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RUSSIAN PERSPECTIVES ON INTERNATIONAL LAW SYMPOSIUM

Russia, international law, and the melting of the Arctic

ELENA CIRKOVIC — 22 January, 2018



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The melting ice in the polar caps is one of humanity's contemporary ecological anxieties. Climate change scientists have suggested that there is a high likelihood that the Arctic sea ice cover will get thinner and continue to shrink. Likewise, the Northern Hemisphere spring snow cover is expected to decrease during the 21st century as global mean surface temperature rises. Are the current international legal mechanisms sufficiently equipped to respond to such changes? How will this affect the Arctic States and their claims to maritime and coastal boundaries? This post will briefly zoom in on one Arctic state, the Russian Federation. The post argues that the Russian approach to international law in the Arctic and the current and potential exploitation of natural resources, has been that of both strategy and cooperation.

The economic perspective on this issue is primarily concerned with the climate-change-induced possibilities for opening up alternative and much shorter shipping routes during the summer months, such as the Northwest Passage and the Northern Sea Route. The openings would benefit international trade, and make the oil and gas deposits thought to lie under the Arctic seabed much easier to access. The Arctic littoral states – Denmark (Greenland), Canada, Norway and the

United States – are also competing to prove that Arctic territories constitute a part of their continental shelf, for the purpose of exploring and exploiting the soil and subsoil of maritime areas outside their Exclusive Economic Zones. Other states, such as China, also have interests in the region. In 2013, the Arctic Council decided at their meeting in Kiruna, Sweden, to admit six non-Arctic nations as observers, including China. At the moment, the resolution of the disputes in the Arctic depends on international law, as well as scientific data and diplomatic strategies.

These activities seem to take place alongside the (re-opened) debate among some legal scholars regarding the particularly “Russian” engagement with the international legal order.^[1] For instance, in some more recent commentary, Russia (re-)emerges as a ‘norm-maker’, as well as a ‘semi-peripheral’ power.^[2] The Russian approach to international law in the Arctic has historically been that of cooperation as well as strategy. While the 2014 conflict in Ukraine led to the suspension of some forms of energy cooperation as expressed in the EU-Russia Energy Dialogue, energy trade and a convergence of commercial interests between energy companies, Russia, the EU and its members has continued.^[3] Despite the present tense relationship with the Western countries, the Russian Federation continues to participate in the Arctic Council. It sent a delegate to the biannual meetings of the Senior Arctic Officials in 2014 and 2015 and participated in the decision-making processes of the Council. Michael Byers has argued that Russia-Western relations in the Arctic region have been insulated, to some degree, from developments elsewhere.^[4]

This is certainly not evident in all areas of state interests (e.g. security and military, vs. oceans and fisheries) or in relation to all states. In contemporary international law, control over maritime spaces entitles the state to “ownership” of water and subsoil resources and, consequently, entails economic, territorial, strategic, political and military supremacy. However, the nature of the issues such as fisheries, search and rescue, continental shelves, or navigation, demands cooperation. The migratory patterns of fish, or the consequences of climate change, take place independently of international legal standards, as well as the strategic interests and predictions of states. For our contemporary studies on the role of

international law in relation to political, geostrategic, economic and environmental changes and crises, this has great importance, as legal scholarship increasingly identifies contemporary Russia as a state with an exceptional approach to international law. However, this trajectory was never unidirectional or consistent.

Furthermore, the Soviet foreign relations at UNCLOS, especially attempts at collaboration with the United States, present us with an example of a complex combination of global and sovereign interests, and pragmatic concerns. The ratification of UNCLOS in 1982 by four of the five Arctic Ocean states also meant that they committed themselves to a science-based process for determining the outer limit of their continental shelves where, as coastal states, they have exclusive rights over seabed resources.

