

PURSUING NATIONAL INTERESTS THROUGH INTERNATIONAL REGIMES: THE ROLE OF THE UNCLOS IN SHAPING THE ARCTIC ENERGY STRATEGIES OF CIRCUMPOLAR STATES

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ABSTRACT

The article analyses the role of the United Nations Convention on the Law of the Sea (UNCLOS) in shaping the energy strategies of Arctic states, and in defining the mode of their regional interactions. An institutionalist perspective is applied in order to understand the different mechanisms and incentives, which international institutions and regimes may constitute, in terms of spurring the cooperative behavior of self-interested actors. The analysis is focused upon the submissions made to the Commission on the Limits of the Continental Shelf (CLCS) by those of the circumpolar states that have ratified the UNCLOS, in order to be able to amplify their access to potential energy recourses of the Arctic subsoil. The findings indicate that this regime has constituted a significant instrument, in order to mold Arctic state's energy strategies in line with the adherence to commonly acceptable procedures for territorial demarcation. Yet, this state of affairs relies upon the main Arctic player's essential disposition towards avoiding conflict, and may thus ultimately depend upon antecedent variables of a broader geopolitical character.

Keywords: The Arctic. Maritime Law. UNCLOS. Energy. International Regimes.

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INTRODUCTION

The present article aims towards understanding the influence of the United Nations Convention on the Law of the Seas (UNCLOS) regime in defining the circumpolar states' interests in the exploitation of energy resources of the Arctic Ocean. In this regard, focus is directed towards the process of continental shelf delimitation, through the Commission on the Limits of the Continental Shelf (CLCS) submission process, which might grant each state the right to expand its zone of exclusive natural resource exploitation of the Arctic seabed. The article applies an institutionalist perspective upon regimes as institutions with an effective ability to constrain and channelize the efforts of self-interested actors along the lines of international cooperation. The analysis thus departs from the central premises of 1) the state as a rational self-interested actor, and 2) the existence of a normative legal structure, with the potential to wield an effective impact upon the agency of this actor. The central hypothesis is that regimes constitute the most efficient tool for states to obtain internationally recognized and stable access to maritime natural resource exploitation, which thereby alters their preferences in the direction of pursuing these goals within the confinements of such institutions. For this purpose, attention is directed towards the arctic strategies of the states which have ratified the UNCLOS - Canada, Russia, Denmark and Norway - and their submissions made to the CLCS in the period from 1997-2015. The article concludes that at present, though these circumpolar states have overlapping interests in securing access to Arctic energy resources, they have all adhered to the CLCS submission process, and until so far, have also stressed the importance of international law as an essential vehicle for the peaceful territorial demarcation within the region.

THE IMPACT OF REGIMES

Recent conceptual innovation within liberal institutionalist IR contributions have wielded a strong focus upon the emergence of regime complexes and the fragmentation of regimes (BIERMANN et al. 2009; KEOHANE; VICTOR, 2011; RAUSTILA; VICTOR, 2004). The Arctic of today is also characterized by such institutional overlaps, but the particular process of interest to the present study which are related

to maritime territorial demarcation, has nonetheless been identified as strongly confined to a single regime; the UNCLOS. Thus, for the present purpose of analyzing the impact of regimes upon the emergence of international cooperation, the more “classic” institutionalist IR literature implies a range of highly useful reflections and conceptual tools.

Acceptance of the pursuit of self-interest at the international level stands as a central premise amongst authors within this perspective. In his work *After Hegemony*, Robert Keohane (1984) emphasizes how regimes may assume a paramount importance as vehicles for the effective pursuit of self-interest. In this view, regimes offer significant means for states to obtain power and wealth, and furthermore may also serve as important mechanisms with the potential to assure a future hold upon such resources (KEOHANE 1984, p. 25). Axelrod and Keohane (1993, p. 85) stress how cooperation arises in situations in which both conflict and coincidence of interests provide the possibility for different actors to adjust their behavior towards an outcome with a largely beneficial result for all of the parties involved. In a similar vein, Kenneth Oye (1986) regards anarchy as a condition which offers the possibility for realization of significant national objectives, through interstate cooperation. The author underlines that international cooperation needs not depend upon centralized coercion in order to ensure compliance, but rather upon states’ perception of potential gain (OYE 1986, p.1). Arthur Stein (1993) also adopts an interests-based conceptualization of regimes (STEIN, 1993, p.45). Within this, states are taken as discrete units fundamentally concerned with their own self-preservation (STEIN, p. 30). However, cooperation does often occur in situations in which this very self-interested calculus spurs states to engage within collaboration with other states, particularly in situations in which each state pursuing its own goals will lead to undesirable outcomes for all the national actors in question (STEIN, p. 35). Thus, the possibility offered by regimes of joint gains for essentially egoist national entities appears to stand as a central analytical premise for a range of institutionalists.

This leads attention towards an evaluation of the conditions under which cooperation within international regimes is presumed to be likely to materialize. Kenneth Oye accentuates that the realization of mutual benefit depends upon the existence of a structure of preferences, which in each case of the national participants supersedes that of mutual defection, or non-cooperation (OYE 1986, p. 6). Various authors have treated this problem of incentives for cooperation through a game-theoretical logic,

within which the structure of the particular “game” which is played becomes highly important. In some instances, the objectives stimulating common action are related to the avoidance of a generally recognized negative outcome. Such cases, known as dilemmas of ‘common aversion’ are characterized by coordination amongst actors, away from such paths. A different cooperative logic characterizes situations such as ‘the tragedy of the commons.’ This game deals with the incentives and preferences related to the division of common resources: the ideal - though often unlikely - situation for each participant would be the unrestrained exclusive use, followed by the second best option, which is mutual restraint. Common unrestraint constitutes the third best option while unilateral restraint combined with use by the other players constitutes the most undesired option. This situation offers a strong incentive for all of the agents to cooperate towards the mutual management of the resource, constituting the second best option for all of them (STEIN 1993, p. 42-43).

