

## Governance and Security in a Divided Arctic: the New National Strategy for the Arctic Region

### Introduction

In October 2022, the White House published its new National Strategy for the Arctic Region<sup>1</sup> (U.S. Arctic Strategy 2022 or the Strategy). The Strategy is a reaction to the changed geopolitical situation following Russia's full-scale invasion of Ukraine in February 2022. It consists of four pillars and five principles. This *Insight* summarizes the content of the new Strategy and its implications for international governance of the Arctic, with particular reference to the changing security environment.

### Pillar 1: Security

Security forms the first pillar of the U.S. Arctic Strategy, which should be understood in the classical sense of “hard” security, i.e., the defence of national territory.<sup>2</sup> In this context, the Strategy emphasizes cooperation with allies and partners. The seven Western Arctic states are commonly referred to as the Arctic Seven (A7). The terms “allies” and “partners” refer to the Western Arctic member states of the North Atlantic Treaty Organization (NATO) (Canada, Denmark (with regard to Greenland), Iceland, and Norway), as well as Sweden and Finland, which are on course to join NATO. The new U.S. Arctic Strategy highlights the commitment of the United States to “deter threats to the U.S. homeland and our allies.”<sup>3</sup> Much like the entry of both these countries into the EU in 1995, joining NATO will mean the normalization of relations between Finland and Sweden with their European neighbours, while it simultaneously portends a significant political shift since Sweden and Finland had long been neutral, indicating the severity of the security situation for the Arctic region.

## **Pillars 2 and 3: Climate, Environment, and Sustainable Development**

The second and third pillars of the U.S. Arctic Strategy concern the protection of the environment of the Arctic as well as climate change and sustainable development. Both pillars are directly concerned with the interests and needs of local communities in the Arctic, and with the well-being of the people who live there, in particular local communities in Alaska. Notably, strategic objective 2.3 calls for more research on climate change in order to inform policy decisions, emphasizing the important role of science in policy- (and, eventually, law-) making in the Arctic.

These pillars cover core topics of the work of the Arctic Council, too. The international governance of the Arctic is often seen as limited to areas of shared concern. The emphasis on climate change will be welcome news to America's Arctic allies and partners, especially because the joint position of the United States and Russia on climate change during the 2019 Arctic Council ministerial meeting had been perceived as very disruptive.<sup>4</sup>

## **Pillar 4: International Cooperation and Arctic Governance**

In Pillar 4 of the Strategy, the White House provides a brief but important vision of the importance of international law for the governance of the Arctic. The fourth pillar is particularly relevant from the perspective of international law as it covers "International Cooperation and Governance."<sup>5</sup> This year has seen the most significant deterioration in Arctic international relations since the end of the first Cold War due to the war of conquest waged by one Arctic state, Russia, against a neighbouring country. This situation impacts the governance of the Arctic, but not (yet) the international legal treaty norms that apply to the region. These treaties include a range of international treaties 'made in the Arctic,' including the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic,<sup>6</sup> the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic,<sup>7</sup> the Agreement on Enhancing International Arctic Scientific Cooperation,<sup>8</sup> and what is commonly known as the Central Arctic Ocean Fisheries Agreement (CAOFA), but also global standards, such as the United Nations Convention on the Law of the Sea<sup>9</sup> (UNCLOS). Many of these obligations, including CAOFA and the three treaties that were created under the auspices of the Arctic Council,<sup>10</sup> continue to be in force with regard to the Russian Federation as well.

## **Cross-Cutting Principles**

The emphasis on cooperation is also visible in the five cross-cutting principles that inform the Strategy as a whole. In addition to a long-term view and an emphasis on scientific

evidence, especially for the creation of non-binding recommendations and the aforementioned international treaties,<sup>11</sup> these principles include cooperation among the U.S. federal governments and sub-national actors such as indigenous communities in Alaska, and with other allied Arctic states. The latter aspect is particularly important at this historic moment when the future of Arctic governance might appear to be in doubt due to the current pause of the work of the Arctic Council. The new Strategy is a tool for the protection of the Arctic Council as an institution, which is a stated goal of the Biden administration as well.<sup>12</sup> The same applies to other institutions, such as the Arctic Coast Guard Forum, and the international treaties that form the Arctic-made core of International Arctic Law.<sup>13</sup>

UNCLOS remains the most important international treaty for the Arctic, which consists of an ocean surrounded by five major states and two connections to the Atlantic and Pacific. Famously, the United States is not a party to UNCLOS. Strategic Objective 4.2 concerns the protection of freedom of navigation, but also the U.S. concern with continental shelves,<sup>14</sup> extensions of the land mass that are of significant economic value due to the presence of living and non-living natural resources, including oil and gas deposits deemed crucial for national energy independence. On both issues, the Strategy emphasizes the intention that U.S. activities are guided by “international law as reflected in the United Nations Convention on the Law of the Sea.”<sup>15</sup> This includes not only the delineation of the continental shelf but also navigational freedoms, which the U.S. is committed to “protect [...] across the Arctic.”<sup>16</sup> It also promises to “continue to support joining UNCLOS and to vigorously defend U.S. interests, which are best served by widespread adherence to the international rule of law.”<sup>17</sup>

### **Outlook: The Arctic is divided**

The future of the international governance of the Arctic is currently unclear. In March 2022, the Arctic Council, the most important forum for Arctic governance,<sup>18</sup> declared that it would put cooperation with Russia, which currently chairs the Council until spring of 2023, on hold.<sup>19</sup> Since June, the A7 continue to cooperate with each other on Arctic Council-related issues that had been decided upon prior to Russia taking over as chair in 2021 and that do not involve the Russian Federation at all, using the phrase “enduring value”<sup>20</sup> to highlight the importance of the Arctic Council, which has contributed significantly to peaceful international cooperation in the circumpolar North.

