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The United Nations Convention on the Law of the Sea, the Arctic, and Marine Environmental Governance

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The 1982 United Nations Convention on the Law of the Sea (UNCLOS) sets out the legal framework within which all activities in the ocean and seas must be carried out. The Convention was adopted at Montego Bay on 10 December 1982 and entered into force on 16 November 1994.

UNCLOS establishes a series of maritime zones: territorial sea, contiguous zone, exclusive economic zone (EEZ), continental shelf (CS), high seas (HS), and international seabed area (the 'Area'). For each of these maritime zones, the Convention establishes a different legal regime, fixes its maximum breadth, and provides for specific rights and obligations of States. For instance, under UNCLOS a coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources in its EEZ, which can extend up to 200 nautical miles from its coastline. Other States, however, enjoy freedom of navigation in the EEZ of a coastal State.

The legal framework established in UNCLOS applies to the Arctic Ocean. Therefore, the rights and obligations of States provided for in UNCLOS, including the freedom of navigation, the right to conduct marine scientific research and the obligation to protect the marine environment, are also applicable to the Arctic Ocean.

The Arctic Ocean is surrounded by five coastal States: Canada, Denmark (Greenland), Norway, Russia and the United States (US). The Arctic Ocean includes areas within the national jurisdiction of those countries (territorial sea, contiguous zone, EEZ and CS). However, most of its waters are considered part of the HS and, the portion of the seabed area beyond the limits of the extended CS, once determined, will constitute the Area. The US is not a party to UNCLOS, but they have recognized that the Convention contains provisions that reflect customary international law (i.e., rules that are binding on all States, including those that are non-parties to UNCLOS). In 2008, the five Arctic Ocean coastal States highlighted in the Ilulussat Declaration that the

law of the sea provides an appropriate governance framework for the Arctic Ocean – this also meaning that in their view, no new framework was needed. As an umbrella Convention, UNCLOS not only lays down a general legal regime governing all uses of the oceans and its resources, but also provides the framework for further development of specific areas of the law of the sea.

Part XII of UNCLOS, which addresses the protection and preservation of the marine environment, is of particular relevance to the Arctic. It imposes an obligation on States to protect and preserve the marine environment that applies to all maritime zones, including the Arctic Ocean. It also elaborates on the measures to be taken by States, individually or jointly, to prevent, reduce and control pollution of the marine environment from any source (e.g., oil spills or pollution from shipping). Also, the Arctic Ocean is generally considered as an ice-covered area under Article 234 of UNCLOS. This provision grants coastal States the right to enact and enforce special regulations for the control of marine pollution in ice-covered areas within the EEZ, where the ecological balance is recognised as particularly sensitive. However, such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment. As regards shipping and the protection of the marine environment, the general provisions of UNCLOS are complemented by international shipping rules and standards adopted by the International Maritime Organization, such as the Polar Code regulating shipping in the Polar regions, including maritime safety and environmental aspects. The precautionary approach also applies to activities in the Arctic Ocean. The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean includes provisions that prohibit commercial fishing in that area until scientific data demonstrates that such fishing can be sustainable.

The three implementing agreements adopted under UNCLOS also apply to the Arctic Ocean. Part XI of UNCLOS and its 1994 Implementing Agreement is particularly important as it provides for the general legal framework that regulates deep-seabed mining in the Area, including in the Arctic Ocean. Under UNCLOS, the International Seabed Authority (ISA) functions as the international organization that further regulates all activities related to the prospecting, exploration, and exploitation of mineral resources in the Area for the benefit of humankind. The ISA has the mandate to ensure the effective

protection of the marine environment from potential harmful effects arising from deep-seabed mining. The 1995 United Nations Fish Stock Agreement provides the general legal framework for possible future fisheries in the HS portion of the Arctic Ocean. It is particularly relevant for this area regarding the establishment and functioning of Regional Fisheries Management Organizations and the application of the precautionary approach to fisheries. Once it enters into force, the Agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (known as 'BBNJ Agreement') will allow, in particular, the establishment of marine protected areas in the HS areas of the Arctic Ocean.

Climate change remains the biggest global challenge that humanity is facing, and the Arctic is perceived as a region more vulnerable to climate change than the rest of the world. Rapid sea ice melting may lead to the opening of new Arctic shipping lanes (e.g., the Northern Sea Route, the Northwest Passage, and the Transpolar Sea Route), and shipping increases could consequently lead to higher emissions of black carbon and other pollution, including potential oil spills. This, in turn, may lead to significant environmental and socioeconomic impacts for the Arctic, such as the disturbance of marine environments by vessel oiling, air pollution, noise, collisions, loss of sea mammals (threatening food security) and the introduction of invasive species.

Climate change can also be at the origin of territorial and maritime disputes. For instance, Russia has claimed sovereignty over the 'Yaya Island', a maritime feature located in the Laptev Sea that was previously covered by frozen sea water. This feature can potentially generate new maritime zones and, thus, can potentially expand the areas of national jurisdiction of the coastal State concerned.

For more on this, read...

Molenaar E J, A G Oude Elferink, and D R Rothwell (eds), *The Law of the Sea and the Polar Regions - Interactions between Global and Regional Regimes* (Martinus Nijhoff Publishers Publications on Ocean Development 2013)

Byers M, 'Arctic Region' in A Peters and R Wolfrum (eds), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2008)