



The European International Model United Nations 2016

Security Council



Photo source: Kevin Kallauger, *The Economist*, August 16, 2007.

Arctic Territorial Disputes

Welcome Letter

Distinguished delegates,

On behalf of The European International Model United Nations (TEIMUN), we would like to welcome you to the United Nations Security Council. Participating as a delegate at the oldest collegiate MUN in Europe, especially in the Security Council, will be a challenging, yet extremely rewarding experience for you. In and out of session, you will be pushed to consider innovative solutions to modern issues of security. Outside of the committee room, you will have the opportunity to take part in cultural excursions, break a move on the dance floor, play football on the beach, all while making friends from around the world.

Through this background guide we hope to provide you with the necessary information needed to find a solution for the ongoing disputes of the Arctic territory. As chairs, we expect the delegates of the Security Council to give their best effort while respecting the rules of procedure and their fellow delegates. Ultimately, we hope that TEIMUN will be an amazing experience for all of you, and that besides the challenging debates and having a blast, you will make connections and friends that will last for a lifetime. We hope to meet you all in person very soon, and welcome to TEIMUN!

Your chairs,

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Introduction

In August 2007, Russian parliamentary deputy and Arctic explorer Artur Chilingarov placed a Russian flag close to the North Pole, declaring that "the Arctic is ours and we should manifest our presence."¹ Other Arctic states, such as Canada and Denmark, soon followed suit by announcing they would explore extending their States' sovereignty. In the light of these developments and increased mobility and economic potential within the Arctic resulting from global warming, fears of a scramble for the Arctic with escalating territorial disputes grew not only in the media but also in sections of academia.²

In the upcoming years, tensions de-escalated, as the eight Arctic states (Canada, Denmark, Norway, the Russian Federation, the United States of America, Finland, Iceland and Sweden) reaffirmed their commitment to the United Nations Convention on the Law of the Sea (UNCLOS) in the 2008 Ilulissat Declaration. Furthermore, academics seem agree on the view that all States involved have more to gain from cooperation within the existing international legal framework than from escalation.³ This notion was reaffirmed by the resolution of a 40-year dispute between Norway and Russia over the Barents Sea in 2011, which saw an equal division of the contested territory⁴

However, considerable territorial disputes in the region remain unresolved and the effectiveness of UNCLOS in this regard is debatable.⁵ Moreover, the extent to which states will respect the existing international legal framework cannot be known with certainty, in particular when taking into account deteriorating relations between Russia and the West.⁶

The following background paper intends to provide background information on the ongoing territorial disputes in the Arctic region in four sections. Firstly, it shall analyse the increasing national interests in the region, which are arising from climate change. Subsequently, UNCLOS' provisions relevant to the subject will be examined, reviewing the effectiveness for the settlement of territorial disputes in the Arctic. Keeping this legal background in mind, the third section will explain the most important conflicting claims. Finally, any action interfering with the fragile ecosystem of the Arctic has to take environmental issues into account. Hence, the last chapter will set out the existing international structures for the protection and preservation of the environment in the region.

¹ <http://www.ft.com/intl/cms/s/0/65b9692c-4e6f-11dc-85e7-0000779fd2ac.html#axzz409fla7DV>

² <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=192957>

³ <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=192957>

⁴ <http://www.stimson.org/content/evolution-arctic-territorial-claims-and-agreements-timeline-1903-present>

⁵ <http://theglobaljournal.net/article/view/439/>

⁶ <http://www.economist.com/news/international/21636756-denmark-claims-north-pole-frozen-conflict>