Charles Lipson highlights how iteration of interaction becomes an important factor, which contributes to establishment and observance of conventions within the international realm (LIPSON 1993, p. 65). The change of logic and incentives which the repeated reciprocal actions between states implies, is also emphasized by Keohane as an important factor which creates a rational foundation for cooperation (KEOHANE 1984, p. 75). As opposed to security related processes, repetition appears to constitute an inescapable condition within economic and juridical relations between states, which becomes even more pronounced in the cases when states have chosen to subject certain areas of their interactions to international regimes. Another central factor in spurring adherence to cooperation within international regimes has to do with their ability to provide transparency. In more specific terms, this is related to the clear establishment of procedures, patterns of conduct, standards, and definitional norms which all serve to define a level playing field, and ultimately may provide the conditions that spur adherence to the cooperative engagement within institutions (OYE 1986, p. 17). Axelrod and Keohane point to the way institutions work by stabilizing the preferences and behavior of actors and thereby link the present actions of governments with future expectations (AXELROD; KEOHANE 1993, p.94). Reliability of information regarding other states’ actions, as well as the feedback upon their eventual modifications are also essential factors in reducing uncertainties and thus spurring cooperation (AXELROD; KEOHANE, p.

91-92). Regimes are often indispensable providers of these circumstances. Importantly, such constructs often do not function in the role of hierarchic rule enforcers, but rather as mechanisms which ensure that conditions favorable to cooperation are present (AXELROD; KEOHANE, p. 110). Though some sort of common interest may serve as an indispensable precondition for cooperation to become consummated, institutions are nonetheless important for such collaboration to materialize, through their ability to reduce uncertainties and limit asymmetries of information (KEOHANE 1984, p.12-13).

Oran Young (1989, p. 72) stresses that contrary to the accounts of institutions as providers of public goods, in many cases, they actually offer some sort of divisible benefits. Stigmatization and exclusion from such benefits is thereby often associated with such prejudice, that even relatively differing agendas will tend to seek inclusion within existing institutions (ORAN YOUNG, 1989, p. 69-70). In many cases, states adopt procedures of the institutions to which they are part, in a process which assumes a character of a routine internalization of the norms and proceedings of these regimes (ORAN YOUNG, 1989, p78-79). International institutions thereby constitute effective constraints upon the actions of states, and so, also wield concrete impacts upon the variance in collective outcomes (ORAN YOUNG, 1989, p. 80).

MELTING ICE AND POTENTIAL ENERGY SOURCES

The increasing political interests in the Arctic and its potential energy resources should be viewed in the light of the consequences which the phenomenon of climate change and the warming of the region implied. During the past ten years, the seasonal melting of the Arctic icecap has accelerated, and has now reached unprecedented proportions (STOCKER, 2013). Many months of 2016 have also surpassed the records for the smallest Arctic sea ice measured since satellite monitoring began in 1979 (2016 CLIMATE..., 2016). As the Arctic has been warming more quickly than had previously been expected, its potential natural resources also begin to draw attention from states within the region. Since the first satellite imaging was conducted in 1979, the Arctic icecap has shrunk with approximately 40 %, (THE EMERGING..., 2014). Some projections estimate that the Arctic Ocean might even become ice-free in the summertime as early as 2030-2040, while others are more modest (KOIVORUVA 2011, p.137).

The melting of the Arctic icecap has largely coincided with the depletion of energy deposits in other parts of the world, which in conjunction has served to increase the interest for the regions potential hydrocarbon resources. Exploitation of previously inaccessible natural resources has thus come closer to technical feasibility, which in terms has spurred the interests of the coastal states of the Arctic Ocean (WANG 2012, p.3).

Though the Arctic is usually defined by a delimitation from the 66th northern parallel which also includes Sweden, Finland and Iceland, the only states with access to the Arctic Ocean are Russia, Canada, Denmark on behalf of Greenland, the United States and Norway. A 2008 US Geological Survey study suggested that the Arctic energy resources were in the range of 90 billion barrels of crude oil, 44 billion barrels of natural gas liquids as well as 1,669 trillion cubic feet of natural gas: of these, 84 % were estimated to be found offshore (STAUFFER, [2008]). Other estimates made by BP even project that 200 billion barrels of oil equivalent may be found in the Arctic Ocean (STIGSET 2009). For purpose of comparison, the International Energy Agency estimated annual global oil consumption at the current level to be around 35 billion barrels (INTERNATIONAL ENERGY AGENCY, 2016). Thus, prospects for energy-related investments in the Arctic in the intermediate term reach as much as US\$ 100 billion (HIDDEN..., 2012). The proportions of the petroleum basins in the Arctic have even been described as similar to those of the Persian Gulf and West Siberia (KONTOROVIC 2010, p.10-11). Of the offshore resources, the bulk is believed to be found at relatively accessible depths of less than 500 meters (BAKER 2010, p.257). The areas with the largest potential for extraction, as well as the most accessible reserves, are thus considered to be found within the respective exclusive economic zones (EEZ) of the coastal states of the Arctic, which refers to the areas within 200 nautical miles from the baseline of territorial seas (JOHNSTONE 2014, p.14; WANG 2012, p.3).

In spite of the economic opportunities related to the exploitation of Arctic energy resources, a long range of challenges confront potential investors, related to poor equipment, long supply lines, high transportation costs, difficult living conditions and high personnel expenses, as well as difficult conditions for drilling (U.S. ENERGY INFORMATION ADMINISTRATION, 2012). Energy-related concerns should therefore be seen as a natural element within Arctic coastal states' foreign policy strategies beyond 200 nautical miles, but its relative significance should nonetheless be moderated by the fact that large unexplored reserves

still exist within the EEZ's of each state, as well as remaining technical obstacles. Still, as Embinger and Zambetakis (2009) underline, the mere perception of strategic reserves beyond the EEZ's has been sufficient to spur attempts to extend territorial claims to exploit the ocean subsoil in such areas (EBINGER; ZAMBETAKIS 2009, p.1221). Berkman (2012) similarly identifies access to natural resource extraction as a central concern within the different national Arctic strategies (BERKMAN 2012, p.149), and Koivoruva (2011) also link the combination of increased accessibility, brought about by climate changes, as well as interests in hydrocarbon development, to the northern states' aspirations towards increasing their claims to the Arctic seabed (KOIVORUVA 2011, p.213). The aforementioned circumstances thereby indicate that an interest in obtaining increased access to energy sources may well be presumed to lie at the heart of the aspirations of Arctic states to expand the area in which they enjoy exclusive right to the economic resources of the subsoil. The following task thereby entails the identification of which mechanisms of public international law become relevant in order for the individual states to make such claims, to which extend these states make use of them, and whether they function as an effective legal tool in order to ensure a commonly recognized territorial division of the Arctic seabed.

