The Arctic in the Context of International Law

*by Rüdiger Wolfrum**

I. Introduction

The Arctic has been in the focus of scientific research for many years but it triggered the broad interest of international lawyers only recently. This area is of significance for several reasons: it is instrumental for the world climate, the oceanic current system, it hosts unique fauna and flora, it is rich of mineral resources, and it is inhabited by peoples who have developed a culture and style of living responsive to this environment and it may turn out to be a laboratory for a new international regime. Anyhow the development an international legal regime has to accommodate interests which are far more divers than the ones concerning Antarctica.

The Arctic Ocean is not subject to a comprehensive international treaty regime comparable to the Antarctic Treaty.[1] There are reasons to regret this situation but there are equally good reasons to consider it advantageous. Certainly, there is no equivalent to the Antarctic Treaty and to the Environmental Protocol to the Antarctic Treaty[2] but activities in the Arctic are governed by the UN Convention on the Law of the Sea (UNCLOS)[3], the most comprehensive international agreement for ocean spaces.[4] The UN Convention on the Law of the Sea constitutes a frame-

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

[2] Protocol on Environmental Protection to the Antarctic Treaty (done 4 October 1991, entered into force 14 January 1998) (1991) 30 ILM 1455.

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

[4] This has been emphasized by the Ilulissat Declaration of 28 May 2008 (Ilulissat Declaration, Arctic Ocean Conference, Greenland, 27-29 May 2008 <http://arctic-council.org/filearchive/Ilulissat-declaration.pdf> [24 July 2009]); the relevant part reads: "By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials. Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.

This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures" (paras. 3 and 4).

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work agreement which provides for further supplementary treaties either through implementation agreements or rules developed under the auspices of the International Maritime Organization (IMO). Equally all important international environmental agreements, such as the Biodiversity Convention[5], the London Dumping Convention[6] and the legal regime on climate change are applicable in the Arctic. The Meetings of States Parties of these international agreements, including the Meeting of States Parties of the UN Convention on the Law of the Sea, have, generally speaking, the possibility to progressively develop these regimes.

In the following, I will make the attempt to demonstrate that the possibilities offered by the UN Convention on the Law of the Sea and other international agreements referred to may and should be used to develop the Arctic legal system or to supplement the existing one consisting of the international agreements referred to as well as of bilateral agreements between Arctic States. These bilateral agreements cover a variety of matters.[7] In the Arctic the UN Convention on the Law of the Sea and the other international environmental agreements referred to apply fully whereas for Antarctica the Antarctic legal regime mostly takes precedence as *lex specialis*. The full applicability of the UN Convention on the Law of the Sea and of global international environmental agreements could be used to develop the still embryonic Arctic system positively if the political will exists to follow such course of action.

There is one further significant difference between the Arctic and the Antarctic treaty regime. Whereas the Antarctic Continent – at least in part – is being claimed by seven States, there is – at present – no such territorial claim to the Arctic area.[8] Certainly there is a discussion about the extension of the exclusive economic zone in the Arctic Ocean and there is equally the discussion about the delineation of the continental shelves of the circumpolar Arctic States. But the claims in question do not amount to territorial claims equivalent to the ones in the southern polar region.

In my overview I will deal with four issues. Firstly, the freedom of navigation in the Arctic – in particular, with the Northwest Passage; secondly, jurisdictional claims such as the ones concerning the delineation of the outer continental shelf; thirdly, rules on the protection of the Arctic environment and fourthly the rules concerning cooperation in the Arctic.

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[5] Convention on Biological Diversity (concluded 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79.

[6] Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters (concluded 29 December 1972, entered into force 30 August 1975) 1046 UNTS 120.

[7] See Rothwell *The Polar Regions and the Development of International Law* (CUP Cambridge 1996) 156 ff.

