

***Challenges of the Changing Arctic:
Continental Shelf, Navigation and Fisheries***

Conference organized by

**Center for Oceans Law and Policy, University of Virginia School of Law
University of Bergen
Law of the Sea Institute of Iceland**

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The Arctic and the Present Geopolitical Situation

Opening Remarks

by

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Distinguished colleagues and friends,

It gives me great pleasure to deliver a few brief opening remarks at this Conference on the Challenges of the Changing Arctic.¹ First of all – the theme of the conference is highly interesting and relevant. In addition, it gives me an opportunity of meeting with so many friends from my years as the Legal Counsel of the United Nations from 1994-2004. However, I am addressing you also with some concern, reflected in the title of my remarks: *The Arctic and the Present Geopolitical Situation*.

One of the six units of the UN Office of Legal Affairs is the Division for Ocean Affairs and the Law of the Sea. You will recall that in July 1990, then UN Secretary-General Perez de Cuellar convened a series of informal consultations to address certain difficulties with the seabed mining provisions contained in Part XI of the United Nations Convention on the Law of the Sea (UNCLOS). The two last meetings in a series of 15 were convened in April and in May-June 1994 by then Secretary-General Boutros Boutros-Ghali. I had the privilege of conducting these last two consultations on his behalf.

The consultations came to a successful end, and on 28 July 1994 the General Assembly adopted the resulting Agreement Relating to the Implementation of Part XI of UNCLOS. There were many who contributed to this successful process, notably the different informal groups that were active in the consultations. I would like to mention in particular the contribution of the “Boat Paper Group”, chaired by Ambassador Satya Nandan of Fiji, who in his earlier capacity as Under-Secretary-General for Ocean Affairs and the Law of the Sea and Special Representative of the Secretary-General for the Law of the Sea had convinced the Secretary-General to initiate the informal consultations. It is a great pleasure to recognize Satya Nandan among us today.²

Why this focus on UNCLOS in a conference on the Arctic? Well, as we all know, UNCLOS is the overarching legal regime that applies in the Arctic Ocean as it does in all oceans of the world.

The agenda for our conference promises intense discussions. The challenges will be addressed in eight different panels during two days, after which we look forward to listening to the final keynote address by Rolf Einar Fife.

From the first panel we will hear about evolving geomorphology, the Lomonosov Ridge, outer limits and bilateral delimitations, and risk assessment. The second panel will discuss the petroleum resources, sustainable petroleum activities and environmental aspects of hydrocarbon exploration. The third panel will focus on the “still icy” Arctic shipping but also recent developments and essential factors in commercializing this shipping.

Panel four will discuss settlement of disputes, challenges for the European Union, using morality as a way to manage natural resources in the Arctic, and the Mid-Atlantic Ridge. Panels five, six and seven will focus on different aspects of fisheries in the Northeast Atlantic

¹ The conference was hosted by John Norton Moore and Myron Nordquist on behalf of the Center for Oceans Law and Policy, University of Virginia School of Law, by Ernst Nordtveit on behalf of the University of Bergen, and by Tomas Heidar on behalf of the Law of the Sea Institute of Iceland. See <http://www.virginia.edu/colp/pdf/bergen-program.pdf>.

² During the conference, Satya Nandan was presented with *Peaceful Order in the World's Oceans: Essays in Honor of Satya N. Nandan*, Co-edited by Michael Lodge and Myron Nordquist.

and the Arctic Ocean and regional fisheries management. And, finally, panel eight will concentrate on related law of the sea issues, such as maritime security, resource conservation and Arctic Ocean regional governance.

It is not my intention to dwell upon these issues in my brief opening remarks. Instead, I will attempt to put the situation in the Arctic in a geopolitical perspective against the background of the latest development.

One characteristic that I have noted during my engagement in the Arctic, in particular within the Arctic Governance Project³ and Arctic Frontiers,⁴ is that descriptions of the Arctic in the media are not always well-founded. There are often references to the Arctic as if it is “up for grabs” or a new Wild West.⁵ The Russian flag planting, which of course has no legal significance whatsoever, has also given rise to much speculation and misunderstanding.

It is therefore important to emphasize that there is a legal regime that applies in the Arctic, namely UNCLOS, to which all the Arctic states, except the United States of America, are parties. The missing U.S. ratification is of course deplorable. At the same time the U.S. recognizes and respects the Convention. Reference should also be made to the Ilulissat Declaration, adopted on 28 May 2008 by the five coastal states bordering on the Arctic Ocean.⁶ The following part of the declaration is of particular interest here:

Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.⁷

It is against this background that I have maintained in the past, in particular in a 2009 article entitled *The Arctic: An Opportunity to Cooperate and Demonstrate Statesmanship* that the

³ Final documents of the Arctic Governance Project April 2010, available at <http://www.arcticgovernance.org/agp-report-and-action-agenda.156784.en.html>.

