

The Arctic: A Strategic Challenge for the 21st Century

by *Günter Gloser**

Berlin, the conference location, may be far distant from the region we were discussing, but at least certain famous polar bears can be found here, and the temperature is certainly more comfortable. But I do not wish to keep you in Berlin: rather my words should take you straight out into the crisp cold and brilliant blue of the Nordic ice pack. Someone who did see it with his own eyes, but also lost his life there, was the German polar researcher Alfred Wegener. I ask you to bear in mind this thought of Alfred Wegener: "With what indifference nature ignores our achievements." And now I would like to focus on this concept of indifference and turn the question round: can we be indifferent to the Arctic?

The fact that both coastal and non-coastal States gathered for a conference in Berlin, shows that we are not at all indifferent to the Arctic. We cannot ignore it, we cannot be indifferent to it, neither the responsibilities it entails nor the chances it offers. Because what we are talking about here is nothing less than one of the major strategic challenges of the 21st century. It affects each and every one of us. By the way, Alfred Wegener's trips to Greenland were always international expeditions. This conference, too, has been organized in cooperation with the Danish and Norwegian Foreign Ministries.

That the Arctic poses a strategic challenge came as a surprise to many who thought it was the Cinderella of the last century. Just a little over a 100 years ago, polar researchers like the Norwegian Roald Amundsen needed two-and-a-half years, with two long winters, to navigate the famous Northwest Passage. Between 80 % and 90 % of the Arctic Ocean lay under a thick layer of ice. The Arctic region was cut off from the outside world. It was entirely left to the indigenous population. Their way of life was, and is, naturally oriented and adapted to the Arctic environment.

Over the past few decades, and especially during the East-West confrontation, the Arctic seemed to be forgotten. This period was characterized by armament on both sides, submarines, eavesdropping equipment and problems with handling radioactive war weapons. The two sides faced each other highly armed and full of mistrust.

Now, at the start of the 21st century, there has been dramatic change. The planting of the titanium Russian flag near the North Pole by Artur Chilingarov, a member of the Duma, in July 2007 was a symbolic act. But even before that the Arctic had become a top geopolitical issue among the media. Buzzwords about the

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threat of a new “Cold War” and the start of a race for Arctic resources reminiscent of the “Gold Rush” began to do the rounds.

But leaving aside the occasionally overheated rhetoric, one thing must be said: the challenges posed by the Arctic are indeed many and varied, and in many cases tackling them is a matter of urgency. Why all the drama? I can point that out very briefly, because the facts are well-known:

- The Arctic ice pack is melting at a breathtaking rate. At the beginning of the summer it is only 4.1 million square kilometers in extent. That is almost 40% less than previous averages. The measurements from 2007 and 2008 confirm that the negative trend is continuing. Change is not in sight.¹
- According to estimates from the National Snow and Ice Data Center (NSIDC) in Boulder/Colorado, it is conceivable that there will be no pack ice in the Arctic as early as summer 2030.²
- It must be feared that these changes will impact on the global wind and ocean currents so vital for so many creatures on land and in the sea.
- At the same time, renowned government research institutions estimate that there are around 90 billion barrels of oil and 50 trillion cubic meters of natural gas in the Arctic. That would be equivalent to just over 20% of global reserves.³
- This has led to intensive consideration of how and by whom these reserves can be used in future, even if the fact that they would be so expensive to exploit would necessitate high oil prices.
- Current developments are accompanied by indications of increased military engagement in the region on all sides. This led NATO to discuss the matter at a recent meeting in Reykjavik.

Of course we must avoid exaggeration. But: given their ecological, energy policy and security policy implications, the trends now emerging in the Arctic do give cause for concern. In October 2007 Foreign Minister Steinmeier commented on this, saying that given the extent and speed of climate change, the windows of opportunity were even smaller than had been feared and that this would spark areas of conflict which no one could have foreseen five or ten years ago.⁴

¹ See Arctic Council ‘Arctic Marine Shipping Assessment 2009 Report’ (26 April 2009) <<http://arcticportal.org/en/pame/amsa-2009-report>> (3 July 2009).

² National Snow and Ice Data Center ‘Arctic Sea Ice Shatters All Previous Record Lows’ Press Release (1 October 2007) <http://nsidc.org/news/press/2007_seaiceminimum/20071001_pressrelease.html> (3 July 2009); other estimates cited in Fr a n c k x ‘Should the Law Governing Maritime Areas in the Arctic Adapt to Changing Climatic Circumstances?’ in: Koivurova/Keskitalo/Bankes (eds.) *Climate Governance in the Arctic* (Springer Verlag London 2009) 125.