It is the stated desire of the U.S. Government to achieve “an Arctic region that is peaceful, stable, prosperous, and cooperative.”<sup>21</sup> The new U.S. Arctic Strategy’s emphasis on cooperation has the potential to contribute to this effort, at least within the limits of what

is possible. The A7 are committed to respecting international law, and the inclusion of Finland and Sweden in NATO is likely to reduce the risk of Russian aggression against the two Nordic countries. Cooperation with Russia, a key characteristic of the expanding<sup>22</sup> Arctic governance since the end of the first Cold War, is rightly described in the Strategy as “virtually impossible at present.”<sup>23</sup> Today, it seems feasible to assume that future Arctic governance will cover more issues. In terms of the actors involved and the territories and waters concerned, the part of the Arctic that is governed on the basis of respect for international law has become much smaller.

International law is at the heart of the international cooperative governance of the Arctic. Although the Arctic Council is not an international organization in the classical sense of the term as it lacks legal personality, international law is the preferred tool for Arctic governance cooperation. This includes not only soft law standards but also international treaties. Without respect for international law and for the rule of law, cooperation on matters of Arctic governance would be meaningless. It is therefore only consistent that cooperation with Russia be put on hold because of the war waged against Ukraine. While the Strategy is meant to have an outlook of ten years, and it cannot be excluded that the situation will change within this timeframe,<sup>24</sup> “Russia’s continued aggression makes most cooperation unlikely for the foreseeable future.”<sup>25</sup>

The near future of international Arctic governance will likely be characterized by a divided Arctic: on one hand, Russia, covers about half of the region’s territory and is home to around half of its population; on the other hand, there are seven states of the Western Arctic that are committed to continued cooperation on the basis of international law. For the international governance of the Arctic, 2022 marked an inflection point. But the current situation does not mean the end of Arctic governance. The Strategy makes the commitment of the United States to the rule of law and international law for cooperation in the Arctic clear, while also highlighting interest in ensuring peace and security in the region.

Overall, the Strategy affirms that the U.S. seeks to secure peace in the Arctic through a commitment to international law and cooperation with its allies and partners in the region. Although the Strategy is not a legal document per se, it highlights support for the current administration’s approach to international law in the Arctic and marks the differences between two sides of an Arctic divide that is more split than at any other moment since the end of the first Cold War.

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<sup>1</sup> The White House, *National Strategy For The Arctic Region* (October 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/National-Strategy-for-the-Arctic-Region.pdf>.

<sup>2</sup> *Id.*, p. 3.

<sup>3</sup> *Id.*

<sup>4</sup> Before the 2019 Arctic Council ministerial meeting at the end of Finland's chairmanship, it had been common that a declaration bearing the name of the city in which the meeting was held would be adopted. In 2019, the Arctic Council failed to reach such a consensus, also due to the fact that the governments in Washington and Moscow did not consider climate change to be as much of a threat as the other Arctic Council member states.

<sup>5</sup> *Id.*

<sup>6</sup> Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (Arctic SAR Agreement) (2011), <https://oaarchive.arctic-council.org/handle/11374/531>.

<sup>7</sup> Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (MOPPPRA) (2013), <https://oaarchive.arctic-council.org/handle/11374/529>.

<sup>8</sup> Agreement on Enhancing International Arctic Scientific Cooperation (Arctic Science Agreement) (2017), <https://oaarchive.arctic-council.org/handle/11374/1916>.

<sup>9</sup> United Nations Convention on the Law of the Sea (1982), [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

<sup>10</sup> See *supra*, notes 6-8; for an overview see Timo Koivurova et al., *Arctic Regional Agreements and Arrangements*, in RESEARCH HANDBOOK ON POLAR LAW 64-83 (Karen Scott & David L. VanderZwaag eds., 2020).

<sup>11</sup> See *supra*, notes 6-8.

<sup>12</sup> See *supra*, note 1, p. 14.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, p. 13.

<sup>15</sup> *Id.*, p. 14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Arctic Council's work is focused on issues that are shared concerns for the Arctic region as a whole, such as the protection of the environment, sustainable development, and maritime safety.

<sup>19</sup> U.S. Department of State, Joint Statement on Arctic Council Cooperation Following Russia's Invasion of Ukraine (Mar. 3 2022), <https://www.state.gov/joint-statement-on-arctic-council-cooperation-following-russias-invasion-of-ukraine/>.

<sup>20</sup> U.S. Department of State, Joint Statement on Limited Resumption of Arctic Council Cooperation, 8 June 2022, <https://www.state.gov/joint-statement-on-limited-resumption-of-arctic-council-cooperation/>.

<sup>21</sup> *Id.*, p. 3.

<sup>22</sup> MARY DURFEE & RACHAEL LORNA JOHNSTONE, ARCTIC GOVERNANCE IN A CHANGING WORLD 3 (2019).

<sup>23</sup> See *supra*, note 1, p. 14.

<sup>24</sup> *Id.*, p. 5.

<sup>25</sup> *Id.*