⁴ Arctic Frontiers is an international arena addressing development in the Arctic. The conference discusses how upcoming opportunities and challenges may be handled to ensure viable economic growth and societal and environmental sustainability. Annually the conference attracts more than 1000 participants from 25 Arctic and non-arctic countries, representing science, business, politics, and civil society. The conference takes place in the Norwegian city of Tromsø, historically known as the Arctic Gateway. See <http://www.arcticfrontiers.com/>.

⁵ See e.g. *The Arctic Ocean up for grabs* by Laura Stackhouse in Inside View, 5 March 2014 available at <http://readmt.com/analysis/article/2014/03/05/final-frontier-the-arctic-ocean-up-for-grabs/> and *Global Militaries Know That The Arctic Is Melting — Here's What They're Going To Take Advantage* by Jeremy Bender in Business Insider Malaysia, 4 June 2014, available at http://www.businessinsider.my/the-competition-for-arctic-resources-2014-6/#.U6aV3rmKD_1.

⁶ Arctic Ocean Conference, Ilulissat, Greenland, May 27–29, 2008, *Ilulissat Declaration* (May 28, 2008), in DANISH FOREIGN POLICY YEARBOOK 2009 154, 154 (Danish Inst. for Int'l Studies ed., 2009).

⁷ *Id.*

Arctic actually offers an opportunity for states concerned and in particular the Arctic coastal states to demonstrate that they are able to cooperate actively in a constructive manner.⁸

I also noted with particular interest the address by then Prime Minister Vladimir Putin to the International Arctic Forum on 23 September 2010.⁹ Let me quote the two following passages from the address:

And we think that preserving the Arctic as a zone of peace and cooperation is of the utmost importance. It is our conviction that the Arctic area should serve as a platform for uniting forces for genuine partnership in the economy, security, science, education and the preservation of the North's cultural heritage. It is gratifying that our partners share this attitude.

And a few moments later:

Indeed, the Arctic is at the juncture of serious geopolitical and economic interests. However, I have got no doubts at all that the existing issues in the Arctic, including those related to the continental shelf, can be resolved in a spirit of partnership through negotiations and on the basis of existing international law.

The question is, however, if the situation has changed in view of the latest development. I am thinking in particular of Russia's violation of the sovereignty of Ukraine. The situation is exacerbated by the fact that the Russian Federation is one of the five permanent members of the Security Council of the United Nations.

No doubt, this is a very serious development that will have negative effects on the relations within the international community in the future. I have also noted several articles in the media, referring directly to potentially negative effects of the Ukraine situation on the cooperation in the Arctic.¹⁰

Russia's annexation of the Crimea peninsula is an obvious and flagrant violation of international law. So was the attack on Georgia back in 2008.

However, as I said in an address in New York on nuclear disarmament on 2 April this year, those who criticize the Russian Federation, and in particular the U.S., should remember that the attack on Iraq in 2003 was likewise a flagrant violation of international law. And in the discussions over the last couple of years about the situation in Iran and in Syria, it would seem as if some members of the U.S. Congress do not even understand that the UN Charter does

⁸ Hans Corell. *The Arctic: An Opportunity to Cooperate and Demonstrate Statesmanship*. In: *Vanderbilt Journal of Transnational Law*, Vol. 42:1065 (p. 1065-1079), available at <http://www.havc.se/res/SelectedMaterial/20090206corellarcticopportunity.pdf>.

⁹ Vladimir Putin's address to the International Arctic Forum, available at <http://int.rgo.ru/news/vladimir-putin%E2%80%99s-address-to-the-international-arctic-forum/>.

¹⁰ See e.g. *The Arctic Council's Ukraine challenge* by Alexander Pilyasov in *Barents Observer*, 12 May 2014, available at <http://barentsobserver.com/en/opinion/2014/05/arctic-councils-ukraine-challenge-12-05>.

not allow the use of force unless in self-defence (which is not the case here) or after a clear and unambiguous resolution by the UN Security Council.

Let me reiterate what I said in New York on 2 April because it is just as relevant to the Arctic as it is to nuclear disarmament. This is what I said.

Personally, I am seriously concerned at the negative effects that the Russian annexation of the Crimea peninsula will have on the political climate in the future. And we certainly do not know what President Putin may be up to next.

At the same time, I am very critical of the behaviour of the Western powers when the Berlin Wall came down in 1989 and the Cold War ended. They had obviously completely forgotten the lessons from the two World Wars in the last century. The Peace of Versailles was a disaster in many ways.¹¹ In a sense it humiliated Germany in a manner that it paved the way for Adolf Hitler. During the Second World War the Allied, and in particular the U.S., understood that it was necessary to create a partner of the former enemies and acted accordingly. The result is that, today, Germany is a leading actor in Europe and a member of both NATO and the European Union.

