

Introduction

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The European Union (EU) is a global actor, which considers itself

well placed to shape international ocean governance on the basis of its experience in developing a sustainable approach to ocean management, notably through its environmental policy, integrated maritime policy, reformed common fisheries policy, action against illegal, unregulated and unreported (IUU) fishing and maritime transport policy.¹

Over the past decade, the EU has adopted a number of pieces of legislation regarding ocean governance with internal and external dimensions, such as the Marine Strategy Framework Directive² and the Maritime Spatial Planning Directive.³ The Arctic is also on the EU's Agenda. The EU aims to ensure sustainable development in and around the Arctic region on the basis of international cooperation.⁴

Climatically, ecologically, culturally, socially and economically, the Arctic is changing in many ways with implications throughout the region and around the world.⁵ For example, Arctic sea ice has been retreating rapidly over the past decade. The extent of sea ice in the Arctic Ocean has set a new record low

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1 Joint Communication of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy of 10 November 2016 on International ocean governance: an agenda for the future of our oceans, JOIN (2016) 49, 4.

2 Directive 2008/56/EC of 17 June 2008 on establishing a framework for community action in the field of marine environmental policy [2008] OJ L164/19.

3 Directive 2014/89/EU of 23 July 2014 on establishing a framework for marine spatial planning [2014] OJ L257/135.

4 JOIN (2016) 49, 7.

5 Introduction, Arctic Biodiversity Assessment, Arctic Council Working Group Conservation of Arctic Flora and Fauna, 2013. <<https://www.arcticbiodiversity.is/index.php/the-report/chapters/introduction>> accessed 7 April 2017.

for the wintertime of 2017.⁶ Due to climate change, increased human access to formerly ice-covered areas, and the potential for increased activities such as fishing, shipping, tourism, bioprospecting, mining, and oil and gas operations, present significant legal challenges.⁷ Questions therefore arise as to whether the Arctic governance regime is adequately designed to address global environmental change, or needs to evolve to tackle challenges. One example of how governance is responding is the establishment of a legally binding regime to achieve sustainable management of fisheries in the high seas portion of the central Arctic Ocean.⁸ Another development of the current regime is the regulation of maritime activities through the adoption of the International Code for Ships Operating in Polar Waters (Polar Code)⁹ in the International Maritime Organization (IMO). In this book, our focus is what roles the EU can, and should play in shaping the Arctic governance regime to ensure sustainable development in the Arctic region.

The EU is inextricably linked to the Arctic region by a unique combination of history, geography, economics and scientific achievements.¹⁰ Three Arctic countries are EU Member States (Denmark, Sweden and Finland) and the EU maintains close relations with Iceland and Norway through the European Economic Area.¹¹ Canada, Russia and the United States are also strategic partners of the EU. The EU has a strategic interest in playing a key role in the Arctic region¹² and strong political will to enhance Arctic governance. In 2007, the EU

6 'Arctic Ice Sets New Record Low for Winter' (*MarineLink*, 22 March 2017) <<http://www.marinelink.com/news/arctic-record-winter423442>> accessed 7 April 2017.

7 R. Rayfuse, 'Melting Moments: The Future of Polar Oceans Governance in a Warming World' (2007) 16 (2) *Review of European, Comparative and International Environmental Law* 268.

8 For details of the negotiations among five Arctic coastal States (Norway, Denmark, Canada, Russia and United States) and five key high sea fishing entities (China, Japan, South Korea, Iceland and the EU)—Arctic 5+5 process, see Chapter 10.

9 IMO, Res. MEPC. 264 (68) (May 15, 2015) and IMO, Res. MSC.385 (94) (Nov. 21, 2014). International Code for Ships Operating in Polar Waters, adopted 15 May 2015 <<http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>> accessed 9 April 2017.

