its claim also crosses other states' claims.

⁵¹*Rules of Procedure of the Commission on the Limits of the Continental Shelf*, Doc CLCS/40/Rev.1 (17 April 2008), at 5(a), Annex I.

⁵²CLCS rulings require extensive research and input from scientists from different fields. Consequently, final rulings take considerable time. Joanna Mossop, *The Continental Shelf beyond Two Hundred Nautical Miles: Rights and Responsibilities* (Oxford: Oxford University Press, 2016). At this stage, Greenland/Denmark's claim will not be ruled on before 2032, and Canada's will take longer still. Julia Hager, "Russia's Claim to North Pole Territory Officially Confirmed" (21 February 2023), online: *Polar Journal* <polarjournal.ch/2023/02/21/russias-claim-to-north-pole-territory-officially-confirmed/>.

⁵³Dodds, *supra* note 1.

⁵⁴*CAOFA*, *supra* note 12.

a “heightened legal and geopolitical significance” in future governance.⁵⁵ This transformation from the *central* Arctic Ocean to the *Central* Arctic Ocean has not gone unchallenged; Arctic and non-Arctic states alike argue that this reclassification seeks to influence the narrative of Arctic governance by coastal Arctic states.⁵⁶

The Central Arctic Ocean, as a separate entity, apart from the Arctic Ocean, could qualify as an “enclosed” or “semi-enclosed sea.” According to Article 122 of UNCLOS, an “enclosed or semi-enclosed sea” refers to “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”⁵⁷ Geographically, one could argue that the Bering Strait separating Russia from the United States, and the Davis Strait, between Canada and Greenland, fit the definition of a “narrow outlet,” but the Greenland Sea to the east of Greenland as well as the Barents Sea, north of Norway and Russia, hardly qualify as “narrow.” Consequently, the legal and political boundaries of the CAO have become the basis for the argument by some that it is a fully “enclosed” sea: they claim the limitations of the coastal states’ EEZs create an entirely encircled region of the Arctic Ocean, with no outlet into another area of the high seas, except by crossing through the EEZ or the territorial waters of a coastal state.

The assertion that the CAO fits the Article 122 definition based on legal, not geographical, boundaries is contentious. Arctic states that do not have Arctic Ocean coastlines (Iceland, Sweden, and Finland) as well as non-Arctic states would disagree with this interpretation of Article 122 on the grounds that its intention is to erode the CAO’s status as an area of the high seas over which no state may place sovereign claims⁵⁸ and to confer certain rights on coastal Arctic states to ensure continued regional governance of the Arctic Ocean.⁵⁹ The competing claims of jurisdiction and unsettled geographic labels and status of the CAO demonstrate that “[t]he water and seabed of the Arctic Ocean [are] textbook examples of how the intersection of international law, geopolitics and science create extractive and grabbing potentialities.”⁶⁰ The political geography of the Arctic Ocean forms the basis of arguments on the appropriate approach to Arctic governance, whether regional or global, and, therefore, the remainder of this article will focus on the Arctic Ocean and its governance in the Arctic Council.

4. The Arctic: A regional or global concern or rights versus obligations?

The future of the Arctic Council as the pre-eminent forum for Arctic governance is intimately linked to perceptions of the Arctic as a regional or a global concern. Until recently, the international community was content for the Arctic Council, with its clear hierarchical spheres of power and influence, to manage the Arctic Ocean, due to its remote location and inaccessibility. The Council’s creation and structure aligned with the post-Cold War ethos of *détente* and cooperation; it provided an opportunity to capitalize on improved relations between the two superpowers and their allies. However, with the rapid biophysical changes to the Arctic environment and the

⁵⁵Dodds, *supra* note 1 at 543.

⁵⁶*Ibid* at 544.

⁵⁷UNCLOS, *supra* note 39, art 122.

⁵⁸*Ibid*, art 89.

⁵⁹*Ibid*, art 123.

⁶⁰Dodds, *supra* note 1 at 543

unsettling promise of an ice-free central Arctic Ocean, questions arise about the suitability of a regional organization with its narrow scope and inability to enact binding regulations, to effectively address new challenges with global consequences. The “globalization” of the Arctic, through the creation of inseparable economic (most notably, increased shipping traffic) and geopolitical links between the Arctic and the wider world might seem inevitable.⁶¹ As the Arctic landscape changes at record speed, the Arctic Council, as originally formulated, may struggle to maintain its relevance. But even as the Arctic states face internal diplomatic tensions and greater outside pressure to abandon regional governance structures in favour of global management, they recognize the value of maintaining their pre-eminent position in the region and will endeavour to push back against calls for alternate forums and/or international agreements.⁶²

The regional versus global governance debate is highly politicized; it determines who has a right to a seat at the table. Predictably, Arctic states defend their ‘Northern interests’ by emphasizing the benefits of regional governance, while non-Arctic states argue that, as a “global” concern, the Arctic needs a global institution to protect the Arctic environment, to guarantee that emergent economic activities progress sustainably and to maintain the peace. Danita Burke has described the Arctic Council as “a club under the direction of the Arctic States and a high degree of input from Arctic Indigenous peoples who collectively use the forum as a vessel to define and guide the parameters of their cooperation.”⁶³ The Arctic Council member states are at the core of the forum, with full control over which actors (observers) may participate in the forum and to what degree. Observers enjoy the right to attend meetings and contribute to projects, but their influence is limited. Indeed, some observer states have voiced discontent that their position and influence within the Arctic Council is equal to that of non-governmental organizations with observer status and that their status can be revoked at the discretion of any one member state.⁶⁴

For some states, this exclusive structure supporting a regional governance system no longer suits an increasingly accessible Arctic that is not able to remain on the periphery of global relations. The following section will first lay out the legal arguments used to support international governance of the Arctic Ocean, with a case study on China, which favours opening the Arctic to international governance to bolster Chinese influence on the future direction of the Arctic. This section will then outline the arguments for regional governance through the Arctic Council, whose member states wish to maintain the status quo and their preferential status, with a case study of the *CAOFA*.

A. The Arctic’s future: a global concern

Global governance refers to “cooperative problem-solving arrangements on a global plane” in the absence of a global government.⁶⁵ The global policy authority, therefore,

⁶¹Oran R Young & Jong-Deog Kim, “Next Steps in Arctic Ocean Governance: Meeting the Challenge of Coordinating a Dynamic Regime Complex” (2021) 133 *Marine Policy* 1, online: <doi.org/10.1016/j.marpol.2021.104726>; Malgorzata Smieszek et al, “The State and Challenges of Arctic Governance in an Era of Transformation” (2021) 4 *One Earth* 1665 at 1666.

⁶²Burke, *supra* note 26.

⁶³*Ibid* at 5.

⁶⁴*Ibid*.

