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Introduction: Responding to a Changing Arctic Ocean: Canadian and Russian Experiences and Challenges

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Furthering an understanding of Canadian and Russian approaches and challenges in Arctic Ocean governance is the purpose of this thematic issue. A comparison of law and policy perspectives and cooperation between Canada and the Russian Federation has been limited¹ with much more attention being given to great power politics in the Arctic, especially United States–Russian relations.² A comparison is timely given the fact that Canada and Russia have the longest coastlines in the Arctic and in light of the reality that their Arctic regions are on the front lines of climate change³ and increasing access to resources and shipping.

The articles in this special issue of *Arctic Review on Law and Politics* are the result of a research project, “Responding to a Changing Arctic Ocean: Canadian and Russian Experiences and Challenges,” funded by the Donner Canadian Foundation and co-led by the Marine & Environmental Law Institute, Schulich School of Law, Dalhousie University and the School of Law, Far Eastern Federal University. Seven articles in this main component of the thematic issue address Arctic Ocean boundaries and jurisdiction, security, climate change, Indigenous peoples’ rights and interests, marine protected areas and other effective conservation measures, shipping, and fisheries. All articles were written before the Russia-Ukraine crisis. Due to unforeseen circumstances, the oil and gas comparison, “Russian and Canadian

Approaches to the Governance of Oil and Gas in the Arctic Ocean: Regulating for an Uncertain Future,” by Rustambek Nurimbetov, Far Eastern Federal University and Phillip Saunders and Olga Koubrak, Dalhousie University, was delayed; their article will follow later.

1 Arctic Ocean boundaries and jurisdiction

In their contribution, Viatcheslav Gavrilov, Ted L. McDorman and Clive Schofield provide an overview with respect to the practices of Canada and the Russian Federation regarding maritime jurisdictional claims and the delimitation of maritime boundaries with their Arctic neighbours. Both states have enjoyed considerable success in resolving overlapping maritime claims. The Russian bilateral boundary agreements with the United States and Norway are impressive accomplishments, while Canada and Denmark (Greenland) have adopted a continental shelf agreement covering the Davis Strait in the south to the Lincoln Sea in the north. In relation to finalizing the boundary in the Lincoln Sea and resolving ownership of Hans Island, the Canada-Denmark (with Greenland) Boundaries Task Force had yet to report its recommendations. Despite overall excellent relations between Canada and the United States, agreement on the maritime boundary in the Beaufort Sea has yet to be achieved. Irrespective of the apparent overlapping maritime claims regarding the continental shelf areas beyond 200 nautical miles in the central Arctic Ocean, the authors conclude that there is minimal likelihood of serious consequences or interstate tension regarding Arctic maritime claims and boundaries.

2 Arctic security

In their contribution, Whitney Lackenbauer and Alexander Sergunin focus on post-Cold War changes in Canada’s and Russia’s threat perceptions in the Arctic region, as well as their doctrinal/conceptual underpinnings; identify new roles for Canadian and Russian military power in the Arctic Ocean; and examine current Canadian and Russian defence modernization programs in the Arctic. Over the last three decades the general focus of Canadian and Russian threat perceptions in the Arctic have shifted from a Cold War fixation on hard defence to soft security issues, namely, threats and challenges stemming from climate change and safety risks associated with resource development and increasingly accessible sea routes. Although concern about military conflict arising from Arctic disputes over territory or resources continues to frame some media discussions in both countries, the authors, like most strategic analysts and academics, move away from this line of argument. Instead, military functions now focus on assertion of sovereignty over internal waters and protection of resources in the exclusive economic zone and extended continental shelves, protection of economic interests in the North, prevention of potential terrorist attacks against critical industrial and state infrastructure, and dual-use functions, such as search and rescue operations, air and maritime surveillance, and support

to safe navigation. The authors put forward two forms of military modernization in the Arctic: capability developments related to the global strategic balance, where the Arctic serves as a bastion or a thoroughfare; and developments intended to address emerging non-traditional security challenges. They contend that such programs will neither upset the regional military balance nor serve as a valid justification for Arctic states to embark upon a regional arms race.

3 Arctic climate change

In their contribution, Meinhard Doelle and Roman Dremluga focus on the particular vulnerability of both Canadian and Russian Arctic natural and human systems to climate change, which has been known for some time. In particular, the Russian Arctic has experienced a decrease in the area of ice in the Arctic Ocean and more severe climate change impacts than the rest of the world and other parts of the Arctic.⁴ Importantly, Arctic Indigenous peoples' culture and way of life historically has been very closely tied to a predictable and stable climate. If the impacts of climate change can be expected to be a motivator for effective policies, polar regions could be a good place to look for climate policy innovation. The authors consider whether the unique and immediate threat climate change presents in the Arctic is reflected in more progressive laws and policies with respect to four key areas: mitigation, adaptation, impacts and vulnerability, and development. Although Russia has some initiatives in the sphere of transition to a green economy, due to immediate economic considerations, this transformation will take more time than in Canada. They conclude that there are some signs in both countries that climate mitigation is starting to be taken more seriously and that the awareness of the impacts in the Arctic is translating into adaptation efforts.