10 European Commission Communication of 20 November 2008 on the European Union and the Arctic Region, COM (2008) 763, 1.

11 The Agreement on the European Economic Area, which entered into force on 1 January 1994, brings together the EU Member States and the three EEA EFTA States—Iceland, Liechtenstein and Norway—in a single market, referred to as the "Internal Market" <www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAAgreement.pdf> accessed 9 April 2017.

12 JOIN (2016) 49, 2.

published the Integrated Maritime Policy,¹³ which has a strong international dimension. The European Commission tends to “promote Europe’s leadership in international maritime affairs, enhance the impact of the EU at multilateral level, strengthen regional cooperation with neighbouring countries in shared sea basins, and develop and extend bilateral relations with key partners.”¹⁴ The European Commission has specifically set out the EU’s interests in the Arctic and has published three Arctic policy documents between 2008 and 2016.¹⁵ In April 2016, the EU adopted its latest Arctic policy. It focuses on advancing international cooperation in responding to the impacts of climate change on the Arctic’s fragile environment, and on promoting and contributing to sustainable development, particularly in the European part of the Arctic.¹⁶

However, it must be pointed out that the EU does face constraints on its involvement in Arctic governance, given the fact the EU has no coastline bordering the Arctic Ocean. Five coastal States of the Arctic Ocean, the so called Arctic Five—the US, Russia, Canada, Norway and Denmark through Greenland—believe that they hold the stewardship of the Arctic.¹⁷ While the EU is willing to, and has been trying to shape Arctic governance, several questions need to be addressed: 1) What internal challenges is the EU facing in the European Arctic? 2) How could the EU pursue its involvement within relevant Arctic governance regimes at the multilateral level (e.g., the United Nations Convention on the Law of the Sea, Convention on Biological Diversity)? 3) At regional level, how could the EU strengthen regional cooperation in the Arctic, while the EU has yet to be officially accepted as an observer to the Arctic Council—the most important forum for regional cooperation? 4) What strategies should the EU develop regarding effective engagement with the Arctic Five? 5) Over which Arctic issues, such as climate change, biodiversity, ecosystem-based management, marine protected areas, energy, fisheries, tourism,

13 European Commission Communication of 10 October 2007 An Integrated Maritime Policy for the European Union, COM (2007) 575.

14 International dimensions of the EU’s Integrated Maritime Policy: questions and answers, Brussels, 15 October 2009 <http://europa.eu/rapid/press-release_MEMO-09-453_en.htm?locale=en> accessed 13 April 2017.

15 COM (2008) 763; Joint Communication of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy of 26 June 2012 on Developing a European Union Policy towards the Arctic Region: Progress since 2008 and Next Steps, JOIN (2012) 19; JOIN (2016) 49.

16 JOIN (2016) 49, 2.

17 The Ilulissat Declaration, Arctic Ocean Conference, Ilulissat, Greenland, 27–29 May 2008 <https://www.regjeringen.no/globalassets/upload/ud/080525_arctic_ocean_conference_outcome.pdf> accessed 9 April 2017.

international navigation and indigenous people, could the EU exert most influence, and even play a leadership role?

“The European Union and the Arctic” brings together academics from international law and political science to address the questions outlined above. The book is divided into three parts. The first part examines the EU’s current Arctic policy framework and the EU’s participation in various international and regional Arctic forums. The second part encompasses the EU’s engagement with the Arctic Five, providing analysis of examples of some of those relationships. The third part identifies shipping, fisheries, marine mammals and offshore activities as four key areas in which the EU could exert its influence in the Arctic. It explores the EU’s potential contributions to regulate those human activities in the Arctic.

1 Part 1: The EU’s Arctic Policy Framework

This part primarily focuses on the first three questions outlined above: the internal challenge the EU is facing in the European Arctic; how could the EU pursue its involvement within relevant Arctic governance regimes at the multilateral level; and how the EU can strengthen regional cooperation in the Arctic, while it has yet to be officially accepted as an observer to the Arctic Council.