LAW OF THE SEAS AND THE OUTER CONTINENTAL SHELF

In contrast to Antarctica, there exists no specific legal regimes pertaining to the Arctic within the United Nations juridical framework (ROTHWELL 2014, p. 19). Governance of the Arctic is thereby strongly dependent upon the initiative of states within the region (WEBER 2014, p. 43), as well as a range of more general international environmental and maritime conventions and treaties, (KOIVORUVA 2012, p. 136) which have assumed a high degree of relevance as juridical points of reference here. Amongst these can be mentioned: The Convention for the Protection of the Marine Environment of the North East Atlantic, The United Nations Convention on the Law of the Seas, The International Convention for the Prevention of Pollution from Ships, The International Convention for the Safety of Life at Sea, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Stockholm Convention on Persistent Organic Pollutants (BECKER, 2010, p. 233-234).

The increasing complexity which has come to characterize contemporary oceanic governance due to the push for the exploitation of maritime resources (BARROS-PLATIAU et al. 2015, p.156) thereby also appears to have become manifest within the Arctic region. Yet, within this legal array, there is no specific law for the development of hydrocarbon resources, which thereby becomes subject to interpretation of more general international juridical frameworks (JOHNSTONE 2014, p.3).

Since the former Soviet President Michael Gorbachev's rapprochement with the West in the late 1980s, cooperation within the Arctic region has gained some ground. This has resulted in the establishment of institutions such as the International Arctic Science Committee, the Arctic Environmental Protection Strategy, the Arctic Council, The Barents Euro-Arctic Council, the Nordic Council and the Conference of Parliamentarians of the Arctic Region (STRATFOR, 2016; YOUNG, 2012, p. 173-174). Amongst these, the Arctic Council has obtained a particular relevance as an intergovernmental forum for Arctic governance, within which the key members are the eight Arctic states; Russia, Canada, the United States, Norway, Finland, Sweden, the Kingdom of Denmark and Iceland. Six organizations representing the indigenous peoples within the Arctic have permanent participant status, and consultation rights with regards to the Council's negotiations and decisions (MEMBER..., 2016). Yet, decision making powers are distributed exclusively amongst member states. The Arctic Council thereby displays some clear features of the region's governance structure, which is strongly based upon the sovereigns within it.

The territorial division of the Arctic lands and waters into clearly defined national spheres of control and responsibility grounded in international law, has thus come to stand as an essential element of the management of this polar region (KOIVORUVA 2012, p. 132). This state of affairs is clearly reflected within the Ilulissat Declaration, signed between the five coastal states of the Arctic Ocean; Russia, Canada, the United States, Norway and Denmark, in 2008. The reliance upon existing international law for Arctic management as a responsibility of the sovereign states within the region is strongly emphasized within the declaration, and followed by the clear affirmation, that consequently, no international regime for this specific purpose is needed (ILULISSAT DEC. 2008). The Declaration expresses a clear consensus regarding the use of the Law of the Sea as the fundamental mechanism for the delineation of

the outer continental shelf, between the coastal states of the Arctic Sea (ILULISAT DEC., 2008).

In spite of a significant overlap of intertwined legal statutes with relevance for the northernmost part of the world, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) stands as a largely undisputed cornerstone for administration of the Arctic; both as a general legal referential framework (BECKER 2010, p.229; KOIVORUVA 2012, p.131; ENGLISH 2014, p.349) as well as a more specific guideline for resource exploitation and ocean floor division (THE EMERGING..., 2014; LEUNG, 2010, p. 475). Thus, both due to the explicit recognition of its importance by the most significant regional actors, but also because of its concrete address to the questions related to Arctic territorial division at hand, the UNCLOS becomes an essential point of departure for analyzing the way that the Arctic states make use of legal regimes in order to pursue their resource related interests within the area.

The question of whether - and to what extent - the ocean(s) shall be subjected to national jurisdiction, has long been debated. In *Mare Liberum* (1609) Hugo Grotius ascribed a legal character of *sui juris* to the sea, and stressed that it could not become the property of any nation (SCOTT, 1916). Yet, during the course of the seventeenth century, the notion of a 'territorial sea', within which national jurisdiction would be effective, was introduced. The limits of this area were defined by the Dutch legal scholar, Cornelius von Bynkershoek, to be determined by the range of a canon ball fired from the coastline (BAVINCK; GUPTA, 2014, p.79). Up until the signature of UNCLOS in 1958, the limits for national maritime jurisdictions had been three nautical miles (NM), which in effect of the Convention were extended to twelve NM (STRANDBJERG 2012, p. 829). The introduction of the notion of 'the outer continental shelf' can be traced to the 1945 Proclamation by former US President Harry Truman, whereby the US claimed the rights to exploitation of the natural resources of the subsoil of the continental shelf, while preserving the right of 'free and unimpeded navigation on the high seas of the waters above the continental shelf' (UNITED STATES, 1945). The principles of the Truman proclamation were affirmed in the 1958 Convention of the Continental Shelf, by which this was defined in Article 1 as the seabed or subsoil adjacent the coast up to a depth of 200 meters or in a slightly vague definition, 'to where the depth of the superjacent waters admits of the exploitation of the natural

resources of the said areas' (UNITED NATIONS, 1958). In the same document, a similar distinction to that of the Truman Proclamation was also made between high seas, - open to international navigation - and their underlying subsoil (BERKMAN, 2012, p.150).

