

In a world of land and water, where does ice fit in? A report from the ICE LAW Project

*Philip Steinberg & Eris Williams-Reed**

Introduction

Ice complicates a world view where solid, stable land is positioned opposite liquid, mobile water. Ice melts and freezes; it breaks apart and moves; it has both land-like and water-like social properties; its edges are unclear. Ice is as challenging for international lawyers, boundary practitioners, and political theorists as it is for geoscientists and global environmental policymakers. The Project on Indeterminate and Changing Environments: Law, the Anthropocene, and the World (the ICE LAW Project) investigates the potential for a legal framework that acknowledges the complex geophysical environment in the world's frozen regions and explores the impact that an ice-sensitive legal system would have on topics ranging from the everyday activities of Arctic residents to the territorial foundations of the modern state. This report will outline the background of the Project, as well as its objectives and structure, activities, and future plans.

Background

Although the United Nations Convention on the Law of the Sea (UNCLOS) (United Nations 1982) is universally recognized as providing the fundamental governing framework for the ocean that lies at the center of the Arctic region (e.g. Ilulissat Declaration 2008), only one of its 320 articles acknowledges that parts of the ocean are, for at least part of the year, not liquid. Article 234 gives coastal states exceptional environmental powers in portions of their exclusive economic zones where the persistence of “ice-cover” for “most of the year” poses a hazard to navigation. However, even this article contains lacunae that complicate effective implementation: what is meant by “ice-cover”? At what point would melting due to climate change render an area not “ice-covered” for “most of the year”? How do these provisions relate to other provisions in UNCLOS, such as those governing international straits? Can Article 234 inform legal practice in other areas where UNCLOS implementation is complicated by the presence of ice (e.g., should pack ice have an effect in determining baselines)? How does Article 234 reflect (or fail to reflect) the concerns of users other than commercial shipping interests, such as indigenous inhabitants, for whom ice is not a hazard but an enabler of livelihoods? (Aporta

* Durham University, UK

2011; Byers 2013; Kay 2004; Steinberg et al. 2015).

For all these reasons, it is apparent that UNCLOS provides, at best, a starting point for regulating activities in ice-covered maritime regions. But if UNCLOS is not fully up to the task, how might it be supplemented, or interpreted, or replaced to better reflect the activities that transpire on a frozen ocean? And, equally significantly, what does the failure of UNCLOS to adequately account for frozen ocean tell us about the underpinning principles of state sovereignty and international law, in the Arctic and elsewhere?

In 2014, these questions led researchers at IBRU, Durham University's Centre for Borders Research, to form the ICE LAW Project. The Project began with an inaugural workshop, *International Law, State Sovereignty, and the Ice-Land-Water interface*, in June 2014. An interdisciplinary group of anthropologists, legal scholars, geographers, and political theorists, with the remit extended to include not just the legal status of sea ice but, more broadly, the concerns and practices of peoples and institutions that encounter the specificities of polar landscapes and seascapes. One year later, we secured an International Networks Programme Grant from the Leverhulme Trust to expand the Project's connections through a series of collaborative meetings, with the

Network launching in July 2016. Between 2016 and 2019, we are hosting a variety of workshops, community meetings and conference sessions throughout the UK, Europe and the Arctic Nations.

Project Objectives and Structure

The ICE LAW Project is guided by three objectives:

- To examine the challenges posed by polar environments to Western political, legal, and regulatory systems in order to improve understanding of historic and potential relationships between the physical nature of the geosphere, constructions of territory, and practices of territorialization.
- To assist in developing legal and regulatory mechanisms to address the obstacles and opportunities that the physical nature of the polar environment poses to actors there, from indigenous peoples seeking self-determination to corporations seeking secure investment opportunities.
- To extend findings about the practical and conceptual influence of the polar environment within Western and non-Western legal and social systems to inform understanding and policy-making in other regions of the world where the

geophysical categorizations that underpin state authority are similarly upended.

To meet these objectives, the ICE LAW Project incorporates the work of five subprojects.