In chapter 2, Adam Stepień and Timo Koivurova discuss challenges and opportunities for effective EU Arctic policy-making, which addresses the first and second research question of the book. They draw out the two distinct dimensions of the EU’s Arctic policies—one addressing the Circumpolar Arctic and one the European Arctic. The questions of coherence and added value of the EU Arctic policy are considered, leading to three challenges for the EU: balancing between Circumpolar and European Arctic policy spaces; influencing general sectoral EU policy-making; and managing multiple channels of interaction with Arctic actors and stakeholders.

Chapter 3 by the late Alyson J.K. Bailes and Krismundur Ólafsson of the University of Iceland argues that questioning whether the EU is an Arctic actor is redundant when the Union is clearly present through a number of sub-regional structures and partnerships. As a founding member of the Barents Euro-Arctic Council (BEAC, since 1993), through its own Northern Dimension (ND, since 1999), and through its increasing bilateral engagement with the ‘West Nordic’ nations of Greenland, Iceland and the Faroe Islands. The chapter thus addresses the third question outlined in our introduction—how the EU can strengthen regional cooperation in the Arctic, while it has yet to be officially accepted as an observer to the Arctic Council.

2 Part 2: The EU and the Arctic Region

Part 2 of the book explores the EU's effective engagement with the Arctic Five in Arctic governance. Chapter 4 by Mar Campins Eritja deals with the EU's relationship with Greenland, which has, due to its location in the Arctic, acquired a unique strategic relevance for the EU and other economic powers interested in the Arctic's resources. The chapter describes how an enhanced relationship between the EU and Greenland may support the EU's policy objectives in the Arctic. The chapter focuses on the recognition of the Greenlandic population's rights as indigenous peoples by the EU in the achievement of Arctic sustainable development. Special attention is paid to the exploitation of offshore oil and gas resources in Greenland's waters, and the participation of the Greenlandic population in the decision making process according to Greenland's regulation and the applicable EU secondary law.

In chapter 5 Andreas Østhagen and Andreas Raspontik investigate the complex and ambiguous relationship between Norway and the EU. Although Norway has pro-actively worked to get the EU more involved in Arctic governance issues, it has, from the European Commission's first Communication on Arctic issues in 2008, been sceptical of various policy and legal steps taken by the EU. This chapter demonstrates that the EU's manifold Arctic policy endeavours hold a distinct regional element in Norway, beyond the characterisation of the High North (Norwegian Arctic) as a distinct foreign policy. The chapter argues that Norway's relationship with the EU in the Norwegian Arctic must be understood as a continuation of Norway's larger EU-policy, where the balance between separation and further integration is crucial.

Chapter 6, written by two of Canada's leading experts on Arctic sovereignty and foreign policy issues—Whitney Lackenbauer and Suzanne Lalonde, seeks to correct misconceptions about the state of the Canada-EU Arctic relationship. In Canada, the EU's efforts to constructively engage in the Arctic have been met with scepticism and distrust. In turn, Canada's Arctic policy is often cast in a harsh light in the EU. To explain Canada's approach to Arctic issues, they provide a rich overview of Canada's historical engagement with the region and the development of its Northern Strategy, explaining why it places a high priority on sovereignty, economic development for the benefit of Northerners, environmental protection, and governance (particularly by Arctic States and Northern Indigenous peoples). The authors then bring the Arctic policies of Canada and the EU into dialogue, suggesting that evolving policy positions point towards an increasingly convergent, cooperative agenda between Canada and the EU on Arctic issues. Nevertheless, divergent interests and messaging associated with shipping and freedom of the seas/navigation rights,

the rights of Indigenous peoples and the trade in marine mammals, resource development, and environmental stewardship could continue to complicate the relationship.

Tina Hunter in chapter 7 examines the relationship between the EU and Russia in the Arctic, focusing on the development of the Arctic petroleum resources, combined with further development of the Northern Sea Route. This chapter compares Russian policy and conduct in the Arctic with that of the EU. In undertaking this comparative analysis, it necessarily examines similarities and differences in policy of these two actors in the Arctic, and the cooperative nature of their relationship.