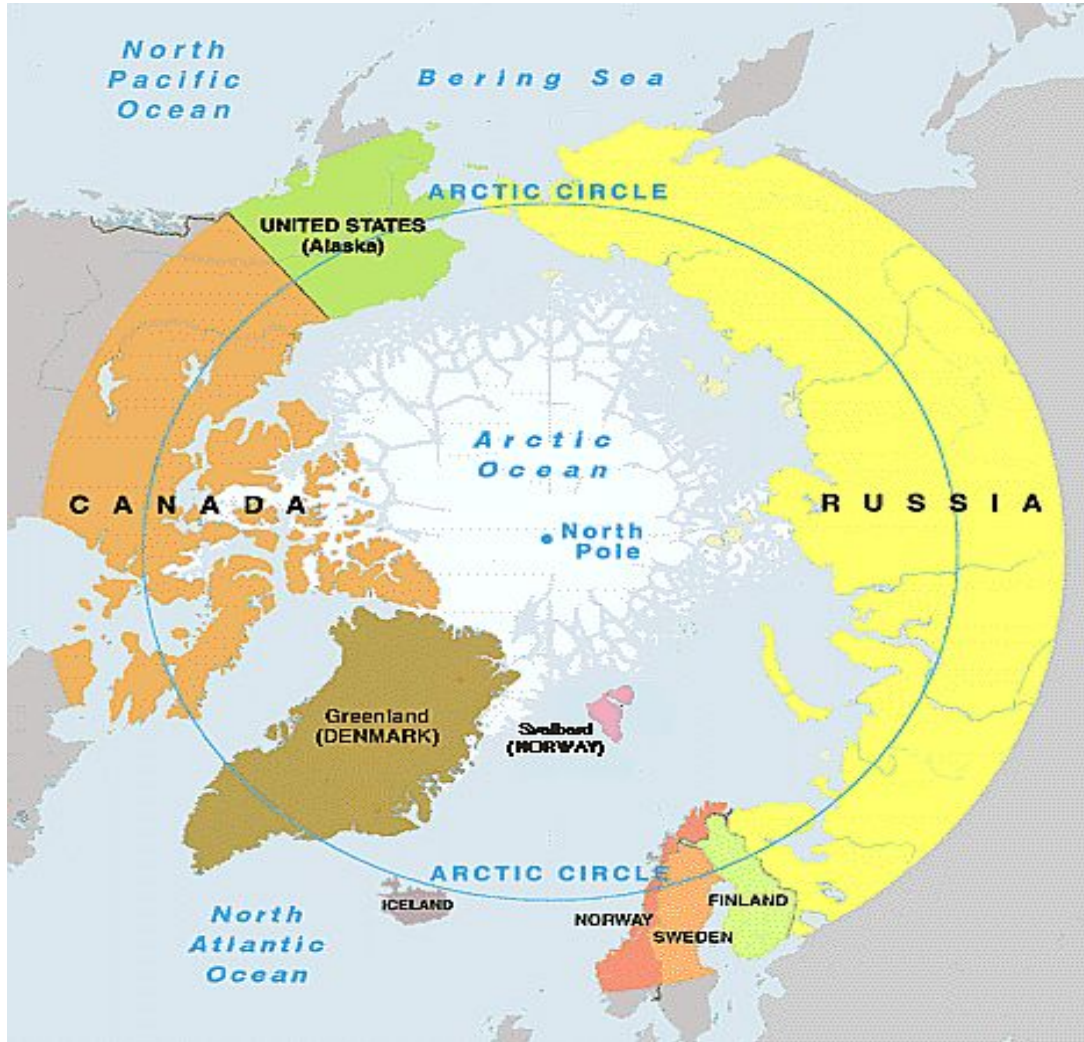


Figure 1:
 Map of the Arctic States, Alaska Business Monthly.

Increasing National Interests in the Arctic Region

The consequences of climate change can be felt and observed all over the planet. However, its implications are much more severe and abrupt in the Arctic. The region is warming at approximately twice the rate of the global average, resulting in rapidly changing landscapes. As a consequence, new shipping routes are opening up and vast resources are increasingly becoming available.⁷ This section shall examine these two results of global warming.