[8] Historically such claims may have been advanced by Imperial Russia, the USSR and Canada; see, in particular, Timoschenko 'The Russian Arctic Sectoral Concept: Past and Present' Arctic 50 (1997) 29-35; Wolfrum *Internationalisierung staatsfreier Räume* (Springer Berlin 1984) 47; Lakhtine 'Rights over the Arctic' AJIL 24 (1930) 708; Rothwell (note 7) 167 ff.; Proelss/Müller 'The Legal Regime of the Arctic Ocean' ZaöRV 68 (2008) 654.

II. The Northwest Passage

In 1985 when Canada was notified of the pending passage of the US Coast Guard icebreaker Polar Sea, it informed the United States that it considers the waters of the Arctic Archipelago as belonging to its internal waters and thus requested authorization for this passage. This request was denied. The dispute was settled by agreeing that the passage could take place without prejudice to the different legal positions. In an agreement of Arctic cooperation between the two States of 11 January 1988[9] it was stated in para. 3 that "[t]he Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada".

In para. 4 of the same agreement the parties confirmed that the differing views concerning the legal status of the Northwest Passage will be upheld regardless of the conclusion of the agreement.

The concept of historic waters is well established in international law. It was developed in the judgment of the International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries Case.[10] This judgment defined historic waters as such waters which are treated as internal waters but which would not have that character if not for the existence of a historic title. Obviously this title depends upon a unilateral declaration of the State concerned and – and that is important – such declaration has been acquiesced by other States whose interests may have been affected. This is not the case in respect of Canadian Arctic waters. The United States as well as the European Union have repeatedly protested against the Canadian claims since the official announcement in 1973 and the United States reiterated its position in the 1988 Agreement.[11]

However, it seems that Canada has shifted the emphasis of its claim or at least has added another pillar to its justification by implementing national legislation providing for the establishment of a system of straight baselines around the Arctic archipelago.[12] According to Art. 8 UNCLOS which so far reflects customary international law all waters on the landward side of the baseline of the territorial sea are internal waters. The intention behind this move of Canada was to improve upon the legal basis for the control of navigation in this area. According to customary international law as well as the UN Convention on the Law of the Sea

[9] Agreement between the Government of Canada and the Government of the United States on Arctic Cooperation (signed and entered into force 11 January 1988) 1852 UNTS 60.

[10] *Fisheries Case (United Kingdom v Norway)* [1951] ICJ Rep 116, 130; see also Bouchez *The Regime of Base in International Law* (Sythoff Leyden 1964) 218; as well as Blum *Historic Titles in International Law* (Nijhoff The Hague 1965) 296-97.

[11] See Agreement between the Government of Canada and the Government of the United States on Arctic Cooperation (note 9).

[12] Territorial Sea Geographic Coordinates (Area 7) Order (10 September 1995) SOR/85-872; the law entered in force in January 1986; on that see Kraska 'The Law of the Sea Convention and the Northwest Passage' International Journal of Marine and Coastal Law 22 (2007) 264 ff.

straight baselines may only be drawn in special geographical circumstances. Whether such circumstances exist may be a matter of dispute. But even if one accepts that Canada may draw straight baselines around the Arctic Archipelago it is doubtful whether it can really restrict the passage beyond of what is provided for under the regime of innocent passage. Art. 8 (2) UNCLOS states: "Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those water".

An identical provision was incorporated in the Geneva Convention on the Territorial Sea and the Contiguous Zone.[13] Since the straight baselines were drawn by Canada only in 1985 and the right to innocent passage existed previously, at least vessels would enjoy the right of innocent passage. However, this is not how the United States sees the situation.[14] It argues that the Northwest Passage constitutes an international strait and accordingly the principle of transit passage is to be applied. This would have for consequence that submarines could transit submerged otherwise they would have to surface. Canada denies that the Northwest Passage was traditionally used for international navigation which is a precondition for considering a strait as one for international navigation, a position which the United States upholds.[15]

There is another issue that has to be considered, namely, what actually is the status of the Behring Strait. At least as far commercial navigation is concerned the Northwest Passage is of relevance in particular together with the Behring Strait if it is to be used as a shortcut from Europe to Asia. In respect of the Behring Strait other issues come into play, namely whether this is a strait which was used for international navigation in the past.

