'While in the Arctic there is peace and stability, however, one cannot exclude that in the future there will be a redistribution of power, up to armed intervention', Vladimir VYWOTWKY, Russian Navy Admiral, April 2008

I. **History and Discussion of the Problem**

The Arctic region is around the North Pole of the Earth. It includes the Arctic Ocean, Canada, Russia, the United States, Greenland, as a territory of Denmark, Norway, Sweden, Finland and Iceland. There are different models about the region’s boundaries. The AMAP (Arctic Monitoring and Assessment Program) defines the area as the north of the Arctic Circle (66° 30’N), which is the rough limit of the midnight sun and the polar night. This border does not match any features of the lands and seas, thus it has no geographical meaning. Another model defines the Arctic as the northernmost limit of the stand of flora, which is approximately the 10°C July isotherm. However, it is only after World War II, that the region becomes a point of interest due to rising needs to transport supplies.

As a result of scientific exploration of the Arctic, it became increasingly attractive for many nations to claim their rights to territorial sovereignty over some portions of the region. From the very beginning, exploration of the Arctic often combined scientific, geopolitical, and even commercial purposes with the pursuit of national prestige. Therefore, arctic exploration was undertaken not only by the states bordering on the Arctic Ocean: the United States, the Soviet Union/Russia, Canada, Denmark-Greenland and Norway, but also by actors such as Germany, the United Kingdom and Poland. However, territorial claims were mainly made by the former group of states – mainly the United States, the Soviet Union/Russia and Canada. As late as in the first decades of the 20th century, there was no international statute in place that would clearly regulate boundaries for all states in the Arctic region, but there seemed to be no urgent necessity to create one at that time. All countries of the Arctic rim traditionally accepted the sector principle, a version of the doctrine of contiguity, and facilely based their territorial claims on this agreement. According to the sector principle, the northern coastlines of the countries adjacent to the Arctic Circle were to indicate the northern boundaries of their respective sectors in the Arctic Ocean, while longitudinal parallels extending from their eastern and western borders bounded these sectors from the other two sides.

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3 E. C. H. Keskitalo, Negotiating the Arctic. (New York: Routledge, 2004), p.27
In the past, international law stated that national claims of sovereignty over particular areas in the Arctic Ocean were to be recognized only if accompanied by physical occupation. Initially, there were two competing theories regarding national sovereignty in the Arctic: (1) that no nation could achieve sovereignty over the Arctic, termed ‘res nullius’ and (2) that every nation shared an undivided sovereignty over this region, called ‘res communes.’ According to current international law, sovereignty is considered to be a derivative of government control and of notoriety over new territory. Consequently, many claims of sovereignty over some portions of the Arctic region that were supported by existing exercise of the government functions became more plausible. On the other hand, claims resting solely on territorial justifications such as the sector principle were denied legal force by many nations, including the United States, which purchased Alaska from Russia in 1867, thus reaffirming its presence in the region.

Due to global warming, the waters surrounding the Arctic have become increasingly valuable as potential viable trade routes. The territory up North is also rich in natural resources. It is believed to possess 20-25% of the world's undiscovered oil and natural gas. Thus, in attempt to obtain such valuable and elusive resources for domestic subsistence and advancement interests, nations like Russia and Canada are continuously deploying troops and marking territory without the consent of the international community nor of the indigenous peoples of the Arctic.

The main Arctic Nations that were first embroiled in this controversial issue are Russia, Canada, Denmark, The United States of America, Sweden, Finland, Iceland and Norway. The World was used to the fact that major intrigues are invariably related and submitted to the Arctic Council, which was set up in 1996 to settle territorial disputes between the Arctic Nations. Things have changed. Other countries now seem to resent this approach, for they would also like to take part in the division of the Arctic pie. Following in the footsteps of the United Kingdom, Germany, France, Spain and Poland are India, Japan, South Korea, Australia, Brazil and People's Republic of China, which are knocking at the Council door, insisting that the Arctic should belong to everyone.