In 1922, Arctic explorer Villjamur Stefansson predicted that “there is no northern boundary beyond which productive enterprise cannot go until North meets North on the opposite shores of the Arctic Ocean as East has met West on the Pacific.”⁸ This statement mirrors the century old idea of cutting the distance and subsequent costs of vessels sailing from Asia or America to Europe, by navigating through the Arctic

⁷ http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf
<https://www.foreignaffairs.com/articles/arctic-antarctic/2008-03-02/arctic-meltdown>

⁸ <http://www.worldpolicy.org/blog/2015/04/08/future-shipping-trade-arctic-waters>

shipping routes. Sailing along the North East-Passage, for instance, reduces the distance from Asia to Europe by 40% in comparison to the traditional route via the Suez Canal.

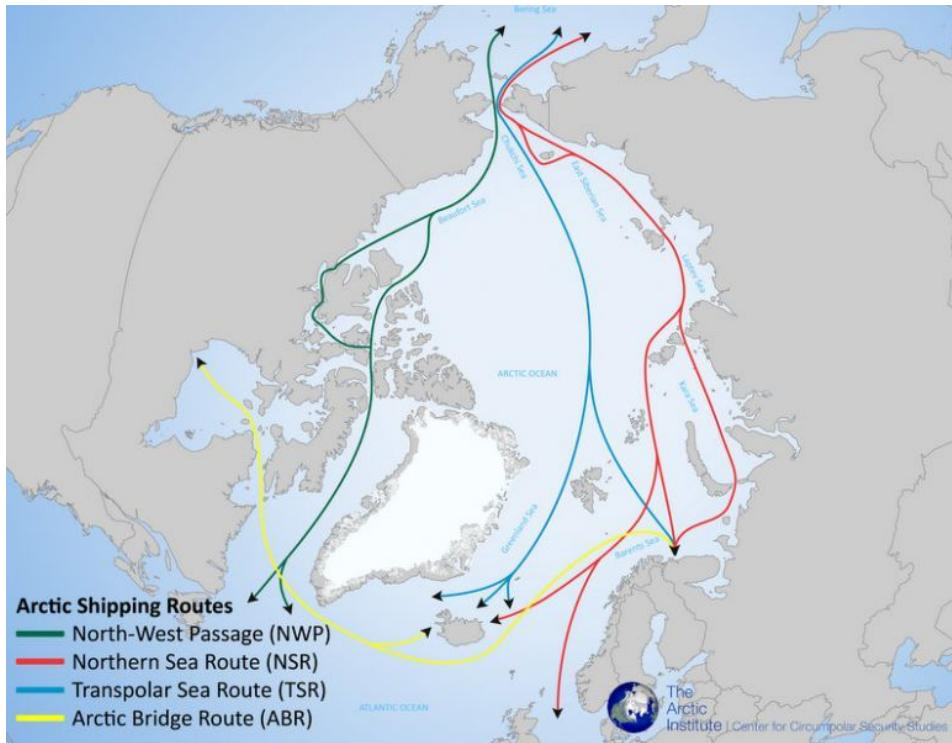


Figure 2: "The Transportation Passages of the Arctic Ocean," *World Policy Journal*.

It is, however, only recently that Sigurdsson's vision is becoming reality. As ice-free periods are becoming longer and significant technological advances are being made, previously inaccessible shipping routes are becoming operational.⁹ In 2014, for instance, 41 vessels sailed through the North-East Passage, compared to only two in 2009. With climate models expecting ice-free summers by the mid-century, it can almost certainly be affirmed that Arctic trade will increase in the near future.¹⁰

In addition to new shipping routes, global warming and technological progress are also making the exploitation of vast deposits of mineral reserves financially feasible. The Arctic is believed to contain approximately 25% of the world's oil and gas, as well as vast amounts of other highly valuable resources, such as copper or coal.¹¹

The pace of climate change in the Arctic has made oil and natural gas, as well as new shipping routes, increasingly accessible. As a result, the likelihood of escalating territorial disputes increases, since stakeholders tend to become more assertive in order to secure national interests and to prevent adversaries from obtaining access to essential resources.