Within Article 2 of the 1958 Convention, it was furthermore accentuated that the rights to the outer continental shelf did not depend upon any act of occupation or official proclamation (UNITED NATIONS, 1958). The inherent rights of individual states to exploit the resources of their outer continental shelf were also affirmed in 1969 by the International Court of Justice (ICJ) which ascribed it with a character of *ipso facto and ab initio* (GOLITSYN 2009, p.402; ICJ, 1969). In the final document from the third UN Conference of the Law of the Sea, from 1973-1982, the continental shelf of a state was defined within Article 3 as 'the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin' (UNITED NATIONS, 1982). The continental shelf of a coastal state was defined within the Convention to reach up until 200 NM from the point at which the territorial sea is measured (UNITED NATIONS, 1982). The 200 NM limit of the continental shelf as defined within the 1982 LOS Convention, thereby meant that it came to define the extend of the Exclusive Economic Zone (EEZ) of states. In addition hereto, the 1982 Convention was also significantly more specific in its definition of the outer continental shelf, than that of 1958 (KOIVORUVA 2011, p.215). The continental shelf thereby appears as a mainly juridical construct in the 1982 Convention, which grants all states the right to exploit non-living resources 200 NM from their territorial waters, independently of the geological features of the ocean floor. Yet, the continental shelf may also be treated through a more geologically grounded definition, in effect of which a potentially favorable physical outlay of the ocean floor may grant a state the right to extend its exclusive economic zone beyond 200 NM from its territorial waters (STRANDBJERG 2012, p. 830-831). The state may thereby obtain exclusive sovereign rights to exploitation of the seabed and subsoil (RIDDEL-DIXON 2012, p. 2), depending upon a geological conception of the continental shelf.

The possibility to extend the exclusive economic zone on basis of a prolonged continental shelf is mentioned in Article 76, paragraph 5 of the 1982 UNCLOS. As mentioned herein, the outer limits of the continental

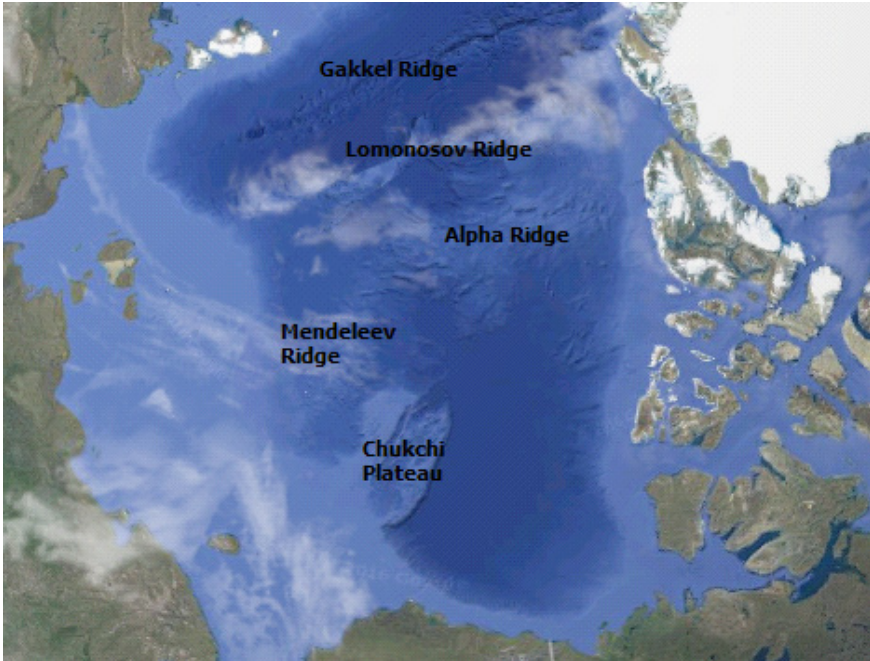
shelf shall either not 'exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured, or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line defining a depth of 2,500 meters (UNITED NATIONS, 1982). Brekke (2014) refers to these rules as the Hedberg and the Gardiner rules, respectively referring to the distance and the depth criteria, which the states may apply variably in order to maximize their claims to the waters beyond to their territorial sea (BREKKE, 2014, p .40-41).

In order for states to be able to extend their outer continental shelf, they need to submit scientific evidence supporting their claim to the Commission on the Limits of the Continental Shelf (CLCS) (UNITED NATIONS, 1982, Art.76). The Commission, consisting of 21 experts in hydrography, geophysics and geology (BAKER 2010, p.261), was created under the 1982 UNCLOS, and is responsible for issuing recommendations regarding the delimitation of the outer continental shelf, based upon these submissions (BREKKE 2014, p.38). The Commission's role though, is limited to making recommendations as to how far the outer continental shelf should extend, but the final delimitation pertains to the individual states. Therefore, the CLCS does not consider cases which imply a territorial dispute between two state parties, which will have to agree upon a maritime boundary (KEIL, 2013; WEBER, 2014, p.45). As the Commission does not possess power of enforcement of its recommendations, the diverging positions of states may be presented in *notes verbales* or in the form of revised submissions which the CLCS subsequently considers. Yet, upon the completion of the Commission's work, and in the case that the disputing parties still disagree, they will have to procure other juridical mechanisms, such as the International Tribunal for the Law of the Sea, the International Court of Justice, international arbitration or bilateral negotiation (SUBEDI 2009, p. 424). At present, the high workload of the Commission relative to its capacities means that many states will have to wait for more than a decade, in order to receive the recommendations from the CLCS (SUBEDI, 2009, p. 423).

As the Arctic Ocean is the world's smallest, the prolongation of the outer continental shelf of coastal states holds the potential to bring a very large proportion of its subsoil resources below the respective national jurisdictions. This process is also bound to lead to a series of overlapping claims by circumpolar states (LEUNG, 2010, p. 477). As displayed on

the map below, the existence of large ridges and elevations of the Arctic Ocean seafloor, such as the Lomonosov Ridge, the Gakkel Ridge, the Alpha Ridge, the Mendeleev Ridge and the Chucki Plateau, means that there is a significant possibility for the states of the region to make the case, that these structures constitute submerged prolongations of their landmass (BREKKE, 2014, p.41).