⁶⁵Ramesh Thakur & Luk Van Langenhove, “Enhancing Global Governance through Regional Integration” (2006) 12 *Global Governance* 233 at 233.

requires the participation of states to invest in policy action through engagement with transnational, regional, or global bodies to tackle problems that cannot be resolved through individual state action.⁶⁶ In regard to the Arctic, some non-Arctic states, like China, see the challenges facing the Arctic as a global governance issue since the causes of climate change originate far from the Arctic's borders, while the impacts of a melting Arctic — higher sea levels and unpredictable weather patterns — are felt far from the North. Similarly, conflicts hundreds of kilometres away currently fuel political tensions and increased Arctic militarization,⁶⁷ while, in turn, military action in the Arctic could undermine global security. Consequently, for proponents of a new global Arctic governance regime, the ties that bind Arctic issues to global challenges demonstrate that regional governance is no longer adequate.⁶⁸ The “new” Arctic requires a unified global-level response that looks beyond any one state's or group of states' interests to benefit all of humankind, now and in the future.⁶⁹

The arguments used to support a global governance system focus on the rights of all states — coastal and land-locked — as found in *UNCLOS*. These rights, closely tied to the physical, not the political, geography of the Arctic Ocean, suggest that regional governance runs counter to *UNCLOS* as well as the spirit of international environmental agreements, including the *United Nations Framework Convention on Climate Change* and the *Convention on Biological Diversity*.⁷⁰ Article 87 on the freedoms of the high seas bestows rights on all states, “whether coastal or land-locked,” regarding fishing, navigation, and scientific research. These rights apply to the CAO beyond the EEZs of the coastal Arctic states,⁷¹ which is precisely the area where several states hope to fish and create transportation routes. Non-Arctic states also note that Article 58 gives all states the same freedoms referred to in Article 87 in the water column of the coastal states' EEZs.⁷² In addition, the seabed of the CAO, especially the areas over which there are no current continental shelf claims, and its mineral resources fall under Article 136, and non-Arctic states should have equal opportunity to explore and exploit the non-living resources there since no state may exercise sovereign rights over any part of the Area or its resources.⁷³ Non-Arctic states argue that creeping jurisdiction on the continental shelves through converging claims on the CAO seabed is shutting out the rest of the global community from valuable resources as well as opportunities to

⁶⁶*Ibid* at 233.

⁶⁷Malte Humpert, “Control over the Arctic Ocean Top Priority of New Russian Naval Doctrine,” *High North News* (4 August 2022), online: <www.highnorthnews.com/en/control-over-arctic-ocean-top-priority-new-russian-naval-doctrine>; Malte Humpert, “New Satellite Images Reveal Extent of Russia's Military and Economic Build-up in the Arctic,” *High North News* (3 May 2019), online: <www.highnorthnews.com/en/new-satellite-images-reveal-extent-russias-military-and-economic-build-arctic>; Astri Edvardsen, “Large Army and Navy Exercises in the Nordic Region This Late Fall,” *High North News* (1 December 2022), online: <www.highnorthnews.com/en/large-army-and-navy-exercises-nordic-region-late-fall>.

⁶⁸Bipandeep Sharma, “‘De-securing the Arctic’ in Climate Change: An Indian Perspective” (2021) 77 *India Quarterly* 622.

⁶⁹*Ibid*.

⁷⁰*United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107, Can TS 1994 No 7 (entered into force 21 March 1994); *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

⁷¹*UNCLOS*, *supra* note 39, art 87.

⁷²*Ibid*, art 58.

⁷³*Ibid*, art 137.

participate in Arctic governance to set appropriate regulations for new industries operating in a fragile ecosystem. According to *UNCLOS*, that region of the seabed should be managed for the future benefit of humankind.⁷⁴

Proponents of the global management of the Arctic similarly point to their rights to conduct marine scientific research, both within states' EEZs and on the high seas. On the high seas, the right to conduct marine scientific research is guaranteed by Article 87, while Article 238 declares that “[a]ll States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research.”⁷⁵ Observer states, like China, have used the freedom to conduct marine scientific research under the above articles, along with the Arctic Council’s focus on knowledge gathering and dissemination, to justify their place within the Council. However, they contend that their efforts and capacity are not reflected in the rights and privileges associated with observer status. If research and knowledge sharing were indeed paramount to the Council, it would not place conditions on when or if an observer may speak at meetings or place caps on observers’ financial contributions to projects; a global, more egalitarian organization would provide more opportunities for information sharing for the good of humankind. China believes a new, more global format to Arctic governance, which is in line with the provisions of *UNCLOS*, is long overdue.

B. China, “identity politics,” and the new global Arctic

China has long been the most ardent proponent of a global governance system for the Arctic since, like any powerful state actor, it is “trying to shape the international order and global governance in a way that better supports and fits its own interests.”⁷⁶ Prior to receiving observer status to the Arctic Council, China launched a multi-pronged approach to secure a seat at the table, visiting many Arctic nations, establishing an Arctic science station on Svalbard, and heavily investing in Russian Arctic development projects. As the world’s biggest importer of energy and raw materials and the largest trading country, with the most trade travelling by sea, China views the Arctic as central to its core interests and ambitions.⁷⁷ The melting Arctic Ocean offers a “unique opportunity for itself and for international trade,” opening new trade routes that will have a major impact on its economic future.⁷⁸ In its 2018 Arctic white paper, under the title “Utilising Arctic Resources in a Lawful and Rational Manner,” China also expressed an interest in exploiting oil, gas, minerals, and other non-living resources, exploiting fisheries and other living resources, and developing tourism in the Arctic.⁷⁹

⁷⁴*Ibid*, art 136.

⁷⁵*Ibid*, art 238.

⁷⁶Maria Adele Carrai, Jean-Christophe Defraigne & Jan Wouters, ‘The Belt and Road Initiative and Global Governance: By Way of Introduction’ in Maria Adele Carrai, Jean-Christophe Defraigne & Jan Wouters (eds), *The Belt and Road Initiative and Global Governance* (Cheltenham, UK: Edward Elgar, 2020) at 2.

⁷⁷Christer Pursiainen, Chris Alden & Rasmus Bertelsen. “The Arctic and Africa in China’s Foreign Policy: How Different Are They and What Does This Tell Us?” (2021) 12 *Arctic Rev Law & Policy* 31.

⁷⁸Nong Hong, “The Melting Arctic and Its Impact on China’s Maritime Transport” (2012) 35 *Research in Transportation Economics* 50 at 50.

⁷⁹State Council Information Office of the People’s Republic of China, *China’s Arctic Policy* (January 2018), online: <english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm>.