⁹ http://www.discoveringthearctic.org.uk/1_northwest_northeast_passages.html

¹⁰ <http://www.worldpolicy.org/blog/2015/04/08/future-shipping-trade-arctic-waters>

¹¹ <http://www.wsj.com/articles/SB120363436202384279>

The United Nations Convention on the Law of the Sea

With the stakes for coastal States rising in the Arctic, the legal framework relevant for the region gains major importance. As the Arctic can be seen as an ice-covered ocean, it falls under the scope of UNCLOS, which regulates the use of the world's oceans.¹² The sections of UNCLOS relevant to territorial disputes in the Arctic region shall be analysed in the following.

The Convention establishes maritime baselines, from which several areas are defined. The degree of the coastal States' sovereignty diminishes with increasing distance from the baseline. The area up to 12 nautical miles (nm) seaward from the baseline is called territorial waters, the zone extending 24nm the 'contiguous zone' and the area ranging up to 200nm the Exclusive Economic Zone (EEZ). In all these zones, the coastal States possess the right to sole exploitation of natural resources. Foreign vessels have to be granted 'innocent passage' in territorial waters and rights of navigation in EEZs. 'Innocent passage' is defined as navigation through territorial waters "so long as it is not prejudicial to the peace, good order or security of the coastal State."¹³ It is to be noted that the territorial claims in the Arctic which fall in one of these areas are mostly undisputed.¹⁴

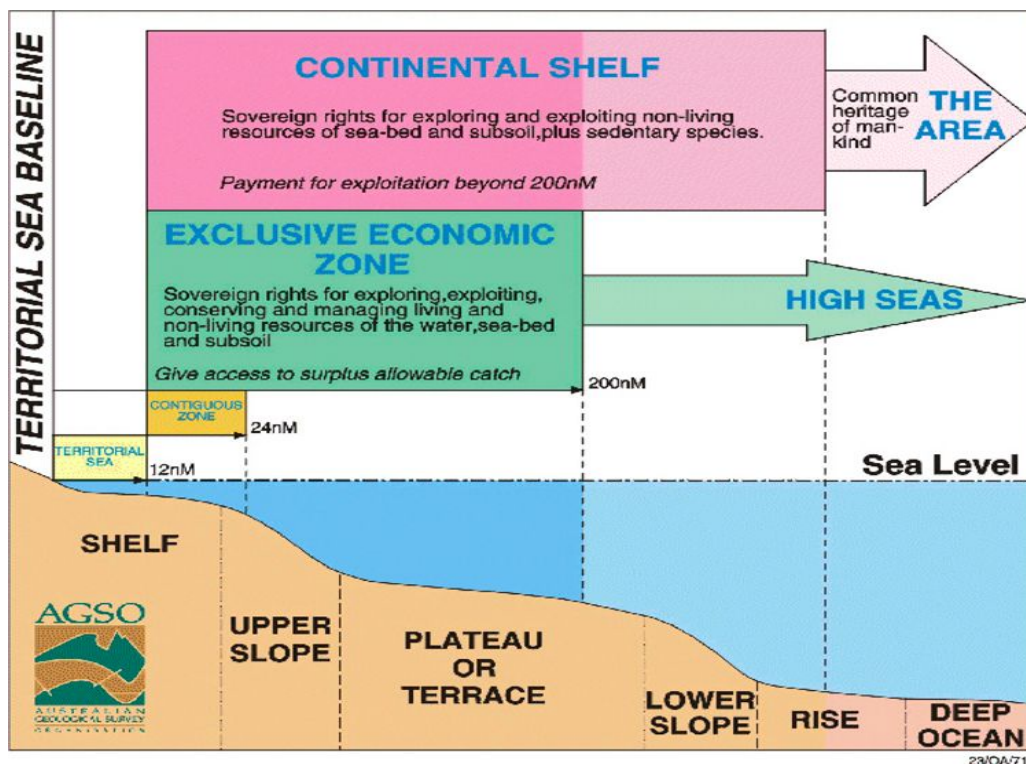


Figure 3: "The Extent of the Continental Shelf and other Marine Zones Contained within UNCLOS," Australian Geological Survey Organisation.