4 Indigenous rights and interests

The contribution by Anna Sharapova, Sara Seck, Sarah MacLeod and Olga Koubrak compares Russian and Canadian approaches to recognition of Indigenous peoples and Indigenous rights in the Arctic with attention to the implications for Arctic Ocean governance. The Arctic has been home to Indigenous peoples since long before the international legal system of sovereign states came into existence. International law has increasingly recognized the rights of Indigenous peoples. In northern Canada, the majority of those who live in the Arctic are recognized as Indigenous. However, in northern Russia, a much smaller percentage of the population is identified as Indigenous, as legal recognition is only accorded to groups with a small population size. The authors consider both the international legal instruments of importance to Indigenous peoples and their rights in the Arctic and the domestic legal and policy frameworks that define Indigenous rights and interests in Russia and Canada. Despite both states being members of the Arctic Council and parties to the United Nations Convention on the Law of the Sea, there are many differences

in their treatment of Indigenous peoples, with implications for Arctic Ocean governance, in particular domestic recognition of Indigenous peoples' legal rights and their inclusion in instruments of Arctic governance. They conclude there is room for development in the recognition and practice of Indigenous peoples' rights in both Canada and Russia with co-management of protected areas offering a particular opportunity. As in other articles in this special issue, climate change is identified as an "overarching" concern, with Indigenous peoples being central to dealing with its effects on the Arctic Ocean and its governance.

5 Marine protected areas and other effective conservation measures

In their contribution, Suzanne Lalonde, Aslan Abashidze and Alexander Solntsev discuss the Canadian and Russian domestic regimes for the establishment of marine protected areas (MPAs) and other effective area-based conservation measures (OECMs). The Arctic region has emerged as one of the clearest indicators of the scale and pace of Earth's changing climate. As the ice melts, opportunities are expanding to exploit the Arctic's oil and gas reserves, precious metals, fish stocks and maritime routes. Increased access and development will inevitably generate "system-wide environmental impacts" and will pose novel management challenges for the Arctic states. In the quest to find an effective balance between competing ocean activities and actors, MPAs and OECMs have emerged as indispensable tools to achieve ocean health, including in the Arctic. It is clear that both Russia and Canada have a strong commitment to effectively manage and conserve the Arctic waters under their sovereignty and jurisdiction despite the complexities and difficulties inherent in achieving an optimal balance between environmental protection, sustainable economic development, and the rights of Indigenous peoples. The authors offer some insights into the key challenges confronting both states in the creation of effective networks of MPAs and OECMs in their Arctic regions.

6 Arctic shipping

In their contribution, Kristin Bartenstein, Roman Dremluga and Natalia Prisekina consider the future of the institutional and regulatory frameworks to govern the Northern Sea Route (Russian Federation) and the Northwest Passage (Canada). Warming temperatures, receding ice cover, growing communities and increased interest in natural resources, tourism and marine scientific research in the Arctic are once again raising interest in shorter shipping routes connecting northern Europe to the northeast of Asia or the northwest of North America. The authors describe many similarities in Canadian and Russian approaches to Arctic shipping regulation, including prohibitions on the discharge of oil and oil containing products, establishing mandatory ship reporting systems and requiring prior authorizations for proposed navigations. They conclude that there is not only a significant difference in the

factual conditions prevailing in both states, including ice cover, navigability of the waterways, infrastructure, and escort and search and rescue capacity, but the political and geopolitical contexts in which Canada and Russia operate also shape distinct policy strategies and legal regimes that diverge in significant ways. While Russia has actively promoted economic development of the NSR, Canada has displayed no such ambition for the Northwest Passage.

7 Arctic fisheries

In their contribution, David VanderZwaag, Vitalii Vorobev and Olga Koubrak review and compare Arctic fisheries management approaches in Russia and Canada, focussing on marine capture fisheries, excluding marine mammals. Fisheries in the Canadian and Russian Arctic are of major importance to each country. In Canada, subsistence fisheries continue to hold great social and cultural value to coastal communities across the region while substantial commercial fisheries take place in the waters adjacent to Nunavut. In the Russian Federation, fisheries are a leading sector for economic development and an important and stable source of revenue from international trade. The authors' exploration of law and policy complexities reveals both commonalities and contrasts. Both countries manage commercial fisheries in limited Arctic areas where a commercial fishery is feasible; both countries continue to struggle in implementing precautionary and ecosystems approaches; and both countries remain committed to preventing unregulated high seas fishing in the Central Arctic Ocean. Contrasts in Arctic fisheries governance are discussed with a major difference being the greater devolution of management responsibilities by Canada to Indigenous communities through co-management arrangements, while Russia has made greater advances in forging transboundary fisheries management agreements and resolving ocean boundary disputes in the Arctic. Numerous challenges and questions loom on the horizon for Arctic fisheries governance in both states.

14 April 2022

NOTES

1. See, e.g., J. R. Edge and D. L. VanderZwaag, "Canada–Russia Relations in the Arctic: Conflictual Rhetoric, Cooperative Realities," in *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand*, eds, S. Lalonde and T. L. McDorman (Leiden/Boston: Brill Nijhoff, 2015), 240–265; A. Chircop et al., "Course Convergence? Comparative Perspectives on the Governance of Navigation and Shipping in Canadian and Russian Arctic Waters," *Ocean Yearbook* 28 (2014): 291–327.
2. See, e.g., D. A. Balton, "United States-Russian Relations in the Arctic Ocean: Cooperation or Conflict?," in *The Arctic in World Affairs: A North Pacific Dialogue on Will Great Power Politics Threaten Arctic Sustainability? 2020 North Pacific Arctic Conference Proceedings*, eds, L. W. Bringham et al. (Busan and Honolulu: Korea Maritime Institute and East-West Center,

- 2020), 231–241; H. A. Conley, “From Climate Change to Great Power Competition: Reprioritizing U.S. Arctic Policy,” in *ibid.*, 53–59.
3. Intergovernmental Panel on Climate Change (IPCC), H.-O. Pörtner et al. (eds), *The Ocean and Cryosphere in a Changing Climate: Special Report of the Intergovernmental Panel on Climate Change* (Cambridge/New York: Cambridge University Press, 2022), 5.
 4. Federal Service for Hydrometeorology and Environmental Monitoring, *A Report on Climate Features on the Territory of the Russian Federation in 2019* (Moscow: Roshydromet, 2020).