

The Western (Near-)Future of Arctic Law

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The escalation of Russia's war of aggression against Ukraine since 24 February 2022 has led to the greatest changes in Arctic governance since the end of the First Cold War.¹ Although there were some efforts at international cooperation, the development of Arctic Law only really took off since 1989. 2022 marks a similarly important incision in the evolution of Arctic Law. The seven Western Arctic states (A7), have suspended cooperation with Russia in the Arctic Council (AC), making the group of eight Arctic states (A8) practically irrelevant as a cooperative collection of states. Instead, Sweden and Finland are on the way to joining the North Atlantic Treaty Organization (NATO), giving up generations of nominal neutrality almost three decades after joining the European Union (EU) - another development of the 1990s that was facilitated by the end of the First Cold War. At the time of writing, in mid-August 2022, about half a year after

the beginning of the escalation, there are no indicators that Russia would change the destructive course it has chosen anytime soon. Instead, while Russia's advances on the ground are largely blocked by Ukrainian forces, rocket attacks targeting civilians across Ukraine continue daily and statements from Russian officials make it clear that this war is waged with genocidal intent.² Russia is waging a genocidal war of aggression against Ukraine. This war is not only Putin's war but Russia's war. Conducting this war and committing numerous crimes against the civilian population of Ukraine would not be possible without the active involvement of hundreds of thousands of soldiers and millions more people in Russia and abroad.

The current situation raises serious questions regarding the use of international law in Arctic governance and concerning the future of Arctic Law. With the cooperation with Russia, which covers

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¹ For an overview see Timo Koivurova (2022). "Is It Possible to Continue Cooperating with Russia in the Arctic Council?", in: Georgetown Journal of International Affairs, 29 June 2022, <https://gjia.georgetown.edu/2022/06/29/is-it-possible-to-continue-cooperating-with-russia-in-the-arctic-council/>.

² See e.g. Thomas Kika (2022). "Ukraine Slams 'Genocidal Language' by Russian Ambassador Pushing 'Final Solution'", in: Newsweek, 20 August 2022, <https://www.newsweek.com/ukraine-slams-genocidal-language-russian-ambassador-pushing-final-solution-1735413> (last accessed 21 August 2022).

half of the lands and half of the population in the Arctic, in the AC already suspended, how can Arctic Law be developed further?

Arctic Law is a product of an inherently optimistic time. While it is based on optimism, it is not unaware of risks. Its basic premise is one of trust in international cooperation to address critical issues that are relevant for all Arctic states. Regarding the Russian Federation, this premise is no longer valid because it can no longer be assumed that the wellbeing of others elsewhere in the Arctic is also in Russia's interest. Regarding the cooperation within the A7, this cooperation still remains relevant - in fact, today, it might be more relevant than ever before.

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Arctic law, therefore, is at a crossroads today. At first sight, the choice might seem twofold: Arctic Law can retain the character of optimistic cooperation but reduce the geographical scope by excluding Russia, being limited to the A7. Alternatively, it can retain the geographical scope of the A8 but change its character and content, being

downsized from a law of cooperation to a bare minimum of law to allow for co-existence. But one of Russia's neighbours, Ukraine, is even being denied its very existence. Therefore, a third potential path emerges for the future of Arctic Law, a path that has been chosen by Russia: Russia has abandoned fundamental norms of international law - although it relies on international law elsewhere, for example in the contexts of the international law of the sea or in Antarctica. Russia has been excluded from the Council of Europe and de facto from the Arctic Council. It might find itself outside of the G20 but its positions in the Organization for Security and Co-operation in Europe (OSCE) and in the United Nations (UN) are, from the perspective of international law, secure for the moment. This selective reliance on and commitment to international law on the part of the Russian Federation also has implications for its position in the community that forms the fundament for the development of Arctic Law as a part of Public International Law. Cooperation through Arctic Law is now limited de facto to the A7. Russia remains a party to international treaties that have been