¹² <http://theglobaljournal.net/article/view/439/>

¹³ UNCLOS Art. 18,19

¹⁴ <http://theglobaljournal.net/article/view/439/>

In fact, territorial claims are mostly based on UNCLOS' provisions regarding the continental shelf. According to these articles, States are entitled to exploit certain natural resources, such as oil and gas, beyond the 200nm limit, if the continental margin of the respective nation exceeds its EEZ. However, UNCLOS also establishes an outer shelf limit, as the territory claimed cannot exceed 350nm from the baseline or 100nm from the 2,500 meter isobaths, which is a line connecting the depth of 2,500 meters.¹⁵

In order to officially lay claim on the basis of the continental shelf provisions, a coastal State is required to submit scientific proof in regard to the extent of its continental margin to the Commission on the Limits of the Continental Shelf (CLCS), which consists of 21 elected experts. This submission has to be presented no later than 10 years after entry into force of the UNCLOS for the respective State. After reviewing the submitted data, the CLCS issues a recommendation on the delineation of the state's continental shelf. However, as the decision of the CLCS is politically neutral and States may share continental shelf land mass, the ultimate demarcation of maritime boundaries remains dependent on the applicant State.¹⁶ So far, Russia, Norway, Denmark and Canada have submitted claims in the Arctic region to the CLCS.¹⁷

Nonetheless, UNCLOS also entails dispute-settlement mechanisms in regard to the demarcation of maritime boundaries. UNCLOS obliges parties to the treaty to settle disputes by peaceful means and sets out different procedures, if no agreement is reached in negotiations between the disputing states.¹⁸ Hence, conflicting States can choose to refer the case to the International Tribunal of the Law of the Sea, the International Court of Justice or arbitral tribunals.¹⁹ However, UNCLOS also gives states the option to declare that they are not bound by these mechanisms.²⁰ Since Russia and Canada have made use of such a declaration and the U.S. has not ratified UNCLOS, Norway and Denmark are the only states that have submitted a claim to the CLCS and are bound by the legally-binding dispute-settlement mechanisms.²¹

With UNCLOS, an international legal framework covering the territorial disputes in the Arctic region is in place. However, the dispute-settlement mechanisms of

¹⁵ UNCLOS, Art. 76

<http://theglobaljournal.net/article/view/439/>

http://muse.jhu.edu.proxy-ub.rug.nl/journals/sais_review/v033/33.2.carlson.html

¹⁶ Alex G. Oude Elferink & Constance Johnson, Outer Limits of the Continental Shelf and "Disputed Areas": State Practice Concerning Article 76(10) of the LOS Convention, 21 INT'L J. MARINE & COASTAL L. 461, 464 (2006). http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf, 352ff.

¹⁷ <http://www.stimson.org/content/evolution-arctic-territorial-claims-and-agreements-timeline-1903-present>

¹⁸ UNCLOS Art. 279, 281

¹⁹ UNCLOS 287

²⁰ UNCLOS Art. 298

²¹ http://www.un.org/depts/los/convention_agreements/convention_declarations.htm

UNCLOS in regard to the demarcation of maritime boundaries lack teeth. The CLCS solely possesses the mandate to delineate the continental shelf and Norway and Denmark are the only states to be bound by legally-binding procedures in the Arctic region.

The Territorial Claims of the Arctic States

All eight Arctic States may, in theory, lay claim on territory in the Arctic region on the basis of UNCLOS' provisions concerning the continental shelf. The following will examine the major territorial issues persistent between the main actors in the region, namely the USA, Canada, Denmark and Russia.