Canada, Russia, and the United States have long distrusted China's Arctic ambitions, even pushing back against China's application for observer status.⁸⁰ China intended to clarify its Arctic strategy with the Arctic white paper. Instead, the white paper's "ambiguity" and language heightened concerns about China's Arctic ambitions.⁸¹ China, lying at almost fifteen hundred kilometres from the Arctic Circle, used the white paper to proclaim its status as a "near-Arctic state."⁸² While a bold assertion, China was mindful not to jeopardize its Arctic Council observer status by placing territorial claims on the Arctic.⁸³ Through its "near-Arctic" identity, China differentiated itself from other more distant states in order to insert itself in a more advantageous position.⁸⁴ Furthermore, China used its argument of relative proximity to highlight how biophysical transformations in the Arctic resulting from climate change directly affect "China's climate system and ecological environment, and, in turn, ... its economic interests in agriculture, forestry, fishery, marine industry and other sectors."⁸⁵ Consequently, China contends that it is an "important stakeholder," which merits greater levels of participation in Arctic governance.⁸⁶

Stephan Keukeleire and Tom Delreux have noted that states' "ability to shape neighbourhoods in accordance with 'what you want'" can involve the use of milieu-shaping or "structural foreign policy, which actively tries to shape and influence the 'rules of the game' abroad."⁸⁷ This changing of the rules, or at least the desire to change the rules, is clearly evident in China's Arctic foreign policy. In its Arctic white paper, China referred to itself as a "Polar Great Power."⁸⁸ It sees itself as an "actor" in the Arctic, not simply an "observer." Accordingly, some Chinese scholars argue that, when it comes to the Arctic, China should abandon its traditional "neutral" position of an outsider and instead push to "internationalize" the Arctic.⁸⁹ In 2010, Rear Admiral Yin Zhuo of the China's People's Liberation Army declared: "The Arctic belongs to all the people around the world as no nations have sovereignty over it."⁹⁰ This vision of a "global" Arctic influences China's economic ambitions for the region. It asserts that "the dichotomy between Arctic and non-Arctic states in general violates UNCLOS because it automatically puts non-Arctic states in an inferior position."⁹¹

China wishes to eliminate the hierarchical structure of regional Arctic governance, which limits its abilities. Consequently, beyond reinventing itself as a "near-Arctic state," China consistently argues that the Arctic is an area of "global concern," which

⁸⁰Pursiainen, Alden & Bertelsen, *supra* note 77; Shiloh Rainwater, "International Law and the 'Globalization' of the Arctic: Assessing the Rights of Non-Arctic States in the High North" (2015) 30:1 *Emory Intl L Rev* 115.

⁸¹Yun Sun, "The Intricacy of China's Arctic Policy" (2018), online: *Stimson* <www.stimson.org/2018/intricacy-chinas-arctic-policy/>.

⁸²State Council Information Office, *supra* note 79 at 3.

⁸³Pursiainen, Alden & Bertelsen, *supra* note 77.

⁸⁴Yun Sun, *supra* note 81.

⁸⁵State Council Information Office, *supra* note 79 at 3.

⁸⁶*Ibid* at 3; Hong, *supra* note 78; Rainwater, *supra* note 80.

⁸⁷Stephan Keukeleire and Tom Delreux, "Competing Structural Powers and Challenges for the EU's Structural Foreign Policy" (2015) 1 *Global Affairs* 43 at 44.

⁸⁸State Council Information Office, *supra* note 79.

⁸⁹Hong, *supra* note 78.

⁹⁰Mia Bennett, "China, Japan and South Korea Hold Their Own Arctic Dialogue," *Arctic Today* (15 June 2017), online: <arctictoday.com/china-japan-and-south-korea-hold-their-own-arctic-dialogue/>.

⁹¹Pursiainen, Alden & Bertelsen, *supra* note 77 at 45.

gives all states both a right and a duty to engage in Arctic governance. The white paper stated that “[t]he Arctic situation now goes beyond its original inter-Arctic States or regional nature, having a vital bearing on the interests of states outside the region and the interests of the international community as a whole, as well as on the survival, the development, and the *shared future for mankind*. It is an issue with *global* implications and *international* impacts.”⁹² While the Arctic Council barely appeared in the Arctic white paper, China focused heavily on its rights under the *UN Charter* and *UNCLOS*, particularly on articles addressing freedom of navigation and the freedom of the high seas applicable to the CAO.⁹³ China recognizes that, with the coastal Arctic claims on the continental shelf, the CAO will be swallowed up by jurisdictional claims that will solidify regional control over a zone that it views as the “common heritage of humankind.” For China, the CAO must remain open, especially as climate change transforms the polar ice cap into open seas.⁹⁴

In its white paper, China often draws attention to the global consequences of climate change, noting that “[t]he international community faces the same threat and shares the same future in addressing global issues concerning the Arctic.”⁹⁵ However, China sees beyond the challenges of climate change to the opportunities presented by a more accessible Arctic. An ice-free CAO is especially appealing to the Chinese government. The white paper explains that

[t]he utilization of sea routes and exploration and development of the resources in the Arctic may have a huge impact on the energy strategy and economic development of China, which is a major trading nation and energy consumer in the world. China’s capital, technology, market, knowledge and experience is expected to play a major role in expanding the network of shipping routes in the Arctic and facilitating the economic and social progress of the coastal states along the routes. *China has shared interests with Arctic States and a shared future with the rest of the world in the Arctic.*⁹⁶

While the white paper acknowledges that climate change will affect the social and economic aspects of Indigenous lives, it ties these changes to “trans-regional and global issues in the Arctic,” including “scientific research, utilization of shipping routes, resource exploration and exploitation, security, and *global governance*” in which China plays an active role.⁹⁷ Looking forward, China’s opportunistic interpretation of climate change is likely to butt up against the coastal states jealous guarding of their territorial waters, especially the Northeast Passage (Russia) and the Northwest Passage (Canada) sea routes,⁹⁸ and the CAO, where continental shelf delimitations are incomplete. China is expected to become increasingly vocal about its willingness to “work with all other countries to build a community with a *shared*

⁹²State Council Information Office, *supra* note 79 at 2 [emphasis added].

⁹³*Ibid* at 3; Pursiainen, Alden & Bertelsen, *supra* note 77; *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 (entered into force 24 October 1945).

⁹⁴Yun Sun, *supra* note 81.

⁹⁵State Council Information Office, *supra* note 79.

⁹⁶*Ibid* at 3 [emphasis added].

⁹⁷*Ibid* [emphasis added].

⁹⁸Canada has consistently claimed that the Northwest Passage forms part of Canada’s internal waters according to Article 8 of *UNCLOS*. *UNCLOS*, *supra* note 39, art 8.

future for mankind in the Arctic region.”⁹⁹ This bid to open up Arctic governance to the global community will place significant pressure on the Arctic Council, especially as the challenges before it grow, and it remains fractured.

China’s self-proclaimed identity as a “near-Arctic state” is not widely accepted. In his speech a day prior to the 2019 Ministerial Meeting, former US Secretary of State Mike Pompeo criticized China’s use of the term, suggesting that it is trying to “challenge the status quo through the use of identity politics.”¹⁰⁰ Many of the Arctic states are concerned that China already has an oversized influence on Arctic policies due to its investments in economic projects in some Arctic states.¹⁰¹ Pompeo warned that

China is already developing shipping lanes in the Arctic Ocean. This is part of a very familiar pattern. Beijing attempts to develop critical infrastructure using Chinese money, Chinese companies, and Chinese workers — in some cases to establish a permanent Chinese security presence.... Do we want the Arctic Ocean to transform into a new South China Sea, fraught with militarization and competing territorial claims?¹⁰²

His comments signalled both a “circling-of-the-wagons” mentality to minimize China’s presence as well as growing isolationism, focused on boosting individual states’ national interests.¹⁰³ In this sense, the Arctic states wish to maintain a regional approach to governance, just as China has made clear that it no longer wants to take a back seat in Arctic governance.

