

The Arctic Legal System

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The Arctic does not have a legal system of its own, as the region does not enjoy any unique recognized legal status. Instead, it is a geographic space within and beyond the jurisdiction of several circumpolar countries, generally referred to as the Arctic states. Of the Arctic states, five are considered Arctic coastal (or littoral) states because they share maritime areas in the Arctic Ocean. These are Canada, Denmark (through Greenland), Norway, Russia, and the United States. The other three, Iceland, Finland, and Sweden, have Arctic territories but do not have coastlines on the Arctic Ocean.

The Arctic Ocean encompasses a maritime area of fourteen million square kilometers, an expanse that includes areas within as well as beyond national jurisdictions. Because of this fragmented jurisdictional configuration, the Arctic legal order is a complex set of national, international and transnational regulations. While national regulations apply to the Arctic within the sovereign jurisdiction of each Arctic state, international law is binding on all the nations, including the Arctic states, that have agreed to abide by that law. In other words, the countries are bound by specific international rules they ratify following the procedures referred to in international law, such as those in the 1969 Vienna Convention on the Law of Treaties (VCLT). For example, the United Nations Convention on the Law of the Sea (UNCLOS) is an international regulation containing comprehensive mechanisms for governing the world's oceans and seas. It is often referred to as the "Constitution of the Ocean"; it is binding on all the Arctic nations except the United States, which has not ratified the instrument.

Because the US has not ratified UNCLOS, the rules of the Convention do not strictly control its behavior in the Arctic marine area. Nevertheless, the United States is bound to follow customary international law, a set of norms or rules observed by states consistently and continuously based on the belief that such behavior is law – the so-called customary international law. Most articles in UNCLOS are a codification of the rules of customary international law, whereby those provisions are binding on the United States as part of the law of the sea. The law of the sea, including UNCLOS, provides an overarching

legal framework for governing the Arctic Ocean. While the framework applies to all actors from within and beyond the Arctic, UNCLOS, pursuant to its Article 234, grants Arctic coastal states some prerogatives, such as the right to adopt special legal measures on frozen areas.

Similarly, the United Nations Framework Convention on Climate Change (UNFCCC) – a global regulatory scheme for mitigating and adapting to the impacts of climate change – applies to all parties to the Convention, including all the Arctic states. The Convention and its follow-up processes impose a global legal responsibility, shared by the Arctic states, to reduce the emission of greenhouse gases.

Alongside the set of international regulatory mechanisms that apply to the Arctic are regionally focused regulations that are also binding on the region's actors. The latest instrument of this sort of regulation is the CAO Fisheries Agreement (Agreement to Prevent Unregulated High Seas Fisheries in the central Arctic Ocean), the parties to which include all five Arctic coastal states (Canada, Denmark (for the Faroe Islands and Greenland), Norway, Russia, and the United States) as well as other actors having a stake in Arctic fisheries, such as China, the European Union, Iceland, Japan and the Republic of Korea.

The CAO Agreement did not mark the first time Arctic states came together to create regional regulations. The 1973 Polar Bear Agreement (Agreement on the Conservation of Polar Bears) was the first legally binding treaty that brought all five Arctic coastal states together under one umbrella. Cooperation continued under the auspices of the Arctic Council, an intergovernmental forum of the eight Arctic countries. Within this framework, the Arctic states have adopted a set of regulatory instruments that legally bind them. Examples of such regulatory arrangements are the 2011 Arctic Search and Rescue Agreement (Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic), the 2013 Arctic Oil Spill Agreement (the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic) and the 2017 Arctic Scientific Cooperation Agreement (the Agreement on Enhancing International Arctic Scientific Cooperation).

An additional aspect of the Arctic legal system is intensive involvement on the part of non-state actors, such as the region's Indigenous peoples, in policy

shaping, which eventually influences the law-making process in the regional setting. For example, certain Indigenous groups have been designated "permanent participants" in the Arctic Council. This gives them a role in the decision-making process, providing inclusivity in the making of soft law. The Arctic legal system thus recognizes the involvement of both state and non-state actors at various levels.

Finally, Arctic states' national regulations cover the Arctic territory within their domestic boundaries. These regulations are often influenced by and sometimes adjusted to comply with the rules of several international legal instruments with transnational effects. For example, the laws of many countries contain regulations on environmental impact assessments. While implemented nationally, these also apply to actions which states propose within their Arctic jurisdictions, highlighting regional specificity. In sum, the Arctic legal system includes laws that apply to the individual countries either as part of national law or international law, as well as those adopted and enforced by all of the states as part of international law, these pertaining primarily, but not exclusively, to the environmental governance of the Arctic region as a whole.

For more on this, read...

Pushkareva E, 'Concepts of the Legal Status of the Arctic. Max Planck Yearbook of United Nations Law Online' (2016) 19(1) Max Planck Yearbook of United Nations Law Online
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