It is worth considering that a solution for the Northwest Passage, the Northeast Passage and the Behring Strait should be sought within rather than outside the UN Convention on the Law of the Sea. The starting point should be Art. 43 UNCLOS which provides for a cooperation of littoral and user States in straits to improve upon the safety of passage and the protection of the environment. The management of the Malacca Strait should serve as an example. There a Marine Electronic Highway Project was developed under the auspices of IMO.

[13] Convention on the Territorial Sea and the Contiguous Zone (done 29 April 1958, entered into force on 10 September 1964) 516 UNTS 205.

[14] In detail, see Kraska (note 12) 266 ff.

[15] Nandan/Anderson 'Straits used for International Navigation' BYIL 60 (1989) 159-204; Proelss/Müller (note 8) 660; Kraska (note 12).

III. Jurisdictional Claims (Delineation of the Outer Continental Shelf)

According to Art. 77 (1) UNCLOS the outer limit of the continental shelf is the 200 nm line measured from the baseline from which the breadth of the territorial sea is measured. The continental shelf may exceed that line when certain geological or geomorphological conditions are met. These are set out in Art. 76 (3)–(7) UNCLOS. Additionally, Art. 76 (8) establishes a procedure for the delineation of the outer continental shelf. According to this provision the coastal State has to submit the information concerning the extended continental shelf to the Commission on the Limits of the Continental Shelf. The Continental Shelf Commission formulates a recommendation on matters related to the establishment of the outer limits of the continental shelf. The wording of this provision clearly demonstrates that it is neither for the Continental Shelf Commission to establish the outer limits of the continental shelf nor to formulate a binding pronouncement on such matter. The definition of the outer limits of the continental shelf rests with the coastal State concerned. To the extent such delineation was established on the basis of these recommendations, such a limit shall be final and binding. The interpretation of the words "on the basis of" and "final and binding" is a matter of dispute. Without encroaching upon the papers of my colleagues from Russia and Norway let me indicate how I see the legal situation. According to Art. 76 (3) UNCLOS "the continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."

This is a negative definition. A positive one is to be found in Art. 76 (1) UNCLOS. According to it: "[T]he continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin …".

The first – however not the only – precondition for a claim concerning an extended continental shelf is in natural prolongation of the land territory under water. This terminology has been developed by the ICJ in the Tunisia/Libya and in the Libya/Malta delimitation cases.[16] When I mentioned that the prolongation of the land under water is not the only criterion then I was pointing to Art. 76 (2) UNCLOS which refers to the paras. 4 to 6 of the same provision.

According to Art. 76 (4) UNCLOS two methods exist for the delimitation of the outer continental shelf. The crucial criterion is the foot of the slope. A decisive provision is then Art. 76 (5) UNCLOS. According to it the line of the outer limits of the continental shelf on the seabed "… shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not

[16] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* [1982] ICJ Rep 18; *Continental Shelf (Libyan Arab Jamahiriya/Malta)* [1985] ICJ Rep 13.

exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres".

This means that in many cases one of the two criteria will cut off the outer continental shelf. There is however an exception to that. According to Art. 76 (6), second sentence, this delineation method does not apply to submarine elevations that are natural components of the continental margin, such as its plateau, rises, caps, banks and spurs. For such situation, the 350 nm is not applicable. Instead the coastal State concerned may follow the 100 nm from the 2,500 meter isobath. This means in the concrete case if the oceanic ridge in the Arctic is an oceanic ridge in the true sense then it would not sustain a continental shelf exceeding 350 nm. If that ridge, however, is a submarine elevation which constitutes a natural component of the continental margin than the outer continental shelf of Russia, Canada etc. may extend further than the 350 nm. This is a matter to be demonstrated to the Continental Shelf Commission.