On the world stage, China has the power and will to assume the position as an international leader;¹⁰⁴ its Arctic policies reflect this desire to act as a key player in polar governance and further to “internationalize the Arctic.”¹⁰⁵ Whitney Lackenbauer and colleagues argue that “China is not a peer competitor in terms of its actual Arctic capabilities but instead a rising global power that may wield its international influence to revise the regional power structure,” noting that China only follows international regulations if they serve its national interests.¹⁰⁶ The US Department of Defense, in its 2019 Arctic Strategy, reiterated the sentiments of former Secretary of

⁹⁹State Council Information Office, *supra* note 79 at 9.

¹⁰⁰Pursiainen, Alden & Bertelsen, *supra* note 77 at 45.

¹⁰¹*Ibid.*

¹⁰²US Department of State, Secretary of State Michael Pompeo Speech, “Looking North: Sharpening America’s Arctic Focus” (6 May 2019) online: <2017-2021.state.gov/looking-north-sharpening-americas-arctic-focus/index.html>.

¹⁰³Indeed, the 2019 Ministerial Meeting was the first to not produce a ministerial declaration due to the United States’ insistence that the declaration makes no reference to climate change. “No Final Declaration after Arctic Council Meeting as US Refuses Mention of Climate Change,” *Radio Free Europe Radio Liberty* (7 May 2019), online: <www.rferl.org/a/no-final-declaration-after-arctic-council-meeting-as-u-s-refuses-mention-of-climate-change/29926232.html>.

¹⁰⁴Mark Beeson, “The Limits to Cooperation: Global Governance and the Challenge of Climate Change” in Gonca Oguz Gok & Hakan Mehmetcik (eds), *The Crisis of Legitimacy in Global Governance* (London: Routledge, 2022) at 165.

¹⁰⁵P Whitney Lackenbauer, Adam Lajeunesse & Paul Dean, “Why China Is Not a Peer Competitor in the Arctic” (2022) *Journal of Indo-Pacific Affairs* 80 at 85.

¹⁰⁶*Ibid* at 84.

State Pompeo's comments in Rovaniemi, warning that "China is attempting to gain a role in the Arctic in ways that may undermine international rules and norms."¹⁰⁷

Similar examples of suspicion of China's Arctic intentions have been witnessed in other Arctic states, where local governments resist efforts by Chinese stakeholders to invest in economic projects within their jurisdiction due to fears of the "security risks posed by Chinese investment in resource development projects and infrastructure."¹⁰⁸ In Canada, the Canadian Security Intelligence Service warned Inuit leaders about covert investments in northern projects (notably mining), interference with decision-making, and the potential theft of research data.¹⁰⁹ This followed the rejection of a proposal by Shandong Gold Mining to purchase TMAC Resources and the Hope Bay gold mining project located in Nunavut due to a perceived security risk.¹¹⁰ Similarly, though Russia is increasingly looking to China for economic investment in Arctic projects, including development of a North Sea transit route,¹¹¹ Russia remains wary of Chinese intentions and "will tolerate China as a partner, but not a peer, in Arctic development."¹¹² The Arctic is intimately tied to Russia's national identity, its economic ambitions, and its security. Consequently, Moscow will ensure that Chinese influence does not extend too deeply into the region to threaten Russia's Arctic sovereignty.

C. Regional governance: guarding the status quo

Like most regional organizations, the creation of the Arctic Council arose from a desire to build collaborative ties between states that share similar geographical realities and "certain policy problems and approaches on a regional scale that they do not hold in common with all countries on a global scale."¹¹³ Until only recently, the Arctic, isolated geographically, lay at the periphery of global consciousness. Its unique environment, along with its strategic military importance for two opposing, and neighbouring, superpowers, limited incursion by non-Arctic states. With the end of the Cold War, the Arctic states recognized the logic of forming a regional governance system due to "the particularity of the geographical area and the states operating in that area."¹¹⁴ Moreover, the Arctic represented, and still represents, a

¹⁰⁷United States, *Report to Congress Department of Defense Arctic Strategy* (Washington, DC: Office of the Under Secretary of Defense for Policy, 2019).

¹⁰⁸Lackenbauer, Lajeunesse & Dean, *supra* note 105 at 87.

¹⁰⁹Catherine Tunney, "CSIS Warning Inuit Leaders About Covert Foreign Investment in Arctic, Documents Show," *CBC News* (13 October 2023), online: <www.cbc.ca/news/politics/csis-arctic-obed-russia-china-1.6993128>.

¹¹⁰Walter Strong, "Ottawa Blocks Chinese Takeover of Nunavut Gold Mine Project after National Security Review," *CBC News* (22 December 2020), online: <www.cbc.ca/news/canada/north/canada-china-tmac-1.5851305>; Natalie Pressman, "Experts Warn About Potential Risks of Foreign Investment in Arctic Mining," *CBC News* (26 April 2024), online: <www.cbc.ca/news/canada/north/mining-puts-arctic-at-risk-of-foreign-investment-experts-say-1.7186761>; Lackenbauer, Lajeunesse & Dean, *supra* note 105.

¹¹¹Malte Humpert, "Putin and Xi Discuss Further Deepening of Arctic Partnership," *High North News* (24 March 2023), online: <www.highnorthnews.com/en/putin-and-xi-discuss-further-deepening-arctic-partnership>.

¹¹²Lackenbauer, Lajeunesse & Dean, *supra* note 105 at 88.

¹¹³Thakur & Van Langenhove, *supra* note 65 at 234–35.

¹¹⁴Luk Van Langenhove, "Why We Need to 'Unpack' Regions to Compare Them More Effectively" (2012) 47 *International Spectator* 16 at 26.

region where the Western states could “work with Russia as a partner rather than an adversary.”¹¹⁵ Arctic states were not ready for an Arctic treaty, similar to the *Antarctic Treaty*, or a new international organization.¹¹⁶ Neither did they see the benefits of continued political realism that stifled cooperation on soft power issues. Regional governance could “offer an escape from the bind between unilateralism at the state level versus multilateralism at the global level,”¹¹⁷ which in the case of the Arctic Council also permitted the member states to maintain their privileged status within the Arctic.

The Arctic Council member states, especially the coastal states, emphasize geography in their arguments to maintain a regional governance structure. Given the unusual environment in the Arctic, where the ocean is frozen for most or all the year, the delineation between land and water is blurred — if not in a legal sense, then in a geographical and cultural sense. This unique situation is evident in Canada’s disputed claim that the Northwest Passage, a region often covered in ice, is internal waters.¹¹⁸ The Arctic states have full sovereignty over their terrestrial territories as well as sovereign rights over their territorial waters,¹¹⁹ their EEZ,¹²⁰ as well as over their continental shelf,¹²¹ including the exploitation of natural resources¹²² and the management of living resources.¹²³

Coastal Arctic states can claim rights over the continental shelf, according to Article 77 of *UNCLOS*.¹²⁴ Under this article, the coastal state has the exclusive right to exploit the mineral and non-living resources located on the continental shelf; no other entity may explore or exploit the continental shelf without the “express consent” of the coastal state.¹²⁵ Where no claims are made on the continental shelf, the area beyond the EEZ is designated as “the Area,” over which no state may exercise sovereign rights and which is governed by the International Seabed Authority for the benefit of humankind.¹²⁶ Should some version of all the coastal states’ claims on the continental shelf extensions from their EEZs gain approval, only small pockets of the CAO seabed would remain “the Area,” effectively excluding other actors within the CAO. For the coastal states, since their claims converge over the waters and seabed of the CAO, and one state’s activities will affect the waters and activities of another, their view is that a regional approach is most prudent and efficient. Furthermore, Article 142 guarantees the rights of coastal states to take “measures consistent with the relevant provisions of Part XII [Protection and Preservation to the Marine Environment] as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the

¹¹⁵Burke, *supra* note 26 at 35.