Map 1: The Arctic Ocean and its submarine ridges and elevations



Source: Google Maps

The crux of the matter as to whether a submarine structure may provide basis for the extension of the exclusive economic zone of a state, depends upon whether a geomorphological continuity can be proved to exist between this feature and the continental margin (GAO, 2011, p.732). Though the 1982 UNCLOS excludes ocean ridges from its definition of the continental margin, it does open up for the possibility of including submarine ridges and submarine elevations within this (Ibid, p. 731). As these notions are unspecified within the Convention, the CLCS has opted for drawing this distinction through an examination of the individual cases (SUBEDI 2009, p. 421-422). The Lomonosov Ridge is particularly

important in this respect, as it spans the length of the Arctic Ocean, and may be connected to both the Russian Federation on the one side, or Canada and Denmark on the other. As of present, the Lomonosov Ridge has been claimed as a natural prolongation of the continental margins by Russia, Canada and Denmark (BASARAN 2015, p.1). Continental crust obtained from drillings in 2004, also indicates a geological connection of the Lomonosov Ridge to the Eurasian continent (BREKKE 2014, p.41). Apart from the Gakkel Ridge, application of the depth criteria may also serve the Arctic states to make use of the other major existing submerged ridges and elevations, in order to extend their continental shelf well beyond 350 NM from their territorial waters (BREKKE, 2014). It may thus be concluded, that the process by which coastal states make claim to expand their outer continental shelf by means of existing international law, holds the potential for these countries to obtain exclusive rights to a significant portion of the potential subsoil energy and mineral resources of the Arctic Ocean. The specific measures which each of the circumpolar states that have already ratified the UNCLOS Convention - Canada, Russia, Denmark and Norway - has already taken in order to expand their exclusive economic zones over the Arctic seabed through the CLCS submission process is reviewed in the following.

THE CANADIAN SUBMISSION

The Canadian Arctic policy generally reflects an emphasis upon the historical and cultural rootedness in the north, an affirmation of the country's sovereignty, the significance of natural resources and economic development, as well as the adherence to international regimes when handling regional issues. The exercise of arctic sovereignty and the promotion of social and economic development thereby constituted two of the four central regional foreign policy priorities within the Canadian Northern Strategy of 2009 (CANADA 2009, p. 2). Apart from stressing the importance of the Canadian stewardship of the country's Arctic regions (Ibid, p.8), the policy document also emphasized the economic potential of the oil and gas deposits to be found there (Ibid, p.5). Importantly, within the strategy, Canada reifies its intend to proceed with the delimitation of its outer continental shelf, in order to obtain recognition of the maximum extend of its EEZ, while stressing that 'This process, while lengthy, is not adversarial and is not a race. Rather, it is a collaborative process based

on a shared commitment to international law. Canada is working with Denmark, Russia and the United States to undertake this scientific work' (Ibid, p.12). The document thus expresses a clear adherence to the pursuit of national interests within international legal frameworks, which thereby both offers a path for the legitimate eventual appropriation of such natural riches, as well as an important constraint on overtly assertive behavior.

The 'Statement on Canada's Arctic Foreign Policy' from 2010 constitutes a similar mix of accentuations of Canada's sovereignty, national interests and commitments to protect the Arctic on the one hand, and on the other, an adherence to 'international law', 'regional solutions' and a 'rules-based region' (CANADA, 2010). The document also underlines Canada's strong engagement to the continental shelf delimitation process within the CLCS, through the gathering and submission of scientific evidence in order to support its claim (CANADA, 2010). Proving the geological connection between the Canadian continental shelf and the Lomonosov Ridge, has thereby become a vital part of Canada's strategy to expand its EEZ beyond the 200 nautical miles (BASARAN, 2015, p. 17). The scientific work related to this objective, though, has proceeded in an orderly and cooperative manner, and Canada has been cooperating with both Denmark and the United States in order to map the seabed (RIDDEL-DIXON, 2012, p.3; WEBER, 2014, p.47). As Canada ratified the UNCLOS in 2003, its partial submission was made in December 2013, which thus constituted a preliminary application, while maintaining the right to making further future submissions (BASARAN, 2015, p.16). The Canadian foreign policy stance towards the Arctic has so far reflected the possibility of reconciling an affirmative stance - largely determined by domestic policy signaling - and clear concern for sovereignty and natural resource exploitation, with an adherence to the norms of international institutions for a non-conflictual management of territorial issues.

THE RUSSIAN SUBMISSIONS

Russia has long been a central player within the Arctic region, which in term has obtained an important geostrategic significance for the country. Russia's Arctic Ocean shoreline is by far the longest, and of the roughly 4 million Arctic inhabitants, half is of Russian nationality. The region's economic importance to Russia can hardly be exaggerated, as approximately 20 % of its GDP and 22 % of its exports are produced in this

area (CHARRON; PLOUFFE; ROUSSEL, et al. 2012, p. 43). The Arctic has constituted a key piece to the Russian re-assert as an energy superpower since the turn of the millennium (FOXALL, 2014, p. 99) and has also been ascribed a high degree of importance as a substitute for declining oil production in West Siberia (Ibid, 2014, p. 103). In the later part of the 2000s, high oil prices and dwindling West Siberian production made the Russian oil industry look further to the north (KLIMENKO, 2014, p.4). In 2014, the first offshore platform, constructed with a special ice-resistant design initiated production in the Pechora Sea (ROUGHHEAD, 2015). In similarity to other Arctic coastal states, 'The Foundations of Russian Federation Policy in the Arctic until 2020 and Beyond' policy document of 2009 expresses an intend to merge the dual objectives for the future of the region, both as a 'national strategic resource base' and as 'a zone of peace and cooperation' (GOV. RUS. 2009). The document furthermore stresses the importance of defining territorial borders in accordance with international agreements, with the explicit purpose of promoting Russian interests through such vehicles (Ibid). Amongst the main future objectives, the strategy emphasizes the conclusion of the collection of geophysical and cartographical data for the final delimitation of the Russian outer continental shelf, as well as the investments in technology and in the exploitation of Arctic energy deposits (Ibid). The 2013 'Russian Strategy for the Development of the Arctic Zone and the Provision of National Security until 2020' also implied juxtaposition of objectives related to the development of the region's energy sources, the upholding of state sovereignty and international cooperation (GOV. RUS. 2013). The observance of UNCLOS as the decisive framework for the delimitation of borders in the Arctic has regularly been emphasized by Russia, (KLIMENKO, 2014, p.12) and thereby appears to have come to constitute a central guideline for the country's foreign policy in this respect.