As indicated briefly the UN Convention on the Law of the Sea provides for a mechanism to assist States in the delineation of the outer continental shelf. Only if a coastal State takes advantage of this mechanism it will come into the position that its delineation has an *erga omnes* legal effect.[17]

IV. Arctic Environmental Legal Regime

As already mentioned the Arctic has no comprehensive international treaty like Antarctica concerning the protection of the environment. Domestic laws of the Arctic States provide the framework for environment protection. Such laws are influenced by international agreements. This is particularly the case for international treaties dealing with marine issues. Accordingly, the focus of the Arctic environment legal regime has been on marine conservation. There are numerous bilateral agreements between individual Arctic States on issues such as fisheries, wildlife and protection from pollution.[18] Several international agreements dealing with the protection of wildlife are of particular relevance for the Arctic.

Apart from that, the Arctic legal regime consists of a series of soft law instruments which started with the 1991 Declaration on the Protection of the Arctic Environment and the Arctic Environmental Protection Strategy.[19] The Arctic Environmental Protection Strategy was absorbed into the work of the Arctic Council created in 1996.[20] It remains a valid strategy for working groups of the Arctic

[17] Art. 76 (8), last sentence, UNCLOS.

[18] See R o t h w e l l (note 7) 157.

[19] Declaration on the Protection of the Arctic Environment – Arctic Environmental Protection Strategy, Rovaniemi (14 June 1991) <http://arctic-council.org/filearchive/artic_environment.pdf> (1 August 2009).

[20] Declaration on the Establishment of the Arctic Council, Ottawa (19 September 1996) <http://arctic-council.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20Arctic%20Council-1.pdf> (2 August 2009).

Council. The 1998 Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities[21] and the 2000 Arctic Council Action Plan to Eliminate Pollution of the Arctic[22] are some important examples of soft law environment instruments in the region.

The objectives of the Arctic Environmental Protection Strategy were to protect the Arctic ecosystem including humans, to provide for protection, enhancement and restoration of environmental quality and the sustainable utilization of natural resources, to recognize and, to the extent possible, seek to accommodate the traditional and cultural needs, values and practices of the indigenous peoples, to review regularly the state of the Arctic environment and to identify, reduce, and, as a final goal, eliminate pollution. The review of the Arctic Environmental Protection Strategy was mixed.

Nearly all international conventions dealing with the protection of the marine environment have some application in the Arctic. These treaties include the International Convention for the Prevention of Pollution from Ships and its 1978 Protocol (MARPOL)[23] and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, commonly known as the London Dumping Convention, particularly its 1996 Protocol.[24]

The most important of the international agreements designed to protect the marine environment is the UN Convention on the Law of the Sea. Arctic waters are particularly susceptible of pollution and in consequence thereof and upon the initiative of Canada the Third UN Conference on the Law of the Sea included Art. 234 in the Convention.[25] This provision provides Arctic States with the possibility to adopt unilateral measures. However, one should consider whether part IX of UNCLOS is not of greater significance. This part deals with enclosed and semi-enclosed seas and provides for a closer cooperation of the littoral States. Although part IX UNCLOS was not tailored for the Arctic Ocean one can hardly deny that – following an ecosystematic approach – the Arctic Ocean constitutes a semi-enclosed sea. Part IX UNCLOS may be the appropriate basis for the Arctic States

[21] Arctic Council 'Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities' (18 September 1998) <http://arctic-council.npolar.no/About/376_eng.pdf> (2 August 2009).

[22] Arctic Council 'Arctic Council Action Plan to Eliminate Pollution of the Arctic (ACAP)' (13 October 2000) <http://acap.arctic-council.org/media.php?mid=11> (2 August 2009).

[23] International Convention for the Prevention of Pollution from Ships (concluded November 1973, entered into force 2 October 1983) 1340 UNTS 184; Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (with Annexes, Final Act and International Convention of 1973) (signed 17 February 1978, entered into force 2 October 1983) 1340 UNTS 61.

[24] Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter of 1972 (adopted 13 November 1972, entered into force 30 August 1975) 1046 UNTS 138; 1996 Protocol to the London Convention (concluded 7 November 1996, entered into force 24 March 2006) 36 ILM 1 (1997).