¹¹⁶*Antarctic Treaty*, *supra* note 35.

¹¹⁷Thakur & Van Langenhove, *supra* note 65 at 234.

¹¹⁸*UNCLOS*, *supra* note 39, art 8. Canada’s claim is disputed by other States who disagree with Canada’s contentious designation.

¹¹⁹*Ibid*, art 2.

¹²⁰*Ibid*, art 56.

¹²¹*Ibid*, art 77.

¹²²*Ibid*, art 193.

¹²³*Ibid*, arts 61–68.

¹²⁴*Ibid*, art 77.

¹²⁵*Ibid*, art 77.

¹²⁶*Ibid*, arts 136, 137.

Area.”¹²⁷ This provision provides the basis for a regional approach to standards setting that would cover almost the entirety of the CAO.

The argument of the coastal states’ rights is straightforward and not particularly nuanced. Clearly, given the predictions of extreme resource wealth in the Arctic, coastal states wish to protect and extend their rights over the region. This form of creeping jurisdiction for economic gain, however, is less politically appealing to the remaining member states of the Arctic Council, its observers, and non-Arctic states. Global concern for the Arctic environment and calls for conservation measures feature more frequently in narratives on Arctic governance. Consequently, if coastal states relied solely on arguments of their individual rights to exploit the seabed and otherwise profit from an ice-free Arctic, they could expect greater resistance from non-Arctic states. To avoid a global Arctic treaty, the coastal states recognize the need to demonstrate their commitment to preserve the Arctic environment for the benefit of humankind. As a counterpoint to the argument put forward by China and other non-Arctic states that the Arctic requires global management that benefits all, the Arctic states often focus on their “duties” and “obligations” rather than on their “rights” to allay fears that they are maintaining an “iron grip” on the Arctic for self-serving purposes.

In 2021, in recognition of its twenty-five-year anniversary, the Arctic Council released its 2021–30 Strategic Plan. The Council anticipated a continuation of peace, stability, and cooperation, with the Council still occupying its place as the leading inter-governmental forum for Arctic cooperation.¹²⁸ The Strategic Plan vowed that the Arctic Council would continue to promote respect for *UNCLOS* as the “legal framework within which the governance of the Arctic marine environment must be carried out” while also “emphasizing the *role and responsibility* of the coastal states” to further sound governance.¹²⁹ To affirm their roles and responsibilities and promote their vision of regional cooperation and governance in the Arctic, the coastal states can point to several *UNCLOS* articles on the protection of the marine environment and conservation of living resources.

Article 192 of *UNCLOS* on states’ “obligation to protect and preserve the marine environment” is a cornerstone of the legal framework that Arctic states seek to uphold.¹³⁰ They must also prevent, reduce, and control pollution of the marine environment.¹³¹ States should also cooperate on a global and a regional basis to formulate and elaborate “rules, standards and recommended practices and procedures” for the “protection and preservation of the marine environment, taking into account *characteristic regional features*.”¹³² This mention of “characteristic regional features” is particularly relevant to the coastal Arctic states since the unique ice features, which create hazardous conditions for transportation and support ice-dependent species, suggest the need for regional knowledge sharing and cooperation between those states most intimately aware of the region’s environmental challenges. Coastal states would argue that their efforts to establish a regional forum for

¹²⁷ *Ibid*, art 142.

¹²⁸ Arctic Council Secretariat, *Arctic Council Strategic Plan 2021–2030* (20 May 2021) at 6, online: <[arctic-council-strategic-plan-web.pdf](#)>.

¹²⁹ *Ibid* at 15 [emphasis added].

¹³⁰ *UNCLOS*, *supra* note 39, art 192.

¹³¹ *Ibid*, art 194.

¹³² *Ibid*, art 197 [emphasis added].

information sharing and standards setting through the *Ilulissat Declaration* aligns with these obligations.¹³³

The *Ilulissat Declaration* is a clear manifestation of this belief in the coastal Arctic states' ability and duty to govern the CAO within the established legal framework to maintain peace in the Arctic and protect the marine environment.¹³⁴ The Arctic Five noted that "[t]he 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."¹³⁵ They declared that, "[b]y virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean," they were in a "unique position" to meet these economic opportunities and future challenges.¹³⁶ The Arctic Five reiterated that "the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea," which would guide their governance of the Arctic Ocean.¹³⁷ The *Ilulissat Declaration* also specifically mentioned "ice-covered areas," which is covered by Article 234 of *UNCLOS*. It gives coastal states

the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. 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.¹³⁸

Article 234, however, does not permit states to enact laws and regulations in icy areas beyond their EEZ, but the provisions of Article 142 on the right to take measures to prevent harm arising from activities in the Area, which is "ice covered" in the CAO, could permit the coastal states to take cooperative measures to preserve the Arctic Ocean. Due to the existing legal framework, the Arctic Five concluded that they saw "no need to develop a new comprehensive international legal regime to govern the Arctic Ocean," assuring that they would "keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures."¹³⁹ The Arctic Five stated that their intention behind the *Ilulissat Declaration* was to continue

¹³³*Ilulissat Declaration*, *supra* note 37.

¹³⁴The *Ilulissat Declaration* never expressly mentions *UNCLOS*, instead referring to a "comprehensive international legal framework" since the United States has not ratified the convention, in large part due to the provisions regarding the Area and deep seabed mining, which the American government felt would hinder American business interests. The *Ilulissat Declaration*, of course, covers the Central Arctic Ocean, the seabed of which is part of "the Area."

¹³⁵*Ilulissat Declaration*, *supra* note 37.

¹³⁶*Ibid.*

¹³⁷*Ibid.*

¹³⁸*UNCLOS*, *supra* note 39, art 234.