The *Territory* subproject (Stuart Elden, leader) critically examines the extent to which concepts of territory are rooted in simplified assumptions of the planet's surface that were inherited from particular experiences and institutions in temperate Europe. While commonly understood as a bounded space under the control of a group of people, territory embodies a complex bundle of relations – political, geographical, economic, strategic, legal, and technical. Questions of the materiality of territory – what might be called the question of terrain – remain underexplored. These issues are further complicated when we think of non-solid elements, above and below the earth's surface, such as water, sub-soil, air, or ice and when we consider these elements' volume, and the ways in which they are dynamic over both space and time. Thus, while questions concerning ice and the planet's frozen environments are at the heart of this subproject's concerns, many of the issues raised apply to other parts of the Earth, and indeed to an adequate political-legal theory of territory more generally. Essentially the key question of this theme is: How can theories of territory

better account for the complexities of the geophysical?

The *Resources* subproject (Gavin Bridge, leader) critically explores how polar geophysical environments shape the political, economic, and cultural practices through which natural resources are acquired and assembled as commercially valuable assets. Historically, northern environments have been sites of resource economies and non-renewable resource development. Today the Arctic is again a 'frontier' for the development of new energy, mineral, and aquatic resources. While there is already substantial research on the technical challenges of working in polar environments, there has been relatively little attention to how the geophysical properties and environmental dynamics shape institutions of property and regulation, and the practices of 'economization' by which Arctic materials (fish, ores, hydrocarbons) are made into commercial resources. The Resources subproject examines how institutions and practices of resource development in frozen regions are adapted to the materialities of polar environments, deliberately suspending an initial distinction between 'commercial' and 'traditional' forms of resource making in favor of a transversal perspective focused on how resource economies incorporate, in different ways, the materialities of polar nature.

The *Migrations and Mobilities* subproject (Claudio Aporta, Aldo Chircop, Kate Coddington and Stephanie Kane, co-Leaders) explores the movement, convergence and conflict of people, animals and ships as they navigate through and overlap in geographically confined areas, or choke points. We explore the diverse interactions produced by the differing types of mobilities encountered in polar environments, from commercial navigation routes and migrant labor flows to migratory animal patterns and seasonal, subsistence movements of local populations. We seek to understand how these interactions are shaped by geophysical realities that undermine taken-for-granted land-water binaries, such as changing coastlines, shifting rivers, unstable islands, and melting, mobile ice. The subproject necessarily engages with the geopolitical constructions of boundaries, territory, and jurisdictions of the modern state and international law that have been rooted in a taken-for-granted binary between land and water. But the dynamic geophysical properties of northern environments, especially with regard to ice-covered areas and other spaces affected by global climate change, call into question some of these constructions.

The *Law* subproject (Timo Koivurova, leader) is rooted in a study of the challenges arising from the failure of international law to recognize the

distinct category of sea ice. Through an investigation of the reasons why this is so, an inquiry into how this gap in jurisprudence is being met through domestic and sub-national legislation, and speculation as to how these efforts might inform environmentally-sensitive law in other areas in the Arctic and beyond, the research carried out in this subproject will contribute to establishing a framework for legal systems that are better suited to the geophysical environment of the polar regions. In so doing, the subproject will advance broader understanding of the limits and possibilities for adapting legal and political systems to environments that challenge accepted divisions of Earth's surface into solid land (territory) and liquid water (non-territory).

The **Indigenous and Local Perspectives** subproject (Jessica Shadian and Anna Stammler-Gossmann, co-leaders) targets specific areas of concern to coastal indigenous and local communities across the Arctic for whom the polar environment constitutes a customary space or whose livelihood may be influenced by changing physicality of the environment. The interests of coastal communities, including local hunters and gatherers, indigenous corporations, indigenous governments, and aboriginal owned commercial enterprises, often differ from the priorities of government agencies, intergovernmental international and regional organizations, or the commercial sector.

Trends associated with climate change and the subsequent pressure on and accessibility of Arctic resources prompt the need to incorporate indigenous and local knowledge, as well as gaps in community participation more generally, into interdisciplinary research agendas, including the ICE LAW Project.

Activities

Following the launch of the Project's Leverhulme-funded Network, Jessica Shadian of the Indigenous and Local Perspectives sub-project led a community Talking Circle on Arctic search and rescue at Sand Point (Alaska, USA) in December 2016. Organized in connection with the Aleut International Association, with additional support from the US National Science Foundation, the meeting led Sand Point residents to consider gaps that currently exist in emergency preparedness and revealed an urgent need to establish direct channels of response with external authorities. Anna Stammler-Gossmann also began preparatory fieldwork for future research on fishing practices in Bugøynes (Norway).