³ US Geological Survey ‘Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle’ Factsheet 2008-3049 <<http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>> (3 July 2009); for details see also P e t t e r s s o n ‘Mitigation Possibilities in the Energy Sector – An Arctic Perspective’ in: Koivurova/Keskitalo/Bankes (note 2) 311 ff.

⁴ Steinmeier ‘Speech by Federal Foreign Minister Frank-Walter Steinmeier on “Global Warming – an International Challenge”’ (at 2nd EnBW Climate Conference, Berlin, 23 October 2007) <<http://www.zaoerv.de/>>

In March 2008 the High Representative and the European Commission warned of changing “geo-strategic dynamics of the region with potential consequences for international stability and European security interests”.⁵ That is why the European Union, in its Arctic Communication of November 2008, detailed how and why the EU and its Member States should engage in the Arctic region.⁶

In January 2009 a presidential directive finally established US policy on the Arctic afresh for the first time in many years.⁷ At a high-level Arctic Conference at the end of May 2008, the five Arctic coastal States agreed on general rules designed to counter the Arctic challenge. They noted that the law of the sea provides a solid foundation for the responsible management of issues relating to the continental shelf, protection of the marine environment, freedom of navigation and marine scientific research. In order to protect the unique ecosystem of the Arctic Ocean, there is to be cooperation among the five coastal States and other interested parties.⁸

There is also talk of cooperation when it comes to emergency rescue activities. Safety at sea is to be effected through bilateral or multilateral arrangements between affected States. There is also mention of cooperation among the coastal States and with other interested parties when it comes to the collection of scientific data concerning the continental shelf.

These statements are encouraging and to be welcomed. They confirm the validity of the international law of the sea, particularly in the form of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁹ They also reflect the five coastal States’ desire to cooperate with third parties. Non-coastal States should respond to this desire, take up this offer. Of course, this gives rise to the question of what form such cooperation should take.

What instruments and what institutions can meet the challenges posed by the Arctic? Our consideration of the question must, of course, start off with what we already have. In other words, what laws and regulations do we already have? How can they best be fleshed out and implemented?

[//www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Reden/2007/071023-EnBW-Klimakongress-Rede.html](http://www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Reden/2007/071023-EnBW-Klimakongress-Rede.html) (17 June 2009).

⁵ Council of the European Union ‘Report 7249/08 from the Commission and the Secretary-General/High Representative to the European Council – Climate change and international security’ (3 March 2008) <<http://register.consilium.europa.eu/pdf/en/08/st07/st07249.en08.pdf>> (17 June 2009).

⁶ Commission of the European Communities ‘Communication from the Commission to the European Parliament and the Council – The European Union and the arctic region’ COM(2008) 763 final (20 November 2008).

⁷ United States National Security Presidential Directive and Homeland Security Presidential Directive NSPD 66/HSPD 25 ‘Arctic Region Policy’ (9 January 2009) <<http://www.fas.org/irp/offdocs/nspd/nspd-66.htm>> (17 June 2009).

⁸ See Ilulissat Declaration, Arctic Ocean Conference, Greenland, 27–29 May 2008 <<http://arctic-council.org/filearchive/Ilulissat-declaration.pdf>> (16 June 2009).

⁹ United Nations Convention on the Law of the Sea (concluded 10 December 1982, entered into force 16 November 1994) 1833 UNTS 396.

But I don't believe we can stop there. No, it seems to me that we must close existing gaps. Let me give you a few examples:

1. The Environment

It is true that the UN Convention on the Law of the Sea lays down rules for the protection and preservation of the marine environment. But in many cases its provisions are too general and open to interpretation. With the exception of the regulation on ice-covered areas,¹⁰ they are not specific to the Arctic. Other environmental aspects are regulated in a host of multilateral agreements – again, these are not specific to the Arctic.¹¹ Let me remind you here of the joint call made by Foreign Minister Steinmeier and his British colleague Minister Miliband in March last year: “It is vitally important for European Security to implement governance structures for the Arctic region based on international law, aiming at a cooperative and peaceful management of resources and preserving the ecological heritage of mankind.”¹²

2. The Common Heritage of Mankind

The high sea of the Arctic Ocean has to date been an area regarded by the UN Convention on the Law of the Sea as part of the common heritage of mankind.¹³ If there should be a substantial enlargement of the national outer continental shelf, which would reduce the size of the Area regarded as the common heritage of mankind,¹⁴ then how will environmental interests and other international concerns be safeguarded?