Currently, the Arctic Nations are conducting or planning to conduct scientific surveys in the Arctic, both to make potential claims on the seabed as well as to gain more concrete knowledge on the possibility of deriving wealth from Arctic resource development. Following research and surveys, countries are racing to submit territorial claims to the Commission on the Limits of the Continental Shelf, a commission created to supervise the implementation of UNCLOS (UN Convention on the Law of the Sea). Denmark's "Strategy for the Arctic" has attracted mass media attention in May 2011. It follows from the document that Denmark claims the continental shelf in five areas around the Faroe Islands and Greenland, and also the North Pole, which it sees as part of the Greenland shelf and Copenhagen plans to make a relevant submission to the Commission no later than 2014. The news rang the alarm for Canada since Ottawa proclaimed its sovereignty over the North Pole back in the 1950s. Under the International Court ruling, the claim may be granted if no other country proves, within 100 years, that the Arctic Ocean floor belongs to it. More than half of the term has elapsed since, but in recent years the demonstratively peaceful Canada, which has actually never fought a war, has already submitted countless statistical and factual claims on the region and have subsequently been rejected by the Commission as being invalid and insufficiently corroborated. Consequently, Russia and Canada, and soon to be Denmark, have begun to illicitly and illegitimately deploy military presence in the Arctic region to lay "primary" claims.

The United States is building up its military potential in the Arctic as well. The USA proposes that the national Arctic Navy begins intensive Arctic training, acquire new Arctic-class vessels and icebreakers and set up ground and undersea surveillance and monitoring stations. United States multipurpose nuclear submarines are constantly patrolling the Arctic Oceans as well. Even China that lies far away from the Arctic wants a stake in the region. Its Snow Dragon icebreaker has entered the Arctic waters twice. South Korea is also getting icebreakers ready. This ever increasing participation of nations around the globe is evidently intensifying tension between contesting countries, and leads the future of Arctic sovereignty and control to be a crucial stake.
The issue of competing claims for sovereignty over territorial waters was raised in the United Nations in 1967 by Malta, and this led to convening the Third United Nations Conference on the Law of the Sea in 1973. In order to reduce the influence of organized groups of states influencing the negotiations, the standard majority vote was replaced with a consensus process. This prolonged the negotiations, and the final agreement was reached only in 1982. The final treaty, the United Nations Convention on the Law of the Sea (UNCLOS), was ratified in 1994 and became the single most significant international agreement regulating the rights and responsibilities of nations in their use of the world’s high seas. Probably the single most important provision of the UNCLOS permitted coastal states to establish exclusive economic zones extending up to 200 nautical miles within which they could exercise sovereign rights over both the waters and the seabed. Furthermore, the treaty assured that this sovereign territory could be extended depending on how far the continental land mass belonging to a nation extended out under the ocean. To date, the Convention on the Law of the Sea has been ratified by 158 countries, the United States being a noteworthy exception.

II. Current Situation

The Arctic is presently re-emerging as a strategic area where vital interests of many countries coincide. The region’s geopolitical and geo-economic significance, combined with its wealth in natural resources, is transforming the Arctic into a hotly contested frontier of the 21st century.

In August 2007, shortly after sending the scientific expedition to the Lomonosov Ridge that placed the Russian flag on the seabed, Moscow ordered resumption of regular air patrols over the Arctic Ocean. Strategic bombers including the turboprop Tu-95 (Bear), supersonic Tu-160 (Blackjack), and Tu-22M3, as well as the long-range antisubmarine warfare patrol aircraft Tu-142 have flown patrols since then. According to the Russian Air Force, the Tu-95 bombers refueled in-flight to extend their operational patrol area. American newspapers reported that Russian bombers penetrated the 12-mile air defense identification zone surrounding Alaska several times since 2007. Also the Russian navy is intensifying its patrols in the Arctic - this is the first such phenomenon since the end of the Cold War. High ranking Russian army officers say that Russia’s military strategy might be reoriented to meet threats to the country’s interests in the Arctic and that the Northern Fleet’s operational radius is being extended. In July 2008, the Russian Navy officially announced that it has resumed its warship presence in the Arctic. The intensified Russian military activity in the Arctic is interpreted as an attempt to increase its leverage vis-à-vis territorial claims in the region. Moscow’s strategy seems to be to display its military might while invoking international law.