In April 2017, the Law sub-project, led by Timo Koivurova, held their first workshop, 'Laws and Regulations Currently Guiding Human Behaviour in Icy Environments', at the University of Lapland (Rovaniemi, Finland). Following presentations by speakers from varied legal backgrounds, the

workshop concluded that the governance of sea ice and any other geophysical environments should be approached from the foundations of current legal practice.

Less than two weeks later, a joint seminar, 'Rethinking Perspectives on Arctic Issues in 2017', was held at Dalhousie University (Halifax, Canada) by the Migrations and Mobilities sub-project in association with the Master Mariners of Canada. Coordinated by Claudio Aporta, Aldo Chircop, Stephanie Kane and Leah Beveridge, the seminar initiated an important dialogue between key players, progressing improvements in safety, preparedness, and response, and engaging with Arctic communities on such topics.

In May, Gavin Bridge led the first Resources sub-project workshop, 'Anticipating Abundance: Economizing the Arctic', at Durham University (UK) with the aim of considering how the bio- and geophysical materialities of polar environments enable and disrupt an anticipatory economy. The sub-project is currently working on a specialist publication that will explore this topic from geographic, economic, anthropological and cultural perspectives.

Later that month, Stuart Elden's Territory sub-project held its first workshop, Territory in Indeterminate and Changing Environments, in

association with ACCESS-Europe at the University of Amsterdam (The Netherlands). The workshop aspired to begin thinking about how theories of territory can better account for the complexities of the geophysical. While the workshop did not provide any definitive answers, it did show the fertility of the diverse empirical work being done, and the usefulness and limits of the theoretical terms being discussed.

During the summer, the Project had a strong presence at two major international conferences. We hosted a pair of sessions at the International Congress of Arctic Social Science in Umeå (Sweden), with papers and discussion focusing on the challenges and opportunities that emerge when southern institutional, legal, and social norms are extended to the world's frozen regions. Similarly, we held a session at the Nordic Geographers Meeting in Stockholm (Sweden), which invited participants to explore the challenges that emerge when notions of territory, law, resources and mobility inherited from temperate, continental areas are applied to the Arctic. We also held our first Annual Meeting in Umeå and agreed that the Project's network is most productive when dialogue within the sub-projects is coupled with dialogue across them. We are now working to open up opportunities for focused collaboration between the different sub-projects.

In light of our discussion at the Annual Meeting, the Territory sub-project held its second workshop, Territory, Law and the Anthropocene, at Warwick University (UK) in December with input from the Law sub-project. Building on discussion from the first Territory workshop held in Amsterdam, the Warwick workshop questioned the extent to which we need to rethink our way of theorizing territory, and the legal-political regimes that govern it, in light of the results of anthropogenic climate change.

Future Plans

Looking ahead, 2018 and 2019 offer many opportunities for the ICE LAW Project's network to develop new relationships between different disciplines. Following a successful application to the Leverhulme Trust, we are delighted to announce that a new doctoral training center for Arctic research will launch in 2018. Led by ICE LAW's Director, Phil Steinberg, the Durham Arctic Research Centre for Training and Interdisciplinary Collaboration (DurhamARCTIC) will support doctoral candidates at Durham University conducting research projects relating to interdisciplinary understanding for a changing Arctic. More information can be found at the training center's website, <http://www.durham.ac.uk/arctic>.

We are also pleased to announce that the final ICE LAW Project conference is scheduled to be held from Thursday 25 through Saturday 27 April **2019**. We will issue an open call for papers in 2018 and would welcome presentations that resonate with any aspect of the ICE LAW Project, as well as those that aim to achieve synthesis between the Project's different themes. Further details will appear on the Project's website, <https://icelawproject.org/>.

www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

References

Aporta, C. (2011). Shifting perspectives on shifting ice: Documenting and representing Inuit use of sea ice. *The Canadian Geographer*, 55: 6-19.

Byers, M. (2013). *International Law and the Arctic*. Cambridge: Cambridge University Press.

Ilulissat Declaration. (2008). *Ilulissat declaration*. Retrieved from <http://arctic-council.org/filearchive/Ilulissat-declaration.pdf>.

Kay, S. (2004). Territorial Sea Baselines Along Ice-covered Coasts: International Practice and the Limits of the Law of the Sea. *Ocean Development & International Law*, 35: 75-102.

Steinberg, P., Tasch, J., & Gerhardt, H. (2015). *Contesting the Arctic: Politics and Imaginaries in the Circumpolar North*. London: IB Tauris.

United Nations. (1982). *United Nations Convention on the Law of the Sea*. Retrieved from