Cooperative efforts are evident in agreements such as the 1920 Svalbard Treaty with Norway, or multinational cooperation on fisheries management in the Barents Sea, which dates to 1959 and became bilateral when the Soviet Union and Norway claimed 200-nautical mile fishing zones in 1976. The two countries created the Norwegian-Russian Fisheries Commission, and entered into a 'Grey Zone Agreement' on fisheries management in the area where their new maritime claims overlapped, as well as began using science-based quotas. On September 9, 2010 Norway and Russia signed a treaty on delimitating the maritime boundary between the two states in the Barents Sea and the Arctic Ocean. The agreement divided a formerly disputed area into two nearly equal parts.

This year, the Russian delegation has announced that it will file a claim with the new UN Commission on the Limits of the Continental Shelf (CLCS) to expand the nation's continental shelf claim in the Arctic. Russia ratified UNCLOS on March 12, 1997. In February 2016, the Russian Minister of Natural Resources and Environment, Sergei Donskoi presented Russia's revised continental shelf claim in the Arctic to the UN after more than 10 years of geological research. The Russian application includes underwater territories with a total area of about 1.2 million square kilometers and including the Lomonosov Ridge, the Mendeleev Elevation, and the Chukchi high plain. The new commission commenced its work in June, and among the 21 members

are experts in disciplines of geology, geophysics, hydrography and geodesy.

The recent 100th anniversary of the Bolshevik Revolution has sparked numerous academic and non-academic events worldwide, which commemorated and reflected on its legacy. However, such debates do not give sufficient focus to Russia's long-standing, albeit self-interested and strategic engagement with international law, and therefore, avoid the broader question of the mutual constitution of international law and individual state interests. This point, in turn, is relevant to our more pressing concerns in the Arctic, because of the increasing irrelevance of state interests in the matters of climate change.

Interestingly, it was the Russian geologist and palaeontologist Alexei Petrovich Pavlov (1854–1929) who first used the term “Anthropocene” in 1922. The human law (including international law) is part of human activity, which, as Paul J. Crutzen argued in 1995, had driven the earth into a new geological epoch, which he then termed (even if not originally) the Anthropocene. The theme of ecological anxiety in the Arctic is thus related not only to the matter of individual state interests – Russia, or any other state – and its positioning by self and others in international law and politics, but also to how states and international law govern science, technology, and the global society.

These two seemingly separate stories – of Russian strategic interests, and Arctic melting ice – are connected in the following ways. First, the public-private-international-transnational-state nexus of political, military, economic, and other interests are shaping the international legal developments, regardless of their geographic, ideological, and/or socio-cultural positioning. Second, there is a disconnect between the debates on “who owns the Arctic”, and the climate change science, although the physical changes in the Arctic are directly affecting current individual state claims. Russia, for example, claims that the Lomonosov Ridge is a submarine elevation within the meaning of UNCLOS, such that the 2500 metre isobath rule would apply. However, explorations carried out to date, indicate that geologically, the Lomonosov Ridge is not a natural component of Russia's continental margin. According to UNCLOS Art. 76, the default length of the

continental shelf is a minimum of 200 nautical miles from the coastal state's baselines. UNCLOS grants the Arctic state on whose continental shelf they are located the exclusive rights to exploit any resources potentially existing there. These resources would, in consequence, not be subject to the rules applicable to the common heritage of mankind, which are administered by the International Seabed Authority. Thus, the environmental and ecology concerns are not the same as those of individual states and their economic or political and strategic interests, but climate change is causing them; and international law has yet to respond to both. In this regard, it is here argued, that it is less significant whether the claim is made by Russia or another state, than the actual distinction between natural science and politics.

[1] Peters, Anne, "After Trump: China and Russia move from norm-takers to shapers of the international legal order", November 10, 2016, EJIL Talk.

[2] Mamlyk, Boris, "The Ukraine Crisis, Cold War II, and International Law" (2015) 16 German Law Journal 3, 480.

[3] Olga Khrushcheva, Olga and Maltby, Thomas, "The Future of EU Russia Energy Relations in the Context of Decarbonisation" (2016) Geopolitics, 1-32, 2.

[4] Michael Byers, "Crises and international cooperation: An Arctic case study", (2017) 31 International Relations 4, 375.

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