Arctic Security in the Context of International Law – Arda Özkan

Abstract

The Arctic Region has begun to be a topic of increased interest both due to great amount of natural resources discovered in recent years and the fact that a possibility of offering a significant alternative to maritime transportation has emerged as a result of the global warming. Although temperature rise in the region results in melting of glaciers, it also facilitates accessing natural resources in deep seabed. Disputes that may arise with regards to exploring and exploiting of natural resources are among security problems that littoral states focus on. The most important issue for solving the problems and ensuring security in the Arctic

is that states exercise policies based on the principles of international law. International law ensures the security of states and enables them to perform their actions on the basis of equitable principles by preventing activities based on national interests. These norms constitute an indispensable ground for the Arctic littoral states as well. In particular, the littorals need to take interests under protection in the sense of international law by taking full account of the situation. This study analyzes the principles by which maritime boundaries of the Arctic should be delimitation in the context of international law with an emphasis on the global importance created by the characteristics of the Arctic.

Keywords: Arctic, littoral states, maritime boundaries, security, UNCLOS.

Introduction

Seas, which have always been great of importance in international relations (IR), constitute the main area of transportation and international trade since the ancient times. The fact that 85 % of total exportation in the world is still done via seas shows that this remains to be true today (Aust, 2005: 298). While scientific and technological developments provide new opportunities to states in the context of benefiting from seas, the importance of seas has further increased due to the possibility of extracting oil, natural gas and valuable minerals present in the depths of ocean floor and nutritional needs of the rapidly growing population. The situation resulted in the need of defining sovereignty boundaries for utilization and sharing of seas. However, since the boundaries of the maritime areas between the states are not determined by an alliance, there are some regions that do not belong to any state. These regions cause conflicts between states by creating a source of disputes. In the Arctic, there are also some disputes since maritime jurisdiction areas have not been determined. Five Arctic states (The US, Canada, Denmark, Norway and Russia) have claims to some part of the maritime jurisdiction areas in the Arctic. However, international organizations such as the Arctic Council have reached various agreements on the cooperation and environmental protection in the Arctic.

Melting of glaciers in the Arctic is considered to be an environmental disaster. However, this also creates new political and economic opportunities, especially for the littoral states. While the Arctic did not hold a great economic value when it was covered with glaciers, this situation is changing as when energy and valuable mineral resources on the ocean floor become accessible once the glaciers melt (Newton et.al, 2017: 633). Similarly, emergence of a route that is alternative to current international trade routes will add an extra value to the region. Furthermore, the Arctic is a region that should be of great interest in IR discipline because it also hosts scientific studies, besides the issued pointed out above. The reason for this is that, it is expected that climate-based changes that occur in the region will lead to many problems ranging from natural disasters to economic problems, international migrations and political conflicts that the whole world will have to face. Therefore, the littoral states are required to take measures and develop policies in order to be able to combat the new threat factors in the fields of international security and politics.

The ample energy resources in the Arctic, where the maritime borders have not yet been definitively determined, as well as shortened sea trade routes that can be used for longer periods of time, are important factors in increasing the interest in this region. It can be said that a new conjuncture is formed in the international system, which is directly affected by the global warming and climate change, by the participation of non-regional actors in addition to the littoral states. Tension arises from time to time between the littoral states because of problems regarding continental shelf and exclusive economic zone (EEZ) and maritime issues such as sharing of maritime borders and passage from international waters. One of the main reasons for having disputes is the lack of a *sui generis* convention signed between the Arctic littoral states (Matz-Lück, 2009: 241). The issues have moved to a different dimension with the opening of new trade routes and exploring of natural resources. For this reason, a need for a new geopolitical order has arisen for the Arctic.

While Russia has been the most active state in the region among five littoral states to the Arctic, the US has intensified its policies on the region, feeling uncomfortable by China’s coming to the forefront as a new actor in the Arctic. New security problems arise along with new disagreements in the region, where

new energy resources are discovered, new trade routes emerge and new actors are involved. In this region, which emerges as a new issue of conflict, different security strategies are being developed for the Arctic security, with regards to the sovereignty conflicts between littoral states and national security policies (Golitsyn, 2011: 246). The exploration and exploitation of vast hydrocarbon reserves, maritime transportation policies of littoral states, fishing activities, global trade and logistics activities are the issues that increase the importance of this study in the new security policies of the region. In this context, this study addresses the principles by which maritime boundaries of the Arctic should be delimitation in terms of international law, with an emphasis on the global importance created by the characteristics of the Arctic.