¹³⁹*Ilulissat Declaration*, *supra* note 37.

cooperation, based on “mutual trust and transparency,” for the purpose of protecting the Arctic Ocean and providing for its stewardship.¹⁴⁰ It came in response to renewed calls for an Arctic treaty given the climate threats facing the region. The fear was that “[b]road and inflexible rule making and administration from ‘outside’ the Arctic might pose a threat to both the sensitive environmental conditions of the area or the traditional practices of the peoples of the North.”¹⁴¹ Thus, the coastal states wished to make clear that not only was a new international governance system for the Arctic Ocean unnecessary but that they would also “continue to contribute actively to the work of the Arctic Council and other relevant international fora.”¹⁴²

Finally, the coastal Arctic states could point to the articles relating to “enclosed or semi-enclosed” seas regarding their duties to preserve the marine environment. As previously noted, the designation of the Arctic Ocean as an enclosed or semi-enclosed sea is contentious due to significant outlets to the Atlantic Ocean and since it does not consist “entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”¹⁴³ However, the Arctic Five could argue that the CAO is “fully enclosed” due to legal boundaries. At the limits of the coastal states’ EEZs is a completely encircled high seas zone, often referred to as the “doughnut hole.” When the CLCS renders a decision on the various coastal Arctic states’ claims, the CAO will be further carved up and separated from the wider ocean system, supporting the claim of an “enclosed sea” based on a political interpretation of boundaries. This label as an “enclosed sea” has direct impacts on the governance of the CAO; it would encourage the Arctic Five to initiate a regional governance structure that would tighten their hold on policy and decision-making power in the Arctic through their obligations found in *UNCLOS*. Article 123 specifically calls on states bordering enclosed or semi-enclosed seas to cooperate in the performance of their duties under *UNCLOS*.¹⁴⁴ It further stipulates that these states could work “directly or through an appropriate regional organization”:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.¹⁴⁵

In the spirit of this article, and the “duties with respect to the protection and preservation of the marine environment,” the Arctic Five adopted a momentous

¹⁴⁰*Ibid.*

¹⁴¹Nord, *supra* note 7 at 13. In Canada, for instance, the Inuit fear that if there is a reliance on *UNCLOS*’s framework, without regional input and consultation with Arctic Indigenous communities, that “recognition and protection of their Inuit Aboriginal title to ice and water will not be respected.” Anna Sharapova et al, “Indigenous Rights and Interests in a Changing Arctic Ocean: Canadian and Russian Experiences and Challenges” (2022) 13 *Arctic Rev Law & Policy* 286 at 289.

¹⁴²*Ilulissat Declaration, supra* note 37.

¹⁴³*UNCLOS, supra* note 39, art 122.

¹⁴⁴*Ibid.*, art 123.

¹⁴⁵*Ibid.*

approach to the management of marine living resources within a regional agreement — namely, the CAOFA.¹⁴⁶

5. The CAOFA: “Inclusive” regional governance

In *Diplomacy and the Arctic Council*, Burke outlines how the Arctic Council is more than a high-level forum; it is a club, and “[t]he impression that the Arctic Council operates like a club has become more defined as international interest in the forum and the Arctic region has grown.”¹⁴⁷ However, a club such as the Arctic Council can maintain its legitimacy only if non-members validate and reinforce the club’s status.¹⁴⁸ External pressures to shift Arctic governance away from the regional, along with the destabilization of the Ukraine War and the suspension of Arctic Council meetings and activities, has eroded, and could continue to erode, the Council’s legitimacy, especially in the eyes of states like China. Consequently, to maintain their privileged status in Arctic governance, the member states face two challenges: strengthening the unity of the group to defend against growing pressure for a global Arctic and, at the same time, widening the circle of inclusion to key non-Arctic states to boost the Council’s legitimacy and ensure greater cooperation in specific issue areas. As Burke noted, “[f]or club members, finding ways to permit some level of club participation by non-core members can be beneficial; access to the skills and expertise of these actors can be useful. But it can be difficult to balance their involvement with the need to maintain the exclusivity of core club membership.”¹⁴⁹ Given the uncertain situation within the Arctic Council since its March 2022 pause in operations, expedient solutions are needed to ensure continued collaboration between Arctic and non-Arctic states for the protection of the marine environment.

Russia has threatened to leave the Arctic Council if its interests are no longer served within the organization.¹⁵⁰ A regional Arctic body without Russia, the state with the greatest Arctic territory, would be severely hampered. As Heather Exner-Pirot and Evan Bloom have argued, “[t]here can be no meaningful progress on core pan-Arctic issues if Russia is not engaged.”¹⁵¹ The production of high-quality scientific papers and identification of emerging issues is widely seen as the greatest contribution of the Arctic Council.¹⁵² Since the diplomatic disruption and sanctions imposed following Russia’s invasion of Ukraine, scientists and research institutes have noted the inability of researchers to carry out field work in Russian territory as well as the suspension of specific projects involving Russia. Consequently, scientists

¹⁴⁶*Ibid.*

¹⁴⁷Burke, *supra* note 26 at 6.

¹⁴⁸*Ibid* at 141.

¹⁴⁹*Ibid.*

¹⁵⁰Astri Evardsen, “Massive Russian in the Arctic, High North News Overview Shows,” *High North News* (1 September 2023), online: <www.highnorthnews.com/en/massive-russian-mobilization-arctic-high-north-news-overview-shows>; Trine Jonassen, “Russia Will Stay in the Arctic Council as Long as It Serves Our Interests,” *High North News* (11 May 2023), online: <www.highnorthnews.com/en/russia-will-stay-arctic-council-long-it-serves-our-interests>.

¹⁵¹Heather Exner-Pirot & Evan T Bloom, “Opinion: Does the Arctic Council Make Sense without Russia?” *National Post* (10 November 2022), online: <nationalpost.com/opinion/opinion-does-the-arctic-council-make-sense-without-russia>.

¹⁵²Paula Kankaanpää & Oran R Young, “The Effectiveness of the Arctic Council” (2012) 31 *Polar Research* 1.

warn of “significant gaps” in Arctic research data that will prevent a holistic understanding of climate change impacts in the Arctic for several years given the vast territory over which data collection and analysis is lacking.¹⁵³ In addition, China has stated that it would not recognize the legitimacy of the Arctic Council or a new regional organization if Russia is absent.¹⁵⁴ As a formidable global actor, with great Arctic ambitions, China’s rejection of the Arctic Council and absence from working groups and other operations could frustrate efforts to tackle key Arctic issues, including fishing, shipping, and oil and gas development. The current Arctic Council crisis may well inspire China to intensify its efforts to promote global governance of the Arctic and augment its own influence on policy-making in the region. Unity within the Arctic Council is “the best defence” against incursion by outside actors¹⁵⁵ and is crucial for the Arctic member states if they wish to maintain the regional governance structure that has thus far promoted their national interests.

Given the political and security concerns in the Arctic, an international Arctic treaty is simply not realistic;¹⁵⁶ the major Arctic actors are unlikely to participate, which would result in an impotent agreement. A regional approach offers a greater guarantee that the coastal Arctic states — in particular, Russia and the United States — remain engaged in multilateral governance. However, with the challenges of climate change, and increased pressure from non-Arctic states, an adaptive approach to future governance is necessary. By widening the circle of “inclusion” on key issue areas, the Arctic Council could dampen criticism of exclusion, while boosting the chance of compliance and success on key policy issues.