Chapter 8 by Michael Fakhri compares the US marine mammal conservation laws and the 2015 EU trade import ban on seal products. This chapter argues that whoever regulates animals is in effect regulating land and water of where animals live. To regulate a space leads to regulating people by restricting their activities. The seal regimes are principal ways each authority negotiates its relationship with Arctic indigenous communities and expresses power in the Arctic. The chapter therefore considers seal hunting laws as part of a much broader jockeying for control and authority—sovereign power—in the Arctic. Sovereignty is employed as an analytical concept that is pluralist and relational, involves the regular negotiation of authority and jurisdiction, and constitutes a complex relationship to land. It claims that sovereign power is only as legitimate and as good as one's relation to Arctic indigenous communities.

3 Part 3: The EU and Regulating Human Activities in the Arctic

Part 3 discusses the EU's potential role in regulating human activities in the Arctic. This part identifies shipping, fisheries, marine mammals and offshore operations as key areas where the EU exerts most influence. The EU's role in relation to Arctic shipping is explored by Henrik Ringbom in Chapter 9. This chapter explores whether the EU's cautious policy on Arctic shipping is dictated by legal necessity or could there be ways to take a more assertive stance, if the political situation permitted? The EU's own statements related to Arctic shipping are discussed, while legal options and restraints for EU measures in this area are assessed. A number of non-regulatory ways in which the EU could play a role in Arctic shipping are mentioned as well.

In Chapter 10 Nengye Liu examines the EU's potential contributions to the governance of high sea fisheries in the central Arctic Ocean. Due to Arctic sea ice melting and other impacts of climate change, it is now widely recognized

that fish stocks in the Arctic Ocean may occur both within areas under current fisheries' jurisdiction of the coastal States, and in the high seas portion of the central Arctic Ocean. To achieve sustainable management of fisheries in the high seas portion of the central Arctic Ocean, non-Arctic States, especially high sea fishing States, such as the EU, must also be involved in any regulatory efforts. Based on both desk-top studies and field research, this chapter focuses on the EU's possible internal and external actions that could help achieve sustainable management of potential fisheries in the high sea part of the central Arctic Ocean.

In chapter 11, Martin Hennig and Richard Caddell evaluate the legal controversies surrounding the regulation of marine mammals under EU law. This issue has long presented considerable regulatory difficulties for the EU, which has sought to balance its longstanding support for the traditional rights of indigenous peoples against its legal obligations to address popular concerns over animal welfare. This chapter examines the effectiveness of the specific policies introduced by the EU in respect of the hunting of seals and whales by Arctic indigenous peoples, weighed against its overarching policy objectives towards the High North. As regards seal hunting, this chapter demonstrates that the legislative intervention of the EU may have achieved its aim of enhancing animal welfare, yet at the same time it has fundamentally undermined the interests of Inuit sealers. Similarly, this chapter argues that while the EU has pledged to promote Arctic interests within relevant international organisations, it has proved to be a somewhat inconsistent ally to the indigenous communities of the High North in their bid to secure subsistence hunting and trade entitlements for marine mammal products.

In Chapter 12 Henning Jessen explores the role of the EU in influencing offshore oil and gas operations in the Arctic and the way in which its activities may link with the activities of other organisations working on these issues. The EU actively seeks to contribute to the existing efforts of the Arctic States "to develop joint approaches and best practice to address the potential environmental impact and safety concerns related to increasing activities in the region". This referral also relates (inter alia) to the new intra-EU standards on offshore oil and gas drilling as governed by Directive 2013/30/EU on the safety of offshore oil and gas operations. Some of the existing "joint approaches and best practices" applicable in the Arctic are highlighted in this chapter. This discussion includes both the EU approach and the wider legal framework of best practices and safety standards relating to offshore operations that deserve enhanced future political attention and support—both by the EU and other stakeholders.