The Geopolitical Significance of the Arctic: A New Security Issue?

Geographically, the Arctic encompasses the Arctic Ocean, many islands and archipelagos, north of the North American continent, and northern regions of the main regions of Asian and European continents (Nuttall, 2005: 117). Besides, there are three submarine ridges/mountain ranges, namely Alpha, Amor and Lomonosov, at the bottom of the Arctic Ocean. The five states, which are collectively referred to as Arctic States in general, have lands in the region. These are Canada, Denmark, Norway, Russia and the US. In general, the Arctic is defined as the region covered with glaciers in the Arctic circle, including the North Pole and the Arctic Ocean (https://www.nwf.org). On the other hand, the Arctic circle encompasses an area even larger than Africa or Asia, with an area of 33 million km^2. If the Arctic circle is taken as the basis, it can be stated that the area in question includes part of the territory of Sweden, Finland and Iceland in addition to Canada, Denmark, Norway, Russia and the US. The region formed by these eight states is considered as the extended Arctic region (Holmes, 2008: 326).

There are considerable debates about how the Arctic will be defined and where the southern borders are actually located. Controversies occur because all of the terms “Arctic”, “North Pole”, “North Region” or the “North” are used interchangeably. Currently, an international agreement or document that fully

defines the boundaries of the Arctic and that is accepted by all parties does not exist. Definitions of Arctic borders vary depending on environmental, geographical, political, cultural and scientific perspectives (Carina and Keskitalo, 2005: 30-35). The question of whether the region should be regarded as a "land" or a "sea" has played an important role in the delimitation of its maritime borders, since it is covered with glaciers.

In addition to the definitions made for the Arctic based on factors such as geopolitics, climate, biological diversity and demographic characteristics, there are also definitions of political region, naturally. Arctic covers an area of approximately 7 million km^2 according to Circumpolar Arctic Vegetation Map (CAVM), one of the projects supported by the Arctic Council, which is one of the most important international organizations in the region (CAFF, 2013: 14). On the other hand, according to Arctic Monitoring and Assessment Programme (AMAP), which is one of the sub-units of the Arctic Council, the region has a broader definition of area (Heleniak, 2014: 53). Because of the fact that there is no consensus on borders of the Arctic, a variation is seen both in borders of the region (between 7 and 33 million km^2) and its demographic structure (between 4 and 10 million) (Ahlenius et.al, 2005: 14).

The Eight states that have territories in the AMAP's definition of the Arctic constitute the Arctic Council. The Arctic Council is an inter-governmental organization, which promotes cooperation, coordination and interaction among the Arctic littoral states and local communities in the region, especially within the framework of sustainable development and environmental protection. In the Ottawa Declaration of 1996, Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the US were designated as the member states of the Arctic Council. In addition to these eight states, six organizations that represent the native communities, which are in existence in the region, have the status of permanent participants.[2]. In addition to these, thirteen non-Arctic states have observer status in the Arctic Council.[3] The Council has enabled the regular production of ecological and social projects via working groups and it also has made significant contributions to the process of signing three important legal and binding

agreements among the eight member states.[4] Despite this, the Council is an inter-governmental forum and it has no budget. The projects are funded by the member state(s) or observer state(s). The preference to implement the directives, evaluations or recommendations of the Arctic Council is under the responsibility of each member state. The Council does not hold any power of sanction. On the other hand, as it is clearly stated in the Ottawa Declaration, issues of military security are out of the Arctic Council's scope (Arctic Council, 2018).

Map: The Arctic Region

(Source: https://legacy.lib.utexas.edu/maps/polar.html).

It is observed that the melting of glaciers in the region not only has environmental

consequences but also results in significant military, political and economic consequences, hence it is expected that developments will be experienced more commonly due to the glacier melting (Gerhardt et.al, 2010: 992). One of the results that will be created by the melting in glaciers is that the strategically submarine resources in the region such as oil, natural gas and natural minerals will become exploitable. The researches also state that approximately 25% of the total undiscovered but technically calculated oil and natural gas reserves in the world are located in the Arctic (Woodard, 2007: 2). Considering the fact that 5% of the world's oil reserves are owned by littoral Russia and the 2% is owned by the other littoral state, US, the reserve potential of this region becomes more significant. The numbers are even higher for natural gas. The Arctic holds approximately a quarter of the known natural gas reserves in the world. This potential situation approximately corresponds to an amount five times greater than the US reserves. On the other hand, Arctic is a region that has rich resources in terms of metals such as gold, diamond, copper, iron, zinc, uranium, etc. as well as mineral resources (Perry and Andersen, 2012: 13).