The Arctic Council’s unique structure, which holds space for the permanent participants (Arctic Indigenous groups) to engage actively in negotiations, meetings, and knowledge generation, demonstrates a higher degree of inclusivity than many international or regional organizations. The additional category of observers similarly indicates a level of openness that is not often present in diplomatic bodies. However, the limited capacity for observers to influence agenda setting, provide commentary, or even maintain their observer status dampens the inclusive nature. For the purposes of this article, “inclusive regionalism” refers to granting greater participation and agency to state actors with noted interest in specific Arctic issues, whose cooperation and collaboration is paramount to achieving the stated goals within the Arctic region — most notably, the Arctic Ocean. The Arctic Council, with its working groups, would continue to play a pivotal role as the central forum through which key concerns are discussed and knowledge generated, permitting Arctic member states to retain their privileged status, while binding regional agreements, such as the *CAOFA*, may develop to ensure concrete measures to safeguard the region.

Many of the pressures on the Arctic, including the push to exploit living and non-living natural resources, involve non-Arctic actors, making it essential to engage

¹⁵³Koivurova et al, *supra* note 8 at 53; Canova & Pic, *supra* note 11.

¹⁵⁴Trine Jonassen, “China: Will Not Acknowledge Arctic Council without Russia,” *High North News* (15 October 2022), online: <www.highnorthnews.com/en/china-will-not-acknowledge-arctic-council-without-russia>.

¹⁵⁵Burke, *supra* note 26 at 6–7.

¹⁵⁶Oran R Young & Jong-Deog Kim, “Next Steps in Arctic Ocean Governance: Meeting the Challenge of Coordinating a Dynamic Regime Complex” (2021) 133 *Marine Policy* 1, online: <doi.org/10.1016/j.marpol.2021.104726>.

them in the creation of future regulations. Furthermore, Arctic ecosystems do not respect political boundaries and extend into the high seas; successful conservation policies must include the wider international community that likewise benefits from preserving Arctic marine biodiversity.¹⁵⁷ Proponents of global governance argue that the Arctic Council, with its strict regional focus and inability to enact binding regulations or regulate activities beyond national jurisdiction, cannot act for the benefit of humankind. China, alone, given its size and incredible influence, is in a position where, “[e]ven if it is not acting with specific intent to modify global governance structures, ... its abstention from or support for aspects and institutions of global governance may have a huge impact on the system and long-term repercussions within it.”¹⁵⁸ For this reason, avenues for encouraging greater participation by non-Arctic states in Arctic policy-making are necessary.

Even as former US Secretary of State Pompeo objected to China’s growing involvement in the Arctic and its attempt to reimagine Arctic geography for its benefit, the Arctic states have recognized the wisdom of widening the inner circle of Arctic governance depending on the issue area. In 2018, the Arctic Five, along with China, Iceland, Japan, South Korea, and the European Union, negotiated the *CAOFA*. The Arctic Five recognized that a regional fisheries agreement could only succeed if it also had the cooperation of non-Arctic fishing states. Consequently, the five non-Arctic signatories played a greater role in the creation of this agreement, signalling a shift away from a traditional exclusive regional approach. Going forward, the Arctic Five, along with the other member states, may similarly realize that isolating China and other non-Arctic states looking to capitalize on emerging economic activities in the North, may undermine their overarching goals for protecting the Arctic environment, advancing sustainable development, and maintaining peace. The alternative may encourage states that see the Arctic as an area of global concern to hold their own Arctic dialogue.

In 2016, Tokyo hosted the second Trilateral High-Level Dialogue on the Arctic with China and South Korea. These three states had previously acknowledged “the global importance of Arctic issues,” and their decision to “launch a trilateral high-level dialogue on the Arctic to share Arctic policies to explore cooperative projects and seek ways to deepen cooperation over the Arctic.”¹⁵⁹ In Tokyo, they issued a joint statement, declaring that “it is indispensable for the *international community* to ensure the protection and preservation of the fragile marine environment of the Arctic Ocean and maintain peace, stability and constructive cooperation based on a rule-based maritime order.”¹⁶⁰ These trilateral talks demonstrate their intention to frame Arctic maritime governance on a global, not a regional, scale in order to provide legitimacy for their future involvement.¹⁶¹ As the Arctic becomes more accessible, efforts to engage other states may serve to stave off “separate dialogues on a region” working at cross-purposes as more states see it as “part of their own watery backyard.”¹⁶²

¹⁵⁷ Christian Prip, “The Arctic Council and Biodiversity: Need for a Stronger Management Framework?” (2016) 2 *Nordic Environmental LJ* 37.

¹⁵⁸ Carrai, Defraigne & Wouters, *supra* note 76 at 2.

¹⁵⁹ Bennett, *supra* note 90.

¹⁶⁰ *Ibid* [emphasis added].

¹⁶¹ *Ibid*.

¹⁶² *Ibid*.

The 2018 *CAOFA* represents an example of the Arctic Five focusing their attention on the “obligations” and “duties” tied to their coastal state status, rather than to their rights, to both work towards a regional solution to a global issue while involving other key non-Arctic actors, as outlined in Article 123(d). The participating states — the Arctic Council member states, along with China, Japan, South Korea, and the European Union — succeeded in establishing a sixteen-year moratorium on fishing in the CAO and advancing efforts to put in place a sustainable fisheries regime prior to the commencement of commercial fishing. It arose from the recognition that, due to climate change, not only would the CAO soon be ice free, but fish stocks are also shifting polewards due to rising ocean temperatures.¹⁶³ Past experiences with fisheries collapse and the overall poor state of global fisheries have driven the desire to protect a poorly understood region prior to exploitation of newly available resources.

The *CAOFA* may be the first step towards a Regional Fisheries Management Organization for the Arctic Ocean, which could straddle the CAO high seas zones. This development would be in line with Article 118 of *UNCLOS*, which calls on states to cooperate in the conservation and management of living resources of the high seas and to establish “subregional or regional fisheries organizations.”¹⁶⁴ Importantly for the Arctic Council member states, it allowed them to engage in “high seas stewardship before the process of regional management could potentially be coopted by outside actors.”¹⁶⁵ A moratorium on the order of the *CAOFA*, an area exclusively beyond the national jurisdiction of any state, would have been futile without the participation of key fishing states. Going forward, the Arctic Council may identify similar issue areas that require a wider circle of inclusion between the exclusively regional and widely global to safeguard member state interests, on the one hand, and act for the benefit of humankind, on the other. The Arctic member states may seek out similar opportunities to pre-emptively tackle issue areas with the participation of non-Arctic states to ward off criticisms of exclusion and potential non-compliance.

6. Conclusion

When Norway assumed chairship of the Arctic Council in May 2023, it noted the “difficult and challenging time for international cooperation.”¹⁶⁶ While Nikolay Korchunov, Russia’s Arctic ambassador, has stated that Russia does not intend to create a counter group to the Arctic Council, he has warned that Russia will remain in the Council only if it continues to serve Russia’s national interests and if the Council honours Russia right as a member state to participate fully in the Arctic Council’s meetings and projects.¹⁶⁷ At the same time, Morten Høglund, Norway’s Arctic ambassador and the chair of the Senior Arctic Officials under the Norwegian chairship, has prioritized relationship building during his tenure, noting that collaboration

¹⁶³William WL Cheung, Reg Watson & Daniel Pauly, “Signature of Ocean Warming in Global Fisheries Catch” (2013) 97 *Nature* 365.