For example, the Russian Navy deployed an anti-submarine warfare destroyer and guided-missile cruiser designed to destroy aircraft carriers in the area of the Spitsbergen Archipelago. The Spitsbergen unambiguously belongs to Norway, but Russia refuses to recognize Norway’s rights to a 200-nautical-mile economic zone around the Archipelago. The sorties of the Northern Fleet in the area are being justified by the Russian Navy as ‘fulfilled strictly in accordance with the international maritime law, including the UNCLOS. In a recent report released in May 2009, the Russian Security Council, which includes the

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5 Ariel Cohen, Lajos F. Szaszdi, The New Cold War: Reviving the U.S. presence in the Arctic.
6 Russian Strategic Bombers Patrolling Arctic, Interfax, June 9, 2008.
Prime Minister, Vladimir Putin, and heads of the military and intelligence agencies, raised a possibility of war in the Arctic within a decade over control of the regions huge wealth of natural resources.9

In response, the North Atlantic Treaty Organization (NATO) partners re-supply the Thule Air Base in Greenland, which operates under agreements with Denmark. Another example of this increased military attention given to the Arctic region is the strategic cooperation between the United States and Canada in strengthening the North American Aerospace Defense Command (NORAD). There are also plans in the United States to establish a Joint Task Force–Arctic Region Command and an Arctic Coast Guard Forum modeled after the highly successful North Pacific Coast Guard Forum10. Canada joined the trend by announcing in 2007 and that it would build six to eight navy patrol ships to guard the Northwest Passage, as well as two military bases and a deep-water port inside the Arctic Circle.11

III. Past UN Actions

A. The United Nations Convention on the Law of the Sea

The questions of jurisdiction over the Arctic and the militarization of the region have not yet been the topics of any major international treaty. The single most important agreement regulating sovereign rights in the Arctic, as well as in the other sea areas of the world, is the United Nations Convention on the Law of the Sea (UNCLOS). The agreement, which is often described as the ‘constitution for the oceans’, was concluded in 1982 after nine years of work by the United Nations Conference on the Law of the Sea (UNCLOS III) and came into force in 1994 after the 60th country ratified the treaty. To date, 158 countries have ratified the Convention, but the United States has not yet done so, although it helped shape the Convention and signed the 1994 Agreement on Implementation.

The Convention is crucial in regulating navigation in the Arctic waters, particularly in the Northwest Passage. According to the Convention, each country can extend its sovereign territorial waters to a maximum of 12 nautical miles (22 km) beyond its coast, but foreign vessels are granted the right of innocent passage through this zone, as long as they do not engage in hostile activities against the coastal state. The Convention also endorses a new concept of ‘transit passage,’ which is in fact a compromise that combines the legally accepted provisions of innocent passage through territorial waters and freedom of navigation on the high seas.

The concept of transit passage retains the international status of the straits and gives all countries the right to unimpeded navigation and flight over these waters that the world’s naval powers insisted on. The only conditions that have to be satisfied by vessels or aircraft in transit passage are observing international regulations on navigational safety and civilian air-traffic control, as well as proceeding without delay except in distress situations and refraining from any threat or use of force against the coastal State.12

However, the Convention is not perfect and tends to be slightly outdated, as critics point out its lack of clarity in some aspects. For example, the Convention does not expressly provide the right to submerged transit through international straits by submarines, which might mean that all submarines in transit passage have to surface to reveal their presence. Some international lawyers argue, however, that this right can be deduced from the provisions of the Convention, particularly from Article 39, which specifies common duties of vessels in transit passage. The article says that vessels exercising their right of transit passage shall

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10 Ariel Cohen, Lajos F. Szaszdi, The New Cold War: Revising the U.S. presence in the Arctic.