Melting of glaciers in the Arctic due to global warming has multi-faceted global effects. Sea-level rises due to melting of glaciers is at the top of the list. Studies also state that the sea level will rise approximately more than seven meters in case the glaciers melt completely and many coastal settlements will be negatively affected by this (Ross, 2014: 144). Another consequence of the melting glaciers in the region is that the region will become available for use as a new waterway for intercontinental trade (Mundy, 2016: 156). In this context, the region stands out as one of the regions that holds a vital international significance in terms of both being an alternative route that can be used in international trade and having a rich variety of underground resources.

Although it is known that the ice cap in the Arctic has lost almost two-thirds of its average thickness at the end of the summer since 1958; today, 70% of the ice cap is constituted by ice that is both formed and melted within a single year, which is scientifically referred to as seasonal ice (Rasmussen, 2018). Recent studies show that average temperatures in the Arctic are increasing by two to three degrees Celsius a year, and the sea ice cover is gradually decreasing. According to scientific estimates, it is expected that the Arctic will be completely free of sea ice

in the summer of the next twenty years, and sea ice in winter will be thinner, fragile and moveable than today (Arctic Sea Ice, 2019). Global warming affecting the Arctic causes a decrease in the temperature difference between northern and middle latitudes, severe cold weather and prolonged temperatures. In addition, considering that the Arctic, where warming increases sea level, contains the world's second largest freshwater reservoir, it is estimated that 880 million people living in coastal areas will be exposed to flooding by 2030 and more than one billion people by 2060 (Hodgkins, 2019). Despite these changes that cause negative effects at the global level, the climate change causes the Arctic to become more accessible and creates new opportunities such as maritime transportation, tourism, fishing activities and access to hydrocarbon reserves (AMAP, 2017).

The Principles of International Law of the Sea: The UNCLOS

Seas are classified under the certain titles according to the right ownership of the coastal states in terms of law of the sea. With the names made in this context, the seas are defined as internal waters, territorial waters, contiguous zone, EEZ, continental shelf and high seas. The United Nations Convention on the Law of the Sea (UNCLOS) declared in 1982 is of importance in resolving the disputes that many states have in the marine areas. While a certain success has been achieved by means of the good faith of the parties in resolving the disputes in the maritime areas among the states that have ratified the Convention, it is not possible to say the same thing for regions on which there is no common agreement is disputed. One of these controversial regions is the Arctic, due to its international importance. The regime in the region is shaped by the principles of international law (Churchill and Lowe, 1988).

The Arctic consists of the Arctic Ocean and the surrounding lands in general (Holmes, 2008: 5). There are different areas in the Arctic Ocean regarding law of the sea, including internal waters, territorial waters, contiguous zones, EEZ and continental shelves, as well as the high seas outside the national sovereignty areas and deep seabed (Tan and Tsai, 2010: 91). There should be a stable regional order in the Arctic, where international law is respected, cooperation is at the

forefront, states can foresee each other's activities in the region, and non-conflict environment is maintained. The common point of many academic studies is that cooperation, predictability should prevail by means of many international organizations in the region (Olesen, 2014: 6). As a matter of fact, if the continental shelf of any of the states coastal to the Arctic is expanded, its sovereignty areas will also expand. However, in order to do this, the continental shelf areas must be determined first. Scientific examination of the seabed is required in order to expand the continental shelf in the region. In addition, it is expected that the scientific studies for the disputed areas will be followed by the UN within the framework of legal rules (Schofield and Potts, 2008: 154). The UNCLOS states that littoral states have sovereign rights over natural resources in the EEZ, that these rights also apply to continental shelves extending up to 200 nautical miles and that mineral resources in deep-seabed beyond are *the common heritage of mankind* (Hoel, 2009: 100).