¹⁶⁴*UNCLOS*, *supra* note 39, art 118.

¹⁶⁵Burke, *supra* note 26 at 171.

¹⁶⁶Canova & Pic, *supra* note 11.

¹⁶⁷Trine Jonassen, “Russia Threatens to Withdraw from the Arctic Council,” *High North News* (14 February 2024), online: <www.highnorthnews.com/en/russia-threatens-withdraw-arctic-council>; Evarsdn, *supra* note 150.

to the level prior to the Ukraine War will require “a lot of time.”¹⁶⁸ When Finland joined the North Atlantic Treaty Organization (NATO) on 4 April 2023, followed by Sweden on 7 March 2024, making Russia the only Arctic Council member state not part of NATO, Russia expressed its intentions to closely monitor Sweden’s and Finland’s military actions and to take retaliatory measures as necessary.¹⁶⁹ Thus, the NATO expansion further complicated efforts to restore political ties within the Arctic Council. Still, one year into its term as chair, Norway has celebrated its success at advancing its two main goals: “[T]o navigate the Council safely through these challenging times and to ensure that the Working Groups could continue their vital work.”¹⁷⁰ While official meetings of the working groups have resumed, political-level meetings remain suspended.

The current political and economic environment differs greatly from that of the 1990s when the Arctic Council was created. The end of the Cold War provided opportunities to build trust and collaboration for the mutual benefit of the Arctic states. Now, growing mistrust between the major powers suggests a shift away from cooperation towards decidedly more unilateral approaches to the Arctic and its economic potential. Russia is keen to reassert itself as a global superpower; its invasion of Ukraine in February 2022 has had a direct impact on the recent militarization of the Arctic and strained relations between the Arctic Council member states. China, likewise, is striving to insert itself as a dominant actor in the Arctic as a “near-Arctic state,” investing heavily in economic and scientific endeavours and claiming its right to influence Arctic policy both given its geographical location and the provisions of *UNCLOS* and other international agreements.¹⁷¹ Meanwhile, the United States, particularly under the leadership of former President Donald Trump, has sought to reclaim its dominant position on the global stage, eying both Russia and China with suspicion.¹⁷²

The North is no longer a peripheral area of international relations; the “new” Arctic will increasingly take centre stage in Arctic and non-Arctic states’ foreign and economic policies. For Arctic states, these policies are increasingly influenced by the growing trend of protectionism on the international political stage. Concerns over the loss of the status quo and fear of losing influence in Arctic affairs have fueled suspicions about the motives of Arctic and non-Arctic actors alike. Luk Van Langenhove has noted that “[p]rotectionism and isolationism ... can be regarded as policies that are hardly effective at times of increased openness and interconnectivity. Nevertheless, they remain a tempting strategy for many states.”¹⁷³ With Russia’s growing isolation due to the ongoing Ukraine War and its threats to leave the Arctic Council, it is seeking out a path forward to benefit its national interests. In the face of an Arctic Council collapse, other Arctic states may follow suit, to the detriment of the entire region.

Should the Arctic states not acknowledge the physical, economic, and geopolitical pressures threatening to undermine its legitimacy, and fail “to develop an effective mechanism for engaging non-Arctic States that have both legitimate interests in what

¹⁶⁸Jonassen, *supra* note 167.

¹⁶⁹“Russia Says It Will Take Military-Technical Steps in Response to Sweden’s NATO Accession,” *Reuters* (28 February 2024), online: <www.reuters.com/world/europe/russia-says-it-will-take-military-technical-steps-response-swedens-nato-2024-02-28/>.

¹⁷⁰“One Year into the 2023–2025 Norwegian Chairship: A Q&A with SAO Chair Morten Høglund” (16 May 2024), online: *Arctic Council* <arctic-council.org/news/one-year-norwegian-chairship/>.

¹⁷¹State Council Information Office, *supra* note 79; Rainwater, *supra* note 80.

¹⁷²Young, *supra* note 22.

¹⁷³Van Langenhove, *supra* note 114 at 17.

happens in the Arctic and the capacity to play influential roles in addressing Arctic issues,” the inevitable result will be the “marginalization of the Arctic Council” as an influential actor in Arctic governance.¹⁷⁴ The Council must now adapt both to the unprecedented situation that has hindered its operations, and restructure itself to adapt to the ecological and socioeconomic pressures reshaping the Arctic environment, all while growing political and military tension threaten to destabilize the region.

As Gonca Gok and Hakan Mehmetcik noted, “[w]e are currently living in ‘a world order in the making’ in which the old order is disappearing, and the future direction is unpredictable.”¹⁷⁵ They write further that “[d]ramatic changes in the normative, political, and economic environment [open] up a new ‘contestation’ over the legitimacy of actors, issues, and mechanisms of . . . governance.”¹⁷⁶ As the melting of sea ice opens up a frozen ocean, heralding the possibility of new economic ventures and intercontinental transportation routes, states that were previously content to leave the governance of the Arctic in the hands of Arctic states question the legitimacy of a regional forum dictating the agenda of Arctic governance. Moreover, the recent pause in Arctic Council operations, along with Russia’s isolation and China’s announcement that it will not recognize a regional Arctic organization that does not include Russia, suggests that the Council may soon face a legitimacy crisis. For that reason, going forward, the Arctic Council may wish to explore “inclusive” regionalism with key actors on specific issue areas to increase compliance with non-binding agreements and continue to guide the direction of Arctic governance.

While the Arctic states may not wish to globalize the Arctic, they must widen the circle of Arctic actors and rebuild their own strained relations. In the future, geographical proximity to the Arctic may not suffice to exert influence over Arctic marine governance to the degree and with the legitimacy that the Arctic coastal states, in particular, would wish. Inclusive regionalism has served to expand the sphere of core actors in specific areas, giving greater agency to those states, like China, who already question the logic of an exclusionary “club” to manage Arctic affairs.¹⁷⁷ Inviting greater participation by, or the “inclusion of,” observers and/or key interested states in issue-specific policies, rather than eroding the power of Arctic Council, would further cement the Arctic Council as the lead forum through which to address key questions. The Arctic Council cannot itself implement regulations on any state; however, though diplomacy, collaboration, and aided by the scientific output of the working groups, it can serve as a conduit for significant Arctic policies supported by non-Arctic actors, including binding agreements — most notably, the *CAOFA*. Fostering trust, (re)establishing diplomatic dialogue, and restoring cooperation with old and new “friends” will preserve the legitimacy of the Arctic Council, an organization critical to maintaining peaceful relations in the North and protecting a unique and fragile environment.

¹⁷⁴Kankaanapää & Young, *supra* note 152 at 12–13.

¹⁷⁵Gonca Oguz Gok & Hakan Mehmetcik, ‘Global Governance and the Crises of Legitimacy: An Introduction’ in Oguz Gok & Mehmetcik, *supra* note 104, 1 at 1.

¹⁷⁶*Ibid* at 3.

¹⁷⁷Burke, *supra* note 26.