‘refrain from any activities other than those incidentals to their normal modes of continuous and expeditious transit. Most experts agree that, since submarines are by definition underwater vehicles, submerged passage is by definition the ‘normal mode’ of such craft’13. Most experts affirm that the proceedings of the Convention and circumstances of the conclusion of the 1982 Treaty seem to unquestionably confirm the interpretation given above. Therefore, navigation through the Northwest Passage should be free and unencumbered if it is to be considered as an international strait. However, Canada regards the Passage as part of its internal waters, which is rejected by several countries and has led to several incidents. Such problems are usually resolved on the basis of subsequent bilateral treaties between the countries concerned, but some voices are being presently raised suggesting that it might be the time for a specific treaty regime for the Arctic.

Another aspect of the militarization of the Arctic to which the Convention on the Law of the Sea is relevant is the issue of territorial claims in the region. According to the Convention, all coastal states can establish exclusive economic zones extending up to 200 nautical miles (370 km) within which they can exercise their sovereign rights over both the waters and the seabed. Furthermore, a country’s sovereign territory may be extended depending on how far the continental mass extends out under the ocean, if the outer boundaries of this so-called continental shelf are precisely defined and documented.14 The Convention employs the definition of continental shelf adopted by the International Law Commission in 1958, which defined the continental shelf to include ‘the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or, beyond that limit, to where the depth of the adjacent waters admits of the exploitation of the natural resources of the said areas. Exact cut-off lines are determined by a number of factors, such as the structure of the ocean floor, sediment thickness, and ocean depth. Problems arise when these factors are a matter of dispute, as it is the case with the Lomonosov Ridge, where determining whether this geological formation is part of the continental shelf of Canada, Russia, or Greenland is crucial to establishing which country has sovereign rights over the seabed around the North Pole15. To control claims extending beyond 200 nautical miles, or to handle conflicting claims, the Commission on the Limits of the Continental Shelf was established. The Commission considers evidence data submitted by coastal states and makes recommendations to the United Nations.

From its very conclusion in 1982, the UNCLOS was not considered a final treatment of the Law of the Sea, but rather a ‘sea constitution’, intended to provide an essential framework for future solutions. The UNCLOS was supposed to serve as a basis for dealing with a myriad of legal issues that would arise in drafting more specific, regional treaties. Nowadays, some experts and politicians call for a new Arctic treaty, modeled on the Antarctic agreement.

B. The Ilulissat Declaration

In May 2008, representatives of the five coastal States bordering on the Arctic Ocean – Canada, Denmark, Norway, the Russian Federation, and the United States of America – met at the political level in Ilulissat, Greenland, to hold discussions about the future of the Arctic region.

The result of these discussions was the Ilulissat Declaration, adopted on 28 May 2008, which presents the common position of the five Arctic states in regards to climate change, maritime safety, and sovereign

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rights in the area. One major objective of the Declaration, accepted by nations gathered at the conference, was the blockage of any ‘new comprehensive international legal regime to govern the Arctic Ocean’.

The parties of the Declaration confirmed that the Law of the Sea Convention, along with the International Maritime Organization and the Arctic Council, form the core of the regime that governs the Arctic, and that within the framework of this regime the five Arctic states recognized their responsibility to manage activities in the region, including both development and environmental protection.

In the Declaration, the five nations also pledged to ‘remain committed to this legal framework and to the orderly settlement of any possible overlapping claims. The consequences of the Declaration were twofold. In reaffirming the role of the existing international law in governing the issues concerning the Arctic, the signatories also recognized that other states would participate in development and protection of the Arctic, through the international Maritime Organization, the Arctic Council, and other relevant international forums. However, the Declaration also made it clear that there will be no negotiation of an alternative regime for the Arctic Ocean that would be contrary to the provisions of the UNCLOS’.

IV. Key questions

A. Environmental Security

With climate change now being a politically accepted reality the perspective of a melting Arctic ice cover making the Arctic more accessible has become subject of policy statements and governmental planning of the nation state as well as the international community. Since 2005 most policy statements have paid attention to the fundamental environmental change the Arctic is undergoing and emphasized the environmental sensitivity of the region. Several actors, such as Canada, declared from with the first economic interests rising that a sustainable development in the region was of priority. Russia for example justified its extended control over lands and waters of the Arctic region as being means to protect the environment. It has therefore become necessary for members of the international community to monitor the increasing activities in the Arctic and to pass new building plans to attain adequate means to police the area.