Russia ratified UNCLOS in 1997, and made its submission, containing its petition to expand its Exclusive Economic Zone in the Arctic Ocean to the CLCS as early as 2001 (BASARAN, 2015, p. 76). The submission stated a broad claim to the Lomonosov and the Mendeleev Ridges, as parts of the Siberian continental shelf. This assertion was strongly refuted by Canada, Denmark and the United States which all submitted notes verbales to the CLCS. In March 2002, the US responded by publishing a notification to the UNCLOS Secretariat within which it pointed towards flaws in the Russian submission and called for a process

of deliberation (US GOV. 2002). In June the same year, the CLCS returned a response to the Russian submission in which it underlined the importance of examining alternative hypotheses to the claim that the Lomonosov and Mendeleev Ridges may be characterized as submerged prolongations of the Russian landmass, before making any definitive recommendations (GAO, 2011, p.731).

Upon the denial of its submission, Russia has chosen to engage in a process of constructing a more rigorous scientific claim in order to support the hypothesis that the Lomonosov Ridge is to be considered a submarine elevation and not a submarine ridge, and that it is connected to the Siberian continental shelf (BASARAN, 2015, p.15-16). Yet, public attention has tended to imply a stronger focus upon indications of potential future rivalries due to the discords regarding the territorial division of the Arctic subsoil, than upon the efforts to construct a scientific base, in order to pursue such claims within the established procedures of the UNCLOS. Such rhetoric foreseeing a new "scramble for the Arctic" has been nourished by particular incidents, as when a Russian submarine planted the nation's flag below the polar icecap (REUTERS, 2007) in spite of this move being of purely symbolic character and implying no legal significance (BECKER, 2010, p. 225). Russia has engaged within the submission process and affirms its adherence to this procedure, in likeness with other Arctic states. It has furthermore rented icebreakers for its regional neighbors to conduct their mapping of the ocean floor (CHARRON et al. 2012, p.44) and shared data of previous mappings from its 2001 submission with these countries (BAKER, 2010, p. 269). The undeniably ambitious Russian territorial claims thus so far appear to have been moderated within the proceedings of international regimes.

In 2015, Russia made its revised submission to the CLCS, which implied a claim of extending its exclusive economic zone with approximately 1.130.000 square kilometers (JOHNSON, 2015). Such demands have been presented in parallel to a steady military buildup in the Arctic, until late 2015. Recently though, there have been signs that Russian priorities have shifted towards more pressing issues at its southwestern borders and in Syria (BAEV; BOERSMA, 2016). The conflictual atmosphere which characterizes relations between Russia and its Arctic neighbors with regards to other global issues, does hold the potential of a spillover of antagonisms to the Arctic sphere. Yet, it is also likely that these parties will tend to maintain the largely corporative relations which

so far have marked the Arctic regions, particularly due to the additional costs of surging rivalries in this part of the world. As Kontorovich (2010) underlines, offshore energy exploitation is implicitly linked to a range of risks, and is likewise associated with large investments and long payback periods (KONTOROVICH 2010, p.8). With this in mind, clearly defined and commonly accepted boundaries as well as a cooperative political climate may therefore even be claimed to constitute an essential premise for significant future investments to materialize. Wang (2012) also accentuates how the sheer proportion of the undisputed geographical extend of Russia within the Arctic constitutes a natural incentive for the country to pursue its expansionary interests within existing legal frameworks, by which it has much to gain (WANG, 2012, p. 4). Even though the definitive recommendations of the CLCS are yet to be made, the legal process below UNCLOS to which Russia has come to adhere, does seem to establish a certain degree of path dependency for the pursuit of its national interests, as well as a high degree of potential costs in the case of defection.

THE DANISH SUBMISSION

Denmark is represented in the Arctic through the association with Greenland, which together with the Faroe Islands constitute the Kingdom of Denmark. Though Greenland became self-governing and was recognized as a separate entity from Denmark in 2009, its foreign and defense policy is still managed from Copenhagen. The potential revenue from natural resource extraction in the Arctic sea befalls Greenland, but indirectly also becomes an economic benefit for Denmark, as it automatically will lead to a fall in the yearly Greenlandic subsidies. Revenues from natural resource extraction and royalties thereby provide a possible path for Greenlandic fiscal sovereignty, which is the most significant impediment for full independence. Between 2002 and 2004 Greenland held auctions for offshore exploration rights, and between 2006 and 2010 sold many licenses to a range of international oil companies (HIDDEN..., 2012).

The potential for extraction of energy and mineral resources is thus strongly emphasized within the 'Arctic Strategy of the Kingdom of Denmark 2011-2020' from 2011 (GOV. DEN. 2011, p.7). The strategy contains a strong focus upon the peaceful management of the Arctic in accordance with international legal principles (Ibid) as well as the importance of the observance of the UNCLOS as the central instrument of international

public law for the governance and border-related issues of the region (Ibid, p.14). In this regard, the strategy pinpoints the efforts made by public institutions to collect and analyze data of the Arctic ocean floor, in order to present the Danish claim to expand the exclusive economic zone north of Greenland, and highlights the scientific cooperation with other countries in this respect (Ibid, p.14-15).

As Denmark ratified the UNCLOS in 2004, the country has made five partial submissions in 2009, 2010, 2012, 2013 and 2014. The 2013 and 2014 submissions were, respectively, concerned with the areas north-east and north of Greenland (MARCUSSEN et al. 2015, p. 41). The Danish submission is based upon a claim regarding the possible connection of the Greenlandic continental shelf with the Lomonosov Ridge and Morris Jesup Rise, stretching towards the north pole (BASARAN, 2015, p. 17-18). The scientific base for this claim was formed through the joint LORITA-1 expedition with Canada in 2006, followed by the LOMROG 1 in 2007-08, LOMROG 2 in 2009 and LOMROG 3 in 2012 (Ibid, p.18). Surveys from the LOMROG expeditions included in the Danish submissions indicate a certain geomorphological continuity between the Greenlandic shelf and the Lomonosov Ridge as well as similar geological characteristics (MARCUSSEN et al. 2015, p. 42). Statements from the CLCS also appear to indicate that the Morris Jessup Rise may be connected to the continental margin of Greenland (GAO, 2011, p.729). Some evidence thus exists which serves as support for the Danish petition to expand the limits of the Greenlandic outer continental shelf. Yet, as the final submission was made in 2014, and given the heavy workload of the CLCS, conclusive recommendations have long perspectives.