[25] Third United Nations Conference on the Law of the Sea, Official Records UN Doc A/Conf. 62/121.

to develop an adequate legal regime covering navigational issues as well as the protection of the marine environment, including Arctic marine wildlife. As far as shipping is concerned efforts are undertaken by the International Maritime Organization to strengthen existing measures and to develop new measures to improve the safety of maritime transportation in the Arctic and to protect the marine environment from negative impacts of shipping. These measures may include ship routing and reporting systems, such as traffic separation and vessel management schemes in Arctic choke points; development of new guidelines for ships operating in ice-covered waters; development of noise standards for commercial shipping; a review of shipping insurance issues; oil and other hazardous material pollution response agreements and the development of further environmental standards.

Global treaties on atmospheric protection are equally significant for the Arctic. The international environmental agreements on the atmosphere all have a potential for positive effect on the Arctic environment. The major international treaty on transboundary air pollution is the 1979 Convention on Long-range Transboundary Air Pollution[26] and associated protocols. Other significant global treaties for the protection of the atmosphere include the ozone layer regime consisting of the 1985 Vienna Convention for the Protection of the Ozone Layer,[27] and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.[28] Further one should mention the 1992 United Nations Framework Convention on Climate Change[29] and its 1997 Kyoto Protocol.[30] Three protocols to the Convention on Long-range Transboundary Air Pollution mention the Arctic, namely, the 1994 Oslo Protocol on Further Reduction of Sulphur Emissions,[31] the 1998 Aarhus Protocol on Heavy Metals[32] and the 1998 Aarhus Protocol on Persistent Organic Pollutants.[33] In particularly the latter agreement contains a preamble paragraph acknowledging the vulnerability of the Arctic ecosystems, and especially of the indigenous communities because of the biomagnifications of persistent organic pollutants and contamination of traditional foods.

[26] Convention on Long-Range Transboundary Air Pollution (done 13 November 1979, entered into force 16 March 1983) 1302 UNTS 217.

[27] Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 324.

[28] Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3.

[29] United Nations Framework Convention on Climate Change (with Annexes) (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

[30] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 10 December 1997, entered into force 16 February 2005) (1998) 37 ILM 32.

[31] Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (done 14 June 1994, entered into force 5 August 1998) (1993) 33 ILM 1540.

[32] Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals (adopted 24 June 1998, entered into force 29 December 2003) 2237 UNTS 7.

[33] Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (24 June 1998, entered into force 23 October 2003) 2230 UNTS 82.

Conservation of the extraordinary biological diversity of the Arctic region is another high environmental priority. The legal framework to conserve biodiversity was strengthened by the adoption of the 1992 Convention on Biological Diversity.[34] Under the Biodiversity Convention States Parties are obliged to ensure *in situ* conservation, *ex situ* conservation, sustainable use and the development of impact assessment procedures. Perhaps the most important of related international treaties is by now the 1946 International Convention for the Regulation of Whaling,[35] although it was designed for other purposes. In this context one should mention also the numerous international agreements concerning fishing. The most recent and important convention is the UN Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks,[36] an implementation agreement to the Law of the Sea Convention. It provides the framework for the conservation and management of straddling stocks and highly migratory fish stocks in the high seas. The treaty incorporates a precautionary approach and the ecosystem approach and obligates States to minimize pollution, waste and discards of fish. There are other international agreements belonging to this group of treaties. The agreement on the conservation of polar bears and their habitats signed in 1973[37] prohibits hunting and killing of polar bears, except for cases of *bona fides* scientific purposes, conservation purposes, preventing serious disturbances of the management of other living resources and by indigenous people using traditional methods of hunting. Parties are required to take an appropriate action to protect the ecosystem of which polar bears are part with a special attention to habitat component. The 1987 agreement between Canada and the United States on the Conservation of the Porcupine Caribou Herd[38] may serve as an example of the bilateral agreements concluded between circumpolar States. The purpose of this agreement is to facilitate the cooperation and coordination among wildlife management agencies, users of the herd and other land users and landowners in the herds' range. The Parties commit to conserve the herd and its habitat.