1. Greenpeace

Kumi Naidoo, Greenpeace executive director: “A ban on offshore oil drilling and unsustainable fishing would be a huge victory against the forces raging against this precious region and the four million people who live there”

In 2012 Greenpeace started a campaign called “Save the Arctic” with the aim to declare the Arctic a global sanctuary free of industrial exploitation of the natural resources and military activity in the High Arctic (as the Antarctica has already been declared with the Protocol on Environmental Protection to the Antarctic Treaty in 1998). Even though the campaign has a clear focus on pure environmental issues (e.g. ban of oil drilling and industrial fishing) it does not neglect the need of considerations for the interests of indigenous peoples: The sanctuary Greenpeace campaigns includes only the uninhabited part of the High Arctic and Greenpeace does not condemn fishing undertaken by indigenous peoples but big fishing fleets from the US, Europe, Asia and elsewhere. Greenpeace intends to work with both governments and indigenous peoples to establish a new governance regime for the Arctic with a sanctuary as its core. Greenpeace wants to achieve this through a global agreement or regional treaty at UN basis.

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17 Idem
18 Idem
2. The Stockholm and Rio Declarations

„The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.“ (Principle 2, Stockholm Declaration)

„Peace, development and environmental protection are interdependent and indivisible.“ (Principle 25, Rio Declaration)

The Stockholm (1972) and Rio Declarations (1992), outputs of the first and second global environmental conferences, represent milestones in the evolution of international environmental law. The Rio Declaration has served as a basic normative framework at subsequent global environmental gatherings such as the United Nations Conference on Sustainable Development in 2012. Even though both declarations are formally not binding their provisions were at the time either understood to reflect customary international law or expected future norms.

Both declarations have been mistaken to imply a “human right of the environment”. Even though the Stockholm formulation makes reference to a human’s “fundamental right to ... adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being” the idea of a full human right to environment has never achieved general international advocacy. Less disputed is the notion of “sustainable development” - development that „meets the needs of the present without compromising the ability of future generations to meet their own needs“ (Our Common Future) - which is the underlying principle of the Rio Declaration.

Important principles:

A. Right to Environmental Development

The Principle 8 of the Stockholm Declaration labels „economic and social development“ as essential and Rio Principle 3 points out that “right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. The international legal status of this “right to development” remains controversial.

B. Prevention of Environmental Harm

Probably the most significant provision common to the two declarations relates to the prevention of environmental harm. Both declarations underline a State’s responsibility to ensure that activities within its activity or control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control.

C. Precautionary Action

Stockholm Declaration’s principle 15 claims that “the precautionary approach shall be widely applied by States according to their capabilities.” A lack of full scientific certainty shall not excuse states from taking effective measures to prevent environmental degradation whenever threats of serious damage are given. In 2011 the International Tribunal of the Law of the Sea stated a positive resonance to recognize „precaution“ as an international legal principle or even rule of customary international law.
D. “Common but Differentiated Responsibilities” (CBDR)

The Principle 7 of the Rio Declaration states that „in view of the different contributions to global environmental degradations, States have common but differentiated responsibilities“. In 2011 the International Tribunal of the Law of Sea Advisory Opinion affirmed “what counts in a specific situation is the level of ... capability available to a given State”.

E. Public Participation

Principle 10 of the Rio Declaration posits that “[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level”. Information should therefore be transparent and public participation reassured.

B. Indigenous people

The central UN body charged with issues relating to indigenous interests and rights is the Permanent Forum on Indigenous Issues (UNPFII) that is an advisory body to the Economic and Social Council (ECOSOC).

A number of indigenous people’s organizations are also recognized at the Arctic Council. One of them is the Inuit Circumpolar Council (ICC) that issued a petition in 2005 “seeking relief from violations of the human rights of Inuit resulting from global warming caused by greenhouse gas emissions” (ICC 2005). Climate change resulting in the melting of the Arctic is an existential threat to the indigenous populations of Canada, Alaska and Greenland since it severely affects their natural supply of food sources, means of transportation and health. Some indigenous groups have acted in concert with NGOs to oppose drilling in their home territories.