Figure 4: "Arctic Territorial Claims," IBRU, Durham University.

To start with, the USA currently finds itself in ongoing disputes with Canada in respect to two areas. Firstly, the two states disagree on the legal status of the Arctic Archipelago of Canada, which forms part of the North-West Passage. At the core of this conflict lies a dissent on whether Canada may require foreign vessels for its authorisation or if a right of innocent passage has to be granted. Furthermore, Canada and the USA remain in dispute over the demarcation of borders in the Beaufort Sea, which is located north of the Alaskan-Canadian frontier and contains

oil and gas resources.²² In regard to the U.S. claims in the region, it is noteworthy that it does not have access to the forum in which arising disputes are settled, as it has not ratified UNCLOS. Despite this, it is currently collecting proof for a continental shelf claim based on customary international law.²³

In addition, Canada is also involved in a conflict with Denmark about the ownership of Hans Island. The uninhabited rock, which lies in the territorial waters of both states, is of strategic importance for the North-West Passage and is believed to contain considerable reserves of oil.²⁴

Despite these existing unresolved territorial issues, the biggest potential security risk arises from extended continental shelf claims over the Lomonosov Ridge. After having collected scientific data, Canada, Denmark and Russia all have presented submissions to the CLCS, which include this underwater mountain range stretching across the Arctic Ocean. Even though all involved States have expressed their commitment to UNCLOS, a recent military build-up in the region by Russia, manifested through large scale exercises and the establishment of military bases, has resulted in growing uncertainty over its territorial ambitions.²⁵

To conclude, one can assert that there are various unresolved territorial disputes in the Arctic region. Even though these issues have been dealt with within the existing international legal framework of UNCLOS so far, the deteriorated relation between Western states and Russia is also felt in the Arctic. Mostly in regard to the Lomonosov Ridge, mistrust towards other states' intentions is rising.

Arctic Environmental Protection

The pace of climate change in the Arctic not only has huge implications for the economic potential of the region but also for its fragile ecosystem. Global warming in general is disrupting the food chain and affecting all Arctic species from the polar bear to the sea ice algae. However, the increased economic activity associated with it is devastating the marine environment even further.²⁶ The following section shall provide an overview of some existing international mechanisms to tackle environmental challenges in the Arctic region.

On the other side of the planet, the Antarctic Treaty governs relations in the Antarctic. The original Treaty, which aims at leaving all territorial claims in abeyance, forbidding military action and promoting scientific collaboration, was extended in 1991 through the Protocol on Environmental Protection to the Antarctic Treaty.²⁷ This Protocol "designate(s) Antarctica as a natural reserve, devoted to

²² http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf

²³ <http://www.icj-cij.org/docket/index.php?sum=295&code=cs2&p1=3&p2=3&case=52&k=cc&p3=5>

²⁴ http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf

²⁵ <http://www.economist.com/news/international/21636756-denmark-claims-north-pole-frozen-conflict>

²⁶ http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf, pages 366-369.

²⁷ Protocol on Environmental Protection to the Antarctic Treaty, <http://www.ats.aq/e/ep.htm>.

peace and science.”²⁸ However, a similar international regime seems hardly applicable to the Arctic. To mention just some reasons, the Antarctic is much more isolated from human activity and constitutes a continent, whereas the Arctic is an ice-covered ocean surrounded by land mass.²⁹

Instead, the primary institutional framework in the Arctic region is the Arctic Council, consisting of the eight Arctic nations, as well as representations of indigenous communities.³⁰ This intergovernmental forum was established with the aim of promoting collaboration in the Arctic and mostly focuses on environmental protection and sustainable development.³¹ Even though the Arctic Council has been successful in conducting research, its record in terms of effectively addressing the identified issues is rather poor. The organisation suffers from a lack of funding and authority, as Member States remain responsible for the implementation of measures.³²