So, what happened when the Berlin wall came down? Did the Western powers engage with sufficient seriousness in contacts with Moscow? Did they go to Moscow explaining that the West and the Russian Federation have one overarching major common interest: we must not get into an armed conflict with each other! Instead, the West started going it alone and the U.S. even made plans for establishing rocket ramps in Poland and the Czech Republic, as if they had never heard of the Cuban crisis in the early 1960s. At that time the U.S. and the Soviet Union could have become engaged in a war, had not President Kennedy dealt with the matter as sensibly as he did.

The obvious lesson from the past century must be: after a war – also a Cold War – never ever humiliate your former enemy. I am not for a moment suggesting that this excuses President Putin's behaviour towards Ukraine. But had the West engaged with sufficient interest and energy in the Russian Federation from the very outset, maybe today the country could have been on a steady course towards true democracy and the rule of law.¹²

So far, what I said in New York. Let me add that I fully understand the concern in Moscow in relation to Crimea with the Russian naval base in Sevastopol and its strategic importance. But I am sure that the status of Crimea, given its history and the geopolitical situation, could have been resolved through negotiations in full conformity with international law and the Helsinki Accords, provided that enough statesmanship had been demonstrated in Moscow, Kiev and, not least, in the West.

¹¹ See e.g. John Maynard Keynes *The Economic Consequences of the Peace* (1920), available at <http://www.gutenberg.org/files/15776/15776-h/15776-h.htm>.

¹² Reference is made to a publication entitled *Rule of Law – A guide for politicians*. This is a guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiIL), the Netherlands. The guide is now translated into thirteen languages, among them Russian. It is available at <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>. The idea of this guide was born in a meeting of the InterAction Council of Former Heads of State and Government in 2008.

With respect to the Arctic, we see an increasing and fully legitimate interest in the Arctic also from countries outside the Arctic region, among others, the United Kingdom, France, Germany, China, Japan, South Korea, and Singapore. We should also not forget the interest demonstrated by the European Union. The reason is of course that if the Arctic Ocean becomes more open and accessible for navigation, basically, all states are entitled to have their vessels flying their flags there, provided that they observe existing rules.

At the same time we must note with concern the manner in which some states behave in relation to maritime disputes, notably the present disputes relating to the South China Sea and the Senkaku/Diaoyu Islands. UNCLOS requires that disputes of this nature are settled peacefully by negotiations or through arbitration or proceedings before the International Court of Justice or the International Tribunal for the Law of the Sea. It is crucial that the main actors here are able to demonstrate the necessary statesmanship in order to find peaceful solutions.

Notably, the situations referred to here and the situation in the Arctic concern more or less directly all the five permanent members of the UN Security Council, as do the situations in Syria, Ukraine and Iraq. In analysing the existing geopolitical situation one always ends up in the Security Council and the role that the Council should play in establishing the rule of law at the international level.

As I have said so many times, if permanent members of the Security Council violate the very law they are set to supervise, what signal does this send to the world?¹³ Rule of law at the national and international level is the only way ahead if we are to be able to deal with the formidable threats to humankind that we see emerging, generated by poverty, water shortage, diseases, the growing world population, climate change, rising sea levels, desertification, terrorism, transboundary crime, corruption, etc.

Focusing on the Arctic, I reiterate my plea from 2009 that good relations between Moscow and Washington are imperative for a more positive development in the field of international peace and security.¹⁴ The unfortunate tensions that have developed between the two major powers bordering the Arctic simply must be removed, and this can be achieved only through a demonstration of statesmanship on both sides.

It is extremely important that the issues that concern the Arctic, including the questions we are to discuss in our conference, are addressed at the highest political level and solved in good cooperation and that decisions are taken, founded on well-structured information, based on solid research.¹⁵ And let us hope that the Arctic Council will continue to provide a forum for responsible interaction among the states in the High North. After all, we live in the 21st century!

Thank you for your attention!

¹³ See e.g. Reforming the United Nations Security Council. Keynote Address at Conference Henri Lafontaine, a joint initiative of Uppsala University and Wallonie Bruxelles International, held at Uppsala, Sweden on 11 December 2013, available at <http://www.havc.se/res/SelectedMaterial/20131211corellonscreform.pdf>.

¹⁴ Cf. note 8 *supra*.

¹⁵ Cf. Report of the Conference “Common Concern for the Arctic”, organized by the Nordic Council of Ministers on 9-10 September 2008 at Ilulissat, Greenland, available at http://www.norden.org/da/publikationer/publikationer/2008-750/at_download/publicationfile.