Four of the Arctic Eight (Denmark, Canada, USA, Norway) have taken positive steps in advancing indigenous rights and protecting the environment. All of the eight, while coveting Arctic resources, have shown some consideration for the Arctic environment. Nevertheless being refused sovereignty Inuit are incapable of exercising sovereign rights and had to follow resettlement projects without a full-value citizenship.

Out of protest for not being included in a meeting of the five arctic states in 2008 the Inuit of Canada, Alaska, Russia and Greenland issued a Circumpolar Sovereignty Declaration, which builds on modern treaties and serves notice to all nation states that the Arctic is the Inuit homeland: “The conduct of international relations in the Arctic and the resolution of international disputes in the Arctic are not the sole preserve of the Arctic states or other states, they are also within the purview of the Arctic’s indigenous peoples.” The declaration was designed as foundation “to continue ... self-government“ and it „is not an Inui Nunaat declaration of independence“ (ICC Vice Chairs).

Although the Inuit are no longer prepared to accept international relations as the exclusive preserve of nation states, they do not seek conflict. Just as cooperation and adaptation were necessary for Inuit survival in the Arctic, they would like the Arctic states to demonstrate similar qualities. According to the declaration of sovereignty, the Inuit see themselves as “partners in the conduct of international relations in the Arctic” and appeal for coordinated response to the climate change challenge.
1. The Rio Declaration on Indigenous Peoples

Rio Principle 22 underlines the “vital role of indigenous people and their communities and other local communities”. States are called upon to „recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development” given their knowledge and traditional practices“.

2. UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples of 2007 is a not legally binding instrument of international law but sets „an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet’s 370 million indigenous people and assisting them in combating discrimination and marginalization“.

Important principles:

A. Protection of their culture and traditions

The Declaration affirms indigenous people’s „the right not to be subjected to forced assimilation or destruction of their culture“. It points out the states responsibility to „provide effective mechanisms for prevention of ... any action which has the aim or effect of depriving them of their integrity as distinct peoples“

B. Integrity of their home territory

Article 10 clearly claims that „Indigenous peoples shall not be forcibly removed from their lands or territories“. In Article 25 it is specified that „Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands.“

C. Participation in decision process

The Declaration draws attention to the necessity to include indigenous people in a transparent decision process when their interests are touched: „States shall establish and implement ... a fair, independent, impartial, open and transparent process ... to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources“

D. Compensation

Land and territories used, occupied, damaged or confiscated require a „fair and equitable compensation“ or „restitution“ (Article 28).

D. Military Action

Article 30 claims that no military action shall take place in the territories of indigenous people unless „freely agreed with or requested by the indigenous peoples concerned“ and with „effective consultations ... through their representative institutions, prior to using their lands or territories for military activities.“

E. Development Strategies
It is the indigenous peoples who have „the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources“. Any project affecting their lands, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, needs to be cooperated with their representative institutions.

3. Circumpolar Inuit Declaration on Sovereignty in the Arctic

„The Inuit of Inuit Nunaat, are committed ... to working with Arctic states and others to build partnerships in which the rights, roles and responsibilities of Inuit are fully recognized and accommodated.“ (Circumpolar Inuit Declaration)

Important principles:

A. The Inuit and the Arctic

„Inuit are a people“ united in the Inuit Circumpolar Council (ICC), which represents the Inuit of Denmark, Greenland, USA and Russia (Article 3).