The UNCLOS is important for the resolution of law of the sea disputes between states in general and the problems in the Arctic in particular. With the Convention, disputed areas that constitute the main dispute issues in the region are determined; states' sovereignty limits, continental shelf, EEZ and the rules applicable to ships navigating therein. Of the littoral states of the Arctic, Norway signed the Convention in 1996, Russia in 1997, Canada in 2003 and Denmark in 2004 (Weber, 2009: 657). Another littoral country, the US, signed the Convention but has not ratified it yet. The fact that the US has not ratified the Convention despite signing it makes it difficult for it to act together with other Arctic states. The US states that it adheres to the UNCLOS on many issues. It is observed that the US did not veto the Convention as the basis for the solution of law of the sea issues and came together with other Arctic states.

The main straits and passageways where conflicts occur between the Arctic littoral states are the Northwest Passage, the Northeast Passage and the Bering Strait. There are disputes regarding the sovereignty, security and navigation problems between the US and Canada regarding the Northwest Passage and between the US and Russia regarding the Northeast Passage. The problem with the crossings is the uncertainty in their status, in other words whether they an international straits or not. Canada and Russia claim that both passes are in their

own internal and territorial waters and that they have historical rights to these passes, and also argue that the passages cannot be passed without their permission. However, the US claims that the Northeast and Northwest Passages are international straits and therefore have transit rights over the passages (Todorov, 2017: 62). On the other hand, the Bering Strait connects the Pacific Ocean to both the Northwest and the Northeast Passage. The strait caused disagreements between Russia and the US due to its geopolitical location (Byers, 2013: 157). Russia and the US have agreed that this strait is an international strait, unlike two passages mentioned above. The main issue was the drawing border of the strait between two states. By signing an agreement on the delimitation of maritime areas the US and Russia in 1990, the border of the strait was drawn to be equidistant from two states.

The parties to the problem have tried to expand their areas based on the continental shelf concept defined in the UNCLOS. As a matter of fact, on May 28, 2008, five littoral states bordering the Arctic Ocean held a political meeting at the Arctic Ocean Conference in the Ilulissat Region of Greenland (VanderZwaag, 2015: 307). The parties have declared that the current legal regime, in other words the UNCLOS, is sufficient for the delimitation of continental shelf and external borders in the Arctic, issues in the high sea and the environment, and there is no need for the development of another regime (The Ilulissat Declaration, 2008). In the final declaration, also known as the Ilulissat Declaration of 2008, it was observed that the basic legal framework was accepted as international law of the sea, and it became clear that the development of a new and comprehensive international regime to govern the region was not desired.

Perhaps the biggest reason why littoral states do not want a multilateral international structure for the region is to ensure the maximum protection of their economic interests in the Arctic. The fact that its basic legal basis is the UNCLOS provides great advantages to the littoral states. Denmark, Norway, Canada and Russia use the UNCLOS to express their legal demands on the Arctic Ocean and deep seabed. By not being a party to the Convention, the US lacks the official position to the advantage other nations in this important initiative. Because the UNCLOS, which allows regulations to be made especially in the continental shelf, EEZ, high seas and international seabed offers rights to strengthen the claims of

the party state(s) in the matters of the law of the sea (Sorokin, 2015).

The Policies of the Littoral States: Disputed Areas and Current Situation

Both the littoral states and non-littoral states that carry out global policies, put up an important struggle to realize their interests in the Arctic. There are some disputed areas in the region that are the subject of this struggle. However, there has not been a hot conflict in the region so far due to the conflicts. The states that are parties to the problems try to solve the issues within the framework of the law. Most important dispute in the region is the continental shelf that exists throughout the region. In addition, Russia and the US Dispute in Bering Sea, Hans Island Dispute between Canada and Denmark, the US and Canada Dispute in Beaufort Sea, Davis Strait Dispute between Canada and Denmark, Russia and Norway Dispute in Barent Sea and Russia and Norway Conflict in Svalbard are other important issues (Kříž and Chrášťanský, 2012: 117).

Russia has the largest area among the five states that are parties to the issue as the littoral in the Arctic. Russia signed the UNCLOS in 1997 and declared in 2008 that it would take the Convention as the basis for disputes in the Arctic with the Ilulissat Declaration. The Convention granted the littoral states a continental shelf right of 200 nautical miles, however, it allowed to increase this limit up to 350 nautical miles in cases specified in the relevant topics. A commission named the UN Commission on the Limits of the Continental Shelf (CLCS) was established in accordance with Article 76 of the UNCLOS to examine whether states wishing to extend the continental shelf up to 350 nautical miles meet the requirements and to decide on the applications (CLCS – Purpose, Functions and Sessions, 2018). Russia was the first state to apply to the Arctic Commission to increase the continental shelf to 350 nautical miles, claiming that its mainland extends to the North Pole (Carlson et al., 2009: 10). Russia based this claim on the thesis that the Lomonosov and Alfa-Mendeleev Mountain Ridges, which exist under the Arctic Ocean, are the continuation of the Eurasian land (Borgerson, 2008: 74).