THE NORWEGIAN SUBMISSION

The part of Norwegian territory with the closest geographical connection to the Arctic continental shelf are the Svalbard Islands, situated some 560 kilometers northeast of the Nordkapp, the northernmost part of the European continent. Offshore development of hydrocarbon resources constitutes an absolutely essential cornerstone within the Norwegian economy, and has also made Norway one of the countries with the highest nominal GDP pr. capita. As the main part of Norwegian oil and gas production is projected to move gradually from the North Sea towards the Norwegian Sea and the Barents Sea, the “High North” has gained a central place within the country’s foreign policy priorities (WANG, 2012,

p. 6). The official Norwegian policy for the Arctic underlines the economic importance of the region for Norway, and clearly states the possibilities which the increased accessibility holds for Norway (GOV. NOR. 2015). It is furthermore stressed how the realization of these economic objectives is intrinsically linked to stability, regional cooperation and a peaceful state of affairs (Ibid). The role of “a robust and predictable legal and institutional framework” for successful cooperation, is strongly accentuated in this respect (Ibid). In a speech delivered at a conference dealing with the issue of Arctic frontiers in 2008, Elisabeth Walaas, a high ranking official within the Norwegian Foreign Ministry, stated that ‘What matters is that states play by the book if they lay claim to continental shelves in the Arctic beyond 200 nautical miles. And the book they need to play by is the UN Convention on the Law of the Sea and the rules it sets out’ (GOV. NOR. 2008).

In 1996, Norway ratified the UNCLOS. The country therefore submitted its petition to expand its exclusive economic zone in the Nansen Basin in the Arctic Ocean along with areas in the Norwegian Sea and the Barents Sea, within the 10-year deadline in November 2006 (UNITED NATIONS, 2009). As early as March 2009, the commission largely accommodated the Norwegian submission in the Western Nansen Basin, but recommended that the final delineation of Norway’s continental shelf be settled amongst the regional states (Ibid). The CLCS recommendation was characterized as a victory by the Norwegian Foreign Minister, at the time, Jonas Gahr Større, who stressed how it provided a stable foundation for investment in extraction of subsoil natural resources in the area (GOV. NOR. 2009). Yet, the CLCS 2009 decision does not directly address the territorial division between Norway and its neighbors (Ibid). It has therefore been assumed that Norway will wait with declaring the final delimitation of its outer continental shelf until the other circumpolar states have received their recommendations from the CLCS (BREKKE 2014, p. 46). As the reaction to the CLCS decision indicates, the Commission’s recommendations - though they carry much weight as the mechanism commonly recognized amongst Arctic states for the delimitation of the outer continental shelf, - should not be interpreted as providing the legitimacy for a unilateral declaration of EEZ expansion. The recommendations thus serve an important purpose as a necessary point of departure for negotiations in cases when overlapping claims exist, and as a means for providing international legitimacy for the accords reached between states. Yet, they would hardly attain their intended goal of providing for a peaceful division of the natural resources of the ocean

floor, if they were used by one state party to trump another.

INSTITUTIONS EFFECTIVE?

The revision of the individual Arctic coastal states' engagement and strategies for this region indicate that they all tend to pursue their expressed interests in future hydrocarbon development, within the confines of the UNCLOS regime. This does not mean that divergences of interest do not exist, and that these have not been clearly expressed in recent years. Yet, as the case with Russia's resubmission to the CLCS demonstrates, such divergences have actually motivated an even deeper engagement within existing regime frameworks, and thereby appear to have fixed the interests in energy-resource access to their obtention through the mechanisms of international law.

As Weber (2014, p. 47) underlines, the 2010 signature of the Barents Sea Treaty, through which Norway and Russia settled a long-standing maritime dispute, also points towards the possibility for states to manage overlaps in their claims to the seabed. A clear tendency of restraint, seen as the obedience to the existing legal procedural norms for EEZ expansion, thereby seems to characterize the agency of the Arctic states. This approximates the near-optimal outcome for all players in the game of the tragedy of the commons, as conceptualized by Stein (1993). Though the outcome of the CLCS decision process is still unknown, the fact that states have opted to maintain their territorial claims in line with the possibilities offered by the UNCLOS, has the effect of ensuring that the eventual concessions gain an important international recognition. Also in line with Stein (1993), an element of successful common aversion can thus be identified through the joint interest in maintaining the Arctic a zone of peace and mutually respected sovereignty, so as to avoid the costs associated with uncertain claims to areas for resource extraction and potential escalation of rivalries. Coordination, through the choice of commonly accepted practices and institutions for the enclosure of the Arctic waters, thereby becomes evident.

The perception of circumpolar state's cooperation around UNCLOS as a means to avoid a situation of uncertainty and tensions may also be corroborated Becker (2010), who stresses the high costs of any attempts of unilateral steps to exploit the ocean floor, in terms of resentment amongst potential investors (BECKER, 2010, p. 339). The circumpolar

states' consensus regarding the UNCLOS as the common ground for Arctic management is also related to the strong emphasis upon national sovereigns within this legal framework. UNCLOS hereby serves as a means to exclude more distant parties interested in the Arctic, such as China and the EU, and in this manner also consolidates coastal states' claims to offshore resources. The institutionalist emphasis upon well established procedures and transparency as an important basis for cooperation, also becomes expressed as a significant element within the CLSC submission process. The criteria and proceedings for evaluation of the respective state's claims are clearly stated within the UNCLOS framework, which has made it possible to focus efforts upon the technical merits of their petitions. Baker (2010, p. 270-271) highlights how openness around the data obtained through mapping of the seabed is very central to fostering Arctic coastal states' confidence in the delimitation process. Oye's (1986) emphasis upon the transparency and commonly accepted procedures provided by institutions, as the binding glue in assuring recurrent cooperation thus also appears to be descriptive of the mechanisms below the CLCS, which appear to have stimulated the high degree of adherence to the UNCLOS regime in the cases examined. The ongoing nature of the CLCS submission process means that a change in actions is bound to be met by future responses by other parties, meaning that this may be characterized as an iterated game. As Keohane (1984) and Lipson (1993) highlight, this thereby increases the chances that all players will seek to find a mutually acceptable common ground, which the UNCLOS has come to provide. Thus, a general incentive structure related to the benefits of cooperation, which in broad terms approximates the institutionalist perspectives' accounts of cooperation spurred by essentially self-interested actors, can thereby be identified as significant in all the of cases reviewed. Yet, a more extensive analysis of these cases, - which has been beyond the scope of the present article - should be directed towards a thorough scrutiny of the particular causal mechanisms spurring adherence to the UNCLOS, through analysis of the specific decision making processes in each of the national cases. It is very possible, that these causal mechanisms might vary markedly according to the different national and temporal context within which they become effective. Finally, the analysis indicates that the efficiency of the UNCLOS nonetheless appears to rely upon a general understanding between Arctic states of the importance of maintaining non-conflictual relations within this region. Independently of the relative