All the global environmental agreements, the Biodiversity Convention, the London Dumping Convention, the Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol as well as the UN Convention on the Law of the Sea dispose of Meetings of States Parties which may initiate soft law in-

[34] Convention on Biological Diversity (note 5).

[35] International Convention for the Regulation of Whaling (concluded 2 December 1946 entered into force 10 November 1948) 161 UNTS 72.

[36] United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (concluded 4 August 1998, entered into force 11 December 2001) 2167 UNTS 88.

[37] Agreement on Conservation of Polar Bears (concluded 15 November 1973, entered into force 26 May 1976) 13 ILM 13 (1974).

[38] Agreement between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd (concluded and entered into force 17 July 1987) 2174 UNTS 268.

struments dealing with the particular situation in the Arctic. The mechanisms these international agreements provide should be used to progressively develop the Arctic legal regime rather than having recourse to unilateral action.

V. Arctic Cooperation

On 14 June 1991, the governments of Canada, Denmark, Finland, Iceland, Norway, Sweden, USA and the USSR signed the Rovaniemi Declaration on the Protection of the Arctic Environment and agreed to establish an Arctic Environmental Protection Strategy.[39] This Declaration was followed by the Nuuk Declaration of 16 September 1993.[40] The eight Arctic States confirmed their commitment to international cooperation so as to ensure the protection of the Arctic environment and its sustainable and equitable development, while protecting the cultures of indigenous peoples. The objectives of the Arctic Environmental Protection Strategy were already outlined above. Although this strategy is not an international treaty it is significant that in the introduction to the strategy it is noted that "the implementation of the Strategy will be carried out through national legislation and in accordance with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea".[41]

Initiatives by Canada led to the establishment of the Arctic Council (1996)[42] which includes the eight so-called Arctic States as well as six indigenous groups, namely by the Aleut International Association, Arctic Athabaskan Council, Gwich'in Council International, Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North, and the Saami Council. Permanent observers are Germany, France, Netherlands, Poland, Spain and the United Kingdom. The Arctic Council is not an international organization but a form of cooperation *sui generis*. In that respect certain parallels exist with the Antarctic Treaty Consultative Meeting. However, there are also significant differences. In the Antarctic Treaty Consultative Meeting the claiming States do not enjoy a privileged status. This is the case for the Arctic Council if one considers the eight States as equivalent to the claiming States. The main function of the Arctic Council is the protection of the environment although the declaration concerning the Arctic Council provides for wider mandate namely "common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic".[43] The existing working group of the Council concerning sustainable development whose

[39] Rovaniemi Declaration on the Protection of the Arctic Environment, Rovaniemi (14 June 1991) <http://arctic-council.org/filearchive/Rovaniemi%20Declaration.pdf> (1 August 2009).

[40] The Nuuk Declaration, Nuuk (16 September 1993) <http://arctic-council.org/filearchive/The%20Nuuk%20Declaration.pdf> (2 August 2009); on the historical development see in particular Rothwell (note 7) 231 ff.

[41] Rovaniemi Declaration (note 39) 7-8.

[42] Declaration on the Establishment of the Arctic Council (note 20).

[43] Ibid. para. 1.

establishment was clearly influenced by the Rio Conference is occupied with its commercial issues in particularly of products of marine mammals produced by the indigenous groups.

VI. Conclusions

To conclude, my brief overview should have demonstrated that although there exists no comprehensive special treaty regime for the Arctic, activities in the Arctic, nevertheless, do not take place in a legal vacuum. Of particular relevance is the UN Convention on the Law of the Sea and it is encouraging that all circumpolar States have pledged that they will seek solution within this context. Furthermore it should be borne in mind that the UN Convention on the Law of the Sea as well as other international environmental agreements dispose of various mechanisms which make it possible to further develop the already existing Arctic legal regime.