In addition to the Arctic Council, the Polar Code constitutes another means of environmental regulation in the region. Originally, it was intended to create a mandatory common set of safety and pollution rules particular to Arctic navigation, but objections by the United States led to the Polar Code solely resulting in voluntary guidelines.³³ Nonetheless, recent developments have witnessed a return to the original idea of obligatory standards, as the International Maritime Organisation formally adopted the Polar Code in 2015, with its entry into force determined in 2017. Critics, however, argue that essential issues, such as its precise enforcement or reactions to a possible oil-spill, remain unresolved.³⁴

Despite the lack of an international regime similar to the Antarctic Treaty in Antarctica, the Arctic Council and the Polar Code constitute Arctic-specific structures designed to tackle environmental matters in the region. However, as many unresolved issues remain, it is highly questionable if these mechanisms have the capacity to efficiently respond to the pressing environmental challenges of the Arctic.

²⁸ Protocol on Environmental Protection to the Antarctic Treaty, Art. 2, <http://www.ats.aq/e/ep.htm>.

²⁹ http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf, page 373.

³⁰ Declaration on the Establishment of the Arctic Council, Art. 2

³¹ Declaration on the Establishment of the Arctic Council, Art. 1

³² New Ocean, 22.

³³ http://archive.law.fsu.edu/journals/transnational/vol18_2/isted.pdf, page 371.

³⁴ <http://www.worldpolicy.org/blog/2015/09/02/abiding-%E2%80%98polar-code%E2%80%99>

Conclusion

In the past, the Arctic Region was nearly inaccessible to economic activity. However, global warming and technological advances have made the exploitation of vast natural resources, as well as navigation in newly passable Arctic shipping routes, feasible. Due to these incentives, the region has witnessed an increase of territorial claims by the Arctic coastal states. So far, these ambitions have taken place within the framework of UNCLOS, with the regional powers trying to expand their maritime sovereignty by submitting extended continental shelf claims. Nonetheless, it is unclear if the existing international legal order will be capable of providing solutions to the territorial issues of the region. UNCLOS' dispute-settle mechanisms seem to lack enforcement, as they are not binding on most parties involved. Additionally, in the aftermath of the incidents in Ukraine, many States are hesitant to trust the commitment and motives of others in these international agreements.

International cooperation in the Arctic is also indispensable for the protection and preservation of its pristine ecosystem. Even though no similar regime to the Antarctic Treaty exists in the region, the Arctic Council and the Polar code constitute means designed to tackle the environmental challenges in the region. Just as with the existing mechanisms to enhance security, however, the effectiveness of these structures is highly debatable.

To conclude, the Arctic region has the potential to become a prime example for both the efficiency or the failure of the international community in addressing environmental issues and in resolving territorial disputes in a peaceful manner. It will be the responsibility of the Security Council at TEIMUN 2016 to ensure that international cooperation heads in the right direction.

Questions a Resolution Must Answer (QARMAS)

1. Which measures should be taken to solve the issues of conflicting territorial claims in the Arctic and, in particular, to prevent a possible military escalation?
2. The UNCLOS dispute-settlement mechanisms seem to lack accountability. Can security be enhanced by establishing a regime with binding powers? Should a multilateral agreement specifically for the Arctic region, such as the Antarctic Treaty for Antarctica, be set up?
3. The Arctic Council is the primary intergovernmental forum in the Arctic. What should its role in regard to territorial issues be? Should its mandate be strengthened to address, for instance, security issues?
4. How can international trade routes be guaranteed and safeguarded? Which role can international regimes play in this regard?
5. Heightened economic activity threatens the fragile ecosystem of the Arctic. How can an international agreement protect and safeguard the environment and native communities depending upon it? Should the powers of the Arctic Council be extended to this end?

Authors: Arijan Pranjić, Oliver Unverdorben. TEIMUN 2016.