success of this regime in assuring ordered interactions within the Arctic, affairs within this region are subjected to variables at a higher level in terms of the relations between the main circumpolar states. A shift in the broader geopolitical context which molds interactions between these nations, thus also holds the potential spill over into changes within the present Arctic status quo.

Although the Arctic so far appears as a case within which international oceanic regimes have proved an effective tool in fostering cooperation and preventing conflict, it might also become important to direct attention towards the shortcomings of the oceanic delimitation process. The fusion of geological and legal concepts may provide some particularly complex constructs with a series of potential pitfalls. Baker (2010, p. 263) points to how changes in the scientific comprehension of natural phenomena is in a constant process of change, which in terms affects the specificness and regulatory potential of the regimes. Existing divergences between legal scholars and natural scientists with regards to the notion of 'continental shelf' (Ibid, p. 264-265) could become very definitive for the final demarcation of the Arctic seabed, but also implies the danger of jeopardizing some of the general perception of the scientific basis for past and future CLCS recommendations. As stressed by Golitsyn (2009) scientific developments may very well lead to different decisions about essentially similar cases, depending on the point in time at which they are made (GOLITSYN, 2009, p. 408). In addition hereto, Gao emphasizes the vagueness of existing definitions of the seafloor within the UNCLOS (GAO, 2011, p. 731). Finally, Koivoruva also questions the strong reliance upon the definitiveness of international law in relation to Arctic regional management, stressing the flexibility and contradictions in what is essentially a fragmented body of statutes and principles (KOIVORUVA, 2011, p. 221-222).

Though what may be formulated as a certain equilibrium between national interests has been reached in the Arctic, a relaxation of the state-centric focus of the present analysis also reveals that the process of enclosure of the Arctic region on basis of the UNCLOS, may hold a range of deficiencies. Various Arctic observers have assumed a somewhat critical stance towards the appliance of a state-centric perspective upon the Arctic, either in relation to broader common governance challenges "above" the state level, (KNECHT; KEIL, 2013; KOIVORUVA, 2011) or in relation to the neglect of indigenous peoples "below" (POWELL 2010;

RIDDEL-DIXON 2012). As highlighted by Strandsbjerg (2012) the scientific-geological division of the region is characterized by a strong cartographic logic, which implies a distribution of sovereignty exclusively upon nation states. It thereby creates a spatial reality of compartmentalization which is different from that of the Inuit peoples living in the region, who part of the year travel across the ice and who do not think of the region as divided by national borders (STRANDBJERG, 2012). As energy extraction appears to constitute a central objective for all of the circumpolar states, a lack of attention towards the common challenge of adequate resource management and the possible negative consequences for the regions inhabitants may very likely imply serious socio-environmental consequences, and call for supplementary approaches to Arctic governance.

CONCLUSION

The foregoing analysis indicates that the UNCLOS has been a highly effective instrument within international law in order to channelize the energy-related aspirations of circumpolar states, into the confinements of commonly accepted legal proceedings. The revision of Arctic states' regional strategies implies that future access to hydrocarbon resources does constitute, - through not an immediate - then nonetheless a central intermediate and long term national interest. The general hypothesis derived from the institutionalist literature, regarding the effectiveness of regimes to incorporate and constrain the actions of self-interested nations, thus appears to be confirmed both by the explicit intentions, as well as the actions and measures taken by these nations so far, which demonstrate a considerable degree of adherence to the of EEZ demarcation below the CLCS submission process. However, as the continental shelf delimitation process is still at a stage in which few recommendations have been made by the CLCS, the point at which they are made, might mean that the present structure of incentives and stakes is altered. Future energy market conditions and the technical feasibility of offshore drilling also constitute variables which might intensify the ambitions of the coastal states towards securing access to potential energy resources in the Arctic. This may thereby result in stronger tests of the conciliatory capacity of existing regimes.

EM BUSCA DOS INTERESSES NACIONAIS POR MEIO DOS REGIMES INTERNACIONAIS: O PAPEL DA CNUDM NA CONSTRUÇÃO DA ESTRATÉGIA DOS PAÍSES CIRCUMPOLARES PARA A ENERGIA DO ÁRTICO

RESUMO

O Artigo analisa o papel da Convenção das Nações Unidas Sobre o Direito do Mar (UNCLOS) em moldar as estratégias energéticas de estados árticos, e em definir a modalidade das suas interações regionais. Uma perspectiva institucionalista é aplicada para entender os diferentes mecanismos e incentivos que instituições e regimes internacionais podem constituir em termos de estimular o conduto cooperativo de atores voltados pelo interesse próprio. A análise foca nas submissões feitas à Comissão sobre os Limites da Plataforma Continental (CLCS) pelos estados que já ratificaram a UNCLOS, com fins de poderem ampliar o seu acesso aos recursos energéticos potenciais no subsolo ártico. Os achados indicam que este regime tem constituído um instrumento significativo em moldar as estratégias energéticas de acordo com a aderência a procedimentos comumente aceitados para demarcação territorial. No entanto, este status quo depende da vontade dos atores árticos de evitar conflitos, e assim pode em último análise depender de variáveis antecedentes de mais amplo carácter geopolítico.

Palavras-chave: O Ártico. Lei Marítima. UNCLOS. Energia. Regimes Internacionais.

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