

The Convention on the Law of the Sea and its Relevance for the Arctic Ocean

- Summary

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This brief presentation focuses on the need for a new perspective on the Convention on the Law of the Sea in light of international developments, especially in the context of the human rights of Indigenous peoples. One of the first critical elements of such a discussion is the need to affirm and recognize the distinct status and rights of the Indigenous peoples of the circumpolar region, ranging from the small nations of the Russian Federation to the Inuit throughout Alaska, Canada, and Greenland to the Saami of northern Norway, Sweden and Finland.

A second critical element is the need to recognize the profound relationship that Indigenous peoples of the Arctic Ocean coastal areas have with their respective lands, territories and resources. In this context, the term “territories” should be regarded as comprehensive and inclusive of the coastal land areas, shore fast sea ice as well as the off shore areas or the ocean itself, which have been traditionally used for millennia as the source of sustenance in the way of whales, seals, walrus, migratory birds and other marine life.

The international human rights developments that have taken place during and following the adoption of the UN Convention on the Law of the Sea are necessary bench marks for determining the shortcomings of the UNCLOS provisions. Such developments include (but are not limited to) the September 13, 2007 UN General Assembly adoption of the Declaration on the Rights of Indigenous Peoples, the 1988-1989 revision of the ILO Convention on Indigenous and Tribal Peoples, and the OAS Proposed American Declaration on the Rights of Indigenous Peoples. Each of these instruments addresses and affirms the fundamental human rights of Indigenous peoples to lands, territories and resources.

Even a cursory review of the long list of participants engaged in the decades of drafting of UNCLOS will quickly show that despite their direct rights and interests in the Arctic Ocean, Indigenous peoples did not have any measure of satisfactory participation in the preparation of its

content. Such lack of participation, consultation or collaboration must be re corrected in any future consideration of UNCLOS in the Arctic Ocean arena. This is even more essential in the face of the wide range of adverse impacts on this northern environment due to climate change.

Though some may argue that the UNCLOS provisions dealing with ice-covered areas are fast becoming irrelevant, they remain critical to Indigenous peoples throughout the circumpolar region. Such provisions were never dealt with in a comprehensive fashion in the context of UNCLOS. Furthermore, Indigenous peoples interests were wholly ignored in terms of recognition of their resource rights. The matters of peaceful uses, peaceful purposes and collective security need to be scrutinized against the backdrop of the rights and interests of Indigenous peoples and not solely in military terms. An expansive approach that goes beyond freedom of navigation and military and strategic interests would respond to the absence of adequate environmental protections and closer to global security.

One potential path forward is the designation of the Arctic Ocean as a semi-enclosed sea, which would trigger important safeguards in response to the concerns and interests of many, including Arctic Indigenous peoples. For example (and consistent with the interests of Indigenous peoples and members of the Arctic Council), environmental protection, management and conservation of marine resources and marine scientific research are all matters of direct relevance.

The Arctic Council (and initiatives such as the Arctic Environmental Protection Strategy) was a good starting point. However, the Council does not go far enough in light of the political and international human rights developments, the expansion of interests, and the urgent issues facing Arctic Indigenous inhabitants and each coastal nation-state. A new regime is needed to take into account the dramatic changes impacting this fragile ecosystem. Even the single issue of ice free navigation of the Arctic Ocean itself necessitates a comprehensive response and new regime that will effectively involve Indigenous peoples as well as other stakeholders. Any such regime must include Indigenous peoples and must afford them full recognition of and respect for their fundamental human rights.