3. Research

Polar research is of outstanding interest to the international community and to numerous research countries – not least because the Arctic is an early indicator of climate change. So there must be as broad a scope as possible for such research.

¹⁰ Art. 234 UNCLOS.

¹¹ Winkelmann ‘Arktische Ressourcen nutzen und arktische Umwelt schützen: Quadratur des Kreises?’ in: Simonis et al. (eds.) *Lob der Vielfalt, Jahrbuch Ökologie 2009* (Hirzel Stuttgart 2008) 38-39.

¹² Steinmeier/Miliband ‘Europe Has to Face Up to the Security Policy Impact of Climate Change – Joint Contribution by Frank-Walter Steinmeier and His British Counterpart David Miliband’ Federal Foreign Office, Press Communication 088/08 (13 March 2008) para. 10.

¹³ Art. 136 UNCLOS.

¹⁴ For a definition of the “Area” see Art. 1 (1) UNCLOS: “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

How can we ensure that future polar research is not jeopardized either by enlarged national outer continental shelves or by newly accessible shipping routes? How can the relevant guarantees be anchored?

4. Fisheries

There is no overall management of fisheries in the Arctic Ocean at present, there are only partial solutions. It would seem desirable to arrive at Arctic-specific regulations and control mechanisms for the Arctic Ocean too.

5. Institutional Framework

One of the most important institutions dealing with the Arctic is the Arctic Council with its eight Member States and numerous observers. The Council's achievements are many and various and do not need to be listed here.¹⁵ How can the Council retain the advantages of its current way of working and at the same time help bring about an intensified and more binding cooperation among all involved? Several States are applying to become observers at the Council, as is the EU. Would there be any justification, for instance with an eye to the comparable Antarctic treaty system,¹⁶ in making such qualified States voting members of the Council with no territorial claims in the Arctic?

6. Cooperation with Third Parties

Important UN bodies, UN organizations and other international organizations are to some extent concerned with vital issues relating to the Arctic. I should mention the Commission on the Limits of the Continental Shelf, the United Nations Environment Programme, the EU Commission and countries with a high degree of polar engagement. Without false modesty I include Germany in the latter. How can general international cooperation be organized and institutionalized?

7. Security

Can security issues in the Arctic really be adequately addressed without an institutional framework in the long term? We all know that the Arctic Council explic-

¹⁵ Koivurova/VanderZwaag 'The Arctic Council at 10 Years: Retrospect and Prospects' *UBC Law Review* 40 (2007) 121 ff.; Stokke 'A Legal regime for the Arctic? Interplay with the Law of the Sea Convention' *Marine Policy* 31 (2007) 402 ff.

¹⁶ Cf. Antarctic Treaty (signed 1 December 1959, entered into force 23 June 1961) 402 UNTS 71.

itly does not have a security mandate.¹⁷ I doubt that this is the ideal solution. The Arctic Ocean is precious to the whole of humanity. We are currently seeing an increase in military activity and options. Is there not a need for appropriate platforms to deal with these matters too?¹⁸

8. Settlement of legal issues

Numerous legal issues in the Arctic remain outstanding even today. These include the extent of the national outer continental shelf, parts of maritime borders in Arctic waters, the legal nature of shipping lanes, the territorial status of individual islands, or the concrete application of Arctic-specific clauses in the UN Convention on the Law of the Sea. Some very definite and very confident positions have been held on some of these questions for many years. Some legal questions are bilateral issues and it is right to deal with them bilaterally. But would it not be a good idea sometimes to get a judgment or at least a non-binding opinion from the International Tribunal for the Law of the Sea? This might also help to further consolidate and build on the solid foundations provided by the international law of the sea.

It is easy to raise questions and point out existing shortcomings. However, the Arctic calls for an energetic, committed, joint approach on the part of coastal States and all others who are honestly concerned enough to want to tackle the new Arctic challenge. Let me finish by recalling to mind once again the words of Alfred Wegener: “We cannot ignore it; it is not a matter of indifference to us”.

¹⁷ Bloom ‘Current Developments. Establishment of the Arctic Council’ AJIL 93 (1999) 712 ff.

¹⁸ See Holtsmark ‘Towards Cooperation or Confrontation? Security in the High North’ NATO Defence College, Research Paper No. 45 (February 2009) 1-12.