B. Sovereignty in the Arctic

The declaration criticizes the arctic states for having „neglected to include Inuit in Arctic sovereignty discussions“ and once more claims the Inuit’s right „to self-determination in the circumpolar Arctic ... that will appropriately balance our rights and responsibilities as an indigenous people ... and the rights and responsibilities of states.“

C. Need for cooperation

The pursuit of global environmental security requires a coordinated global approach to the challenges of climate change: „There is a pressing need for enhanced international exchange and cooperation in relation to the Arctic, particularly in relation to the dynamics and impacts of climate change and sustainable economic and social development.“ (Article 3.8)

V. Proposed Solutions

A. An Arctic Treaty

With the Arctic ice melting, an increased interest in the Arctic’s natural resources and navigation, and a recent phenomenon of many nations piling up arms and planting flags in the region, calls have emerged for a comprehensive Arctic Treaty to govern the ‘lawless’ Arctic region. Many non-governmental organizations and some politicians are arguing for an international agreement that would adopt a legal framework for dealing with issues such as polar oil and mineral exploration, commercial activity, maritime security, navigation and environmental regulation.

Such an agreement could be achieved under the auspices of the United Nations and could replace the United Nations Convention on the Law of the Sea as the primary piece of legislation concerning the Arctic region, being modeled after the Antarctic Treaty of the early 1960s. In the same way as the Antarctic Treaty does, an Arctic Treaty could set aside the Arctic as a scientific preserve and ban all military activity in that area, while freezing all territorial claims. Proponents of a new Arctic Treaty believe that such an agreement could facilitate arranging for sustainable development of Arctic resources, developing shipping shortcuts through the northern passages, setting technological standards for ships that navigate the icy waters and guarding the welfare of the more than one million indigenous people living within the Arctic Circle.
On the other hand, many governments, including the major Arctic powers, are strongly opposed to establishing another treaty regime in the Arctic and believe that the UNCLOS and other existing international law provides a comprehensive set. In the Declaration, the five nations also pledged to ‘remain committed to this legal framework and to the orderly settlement of any possible overlapping of rules governing use of the world’s oceans, and is sufficient to govern the Arctic region as well. The argument follows that since the situations in the Arctic and the Antarctic are hardly analogous - the Antarctic is a continent surrounded by oceans, while the Arctic is an ocean surrounded by continents – similar rules of suspension of claims to sovereignty cannot be applied. It is argued that the Arctic Ocean is already subject to international legislation, and that it has already been divided up, so few territorial disputes can emerge. The parties that oppose establishing a new treaty for the Arctic believe that in instances where the maritime claims of coastal nations overlap, international law sets forth principles for them to apply in resolving their disputes. These actors customarily regard Russia’s planting of flags on the North Pole seabed as ‘a symbolic act of no legal standing or material consequence, and they believe the real challenge in regulating the Arctic is the execution of the existing rules, rather than adopting new ones.

Alternatively, those who believe the entire Arctic Ocean should be divided into national sovereignty zones present two major ways of delimitating the territory. One is ‘the sector method,’ which would divvy up the region by drawing lines south to the countries involved, using the North Pole as the centre, like slicing up a pie. Another way would be to divide the Arctic waters between countries according to the length of their nearest coastline to the Pole. Either way, a comprehensive and multidimensional international agreement would be necessary to legitimize such a novel solution, which could well be achieved by the General Assembly of the United Nations.

B. Arms Limitations

Even if a political Arctic treaty should not be adopted, there is still a possibility of establishing an arms limitation agreement for the Arctic region. Although such an agreement is likely to be a regional one, global input is necessary as an objective voice of how demilitarization of the Arctic can assure that there would be no conflict in the area, which could potentially spread to the rest of the world.

A successful implementation of strong confidence-building measures could help significantly reduce the need for Arctic countries to guard their national interests in the region with the use of military power. For example, an extensive cooperative surveillance system could be established for the area, in which many states could work together to assure that there are no national security risks for any nation. A naval arms limitation agreement could thus be adopted, and also include terms establishing a Nuclear Weapon Free Zone in the Arctic Ocean, to prevent any unnecessary tensions in the region. Furthermore, global agreements could be concluded concerning the safe usage of the Northern Passage. Such an agreement should be prepared as an effect of a consensus building process with participation of both the major Arctic powers and other nations interested in creating a stable policy system for the Arctic. Several national needs should be taken into account when drafting such a treaty to ensure its subsequent ratification. For example, if such agreements were to be acceptable for Canada, they would need to contain solutions to the potential problems of trafficking of drugs, arms, and illegal immigrants to the Canadian territory.