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created as part of Arctic Law,³ but at the moment this appears to be law that exists on paper more than in practice. With regard to Russia, cooperation has already been reduced dramatically. With regard to the internal coherence of the A7, it is noteworthy that this is strengthened in ways that were unimaginable just a year ago. Finland and Sweden are on course to join NATO, meaning that all A7 states will soon be NATO members and that the Arctic will be clearly split into two halves. The scope of Arctic Law is expanding as it will include a stronger component of security-related norms, such as the North Atlantic Treaty. While Arctic Law has long been more than the international treaties that the A8 has created with a focus on the Arctic, these developments increase cohesion between the A7 and deepen the legal chasm between Russia and the Western Arctic.

This also means that actors that are not Arctic-exclusive, such as NATO and EU, will play a bigger role in cooperation in the Arctic. Arctic Law has never been limited to the A8 but today, this is becoming even clearer. In Ukraine, but also in Georgia, Syria, and elsewhere, Russia's current government has exhibited a clear disregard

for fundamental principles of international law. This makes it difficult to perceive Russia as a partner that can be trusted. Russia has abandoned international law, not the other way around. Instead of cooperation with Western neighbours, Moscow has chosen a path of aggression that leads to isolation, similar to that chosen by Teheran. Today, the Russian state, its institutions, representatives, and supporters, are associated with the genocidal war of aggression. Russia's behaviour forms an antithesis to the cooperative spirit that is the fundament of Arctic Law. During the First Cold War, East and West were split and in opposition to each other. Arctic Law could emerge on the basis of the recognition of shared interests. Today's situation is characterized not only by opposition but by aggression. The current situation, therefore, appears worse than the Cold War when mutual cooperation was possible, for example in the form of the Polar Bear Agreement⁴ or when the United States of America and the Soviet Union cooperated to rescue whales trapped off the coast of Alaska. Arctic Law reflects the spirit of cooperation. Between the A7, this spirit exists and the desire to cooperate only grows due to Russia's

³ See in detail Timo Koivurova, Pirjo Kleemola-Juntunen & Stefan Kirchner (2020). "Arctic Regional Agreements and Arrangements", in: Karen N. Scott & David L. VanderZwaag (eds.), *Research Handbook on Polar Law*, Cheltenham: Edward Elgar, pp. 64-83.

⁴ Agreement on the Conservation of Polar Bears, adopted 15 November 1973, entered into force 26 May 1976, 2898 United Nations Treaty Series I-50540.

aggression and threats. With regard to Russia, it is impossible to see how and when the current situation will change again. The positive experience of 1989-2022, when cooperation was possible despite political differences and when the Arctic, like Outer Space, was seen as an area in which international law was protected from disputes elsewhere, might serve as an inspiration for future cooperation.

At the moment, though, Russia does not meet the requirements for cooperation. Historical experiences show that it can take generations of efforts to allow for a return to the table (for example when West Germany and East Germany joined the United Nations in 1973). Creating the necessary conditions that will allow for a resumption of cooperation within the framework of Arctic Law is up to the Russian people alone. All actors in Arctic Law, state and non-state actors alike, will have to be clearly committed to the core values of international law, including those laid down in the Charter of the United Nations, as well as to the rule of law in international relations. International law does not require all states to share a single political ideology - on the contrary, it allows for peace despite differences. What is necessary is a basic consensus on essential rules, such as the sovereign

equality of states and the prohibition of the use of force in international relations.

Russia has moved away from this fundamental consensus. For the time being, it does not play a role in the further development of Arctic Law - and Arctic Law is being developed further. It is not going to remain static. By abandoning the core consensus that made Arctic Law possible, Russia has placed the power to develop Arctic Law in the hands of the A7. If, when, and how, Russia might be able to catch up in the future remains entirely unclear and this is a topic for future discussions. The A7's commitment to international law today is reflected in its support for those who repel Russia's aggression. Arctic Law continues to develop, but Russia has removed itself from the circle of those who have a say in its development. This is a loss for the Arctic community as a whole, but even more so for the people who live in the Russian Arctic.