The second state to apply to the Commission after Russia was Norway. Norway,

which signed the UNCLOS in 1996, applied to the Commission in 2006 to protect its rights in disputed areas in the region. Norway submitted its requests to the Commission for due diligence regarding the Loop Pit, Banana Trench and the West Nansen Basin, in addition to the Jan Mayen Island and Svalbard land, which are under its sovereignty. However, the EEZ and continental shelf regions claimed by Norway in these areas correspond to an area six times larger than the Norwegian mainland. Norway's related continental shelf demand is more limited compared to other demanding littoral states, as it does not extend to the North Pole (Holmes, 2008: 338-339).

Canada was the third regional state that applied to the Commission to increase continental shelf beyond 200 nautical miles in the Arctic. Canada signed the UNCLOS in 2003 and applied to the Commission in 2013 (Holmes, 2008: 331). The main argument of Canada requesting to expand the continental shelf is that Ellesmere Island under its sovereignty is part of the Lomonosov Ridges that extends under the water. It makes the same claim for the Alpha-Mendeleev ridges. Canadian scientists have been collecting evidence to prove this with scientific research since 2006. On the other hand, the thesis of littoral Russia that these ridges are the continuation of their own mainland causes the continental shelf problem between the two states. That the continental shelf will be extended from 200 nautical miles to 350 miles with these claims makes the problem very serious (Sevunts, 2018).

Denmark is another state with similar claims to the continental shelf as Canada. Denmark's continental shelf in the region is realized through its autonomous region Greenland (Conley and Kraut, 2008: 19). Denmark signed the UNCLOS in 2004 (Carlson et al., 2009: 23) and in 2014, in the tenth year of the signature, applied to the Commission for its requests for the continental shelf (Brix, 2018). Denmark's claim to increase the continental shelf to 350 miles is based on the thesis that the Lomonosov Mountain Ridges are the extensions of their land (Greenland), as claimed by Canada and Russia. The ridges, which cannot be shared between the three littoral states, are at the center of the continental shelf claims regarding the Arctic. States that request to increase the continental shelf to 350 miles apply by claiming that the ridges are their own land extensions and try to obtain data to support their arguments through scientific studies.

Another state of the Arctic Five is the US due to its Alaskan territories. However, the US has no geographic connection with the Lomonosov Mountain Ridges, which is at the center of the debate. Therefore, it stands out from the rest with its claims about Lomonosov Mountain Ridges. According to the US, the Lomonosov Mountain Ridge is an oceanic mountain ridge and is not a continuation of any land that would justify the extension of the continental shelf. Therefore, according to the US, it is not possible for any state to have the right to extend the continental shelf over Lomonosov (Grätz, 2012: 2). It is claimed in the doctrine that although the littoral US is not a party to the UNCLOS, it is the biggest winner under the provisions of the Convention and has the largest and richest continental shelf and the EEZ in the world due to existence of long coastlines and islands in fertile ocean areas (Oliver, 2009: 575).

Despite all these disputes, Exner-Pirot and Murray (2017), who introduced the concept of "Arctic Exceptionalism" to the literature, argue that the cooperation, stability and non-conflict environment prevailing in the Arctic, which has strategically critical features, where the US and Russia (even China) can be considered neighbours in terms of borders and spheres of influence, is an 'exception' on the globe. However, the Arctic littoral states have partly resolved the disputes between them, the tension between Russia and some other littoral states may turn into military actions from time to time. In addition to Russia's emphasizing frequently that it can resort to military force in order to have its claims accepted in the region, other littoral states turning to military activities against Russia's demands has a role in this. Increasing military activity in the Arctic brings with it the situation of hot conflict in the near future, and also becomes a serious threat to the sustainability of peace and stability at both regional and global levels. In addition, the war between pro-Western Ukraine and Russia, which started in 2022, is still ongoing. The defense expenditures of the NATO states involved in Arctic disputes have increased since the beginning of the Ukraine-Russia War. The war has increased the military expenditures of the member states, increasing tensions, but also the risks of conflict in the region. In other words, the Ukraine-Russia war also affects regional security and practices both of the littoral states and global powers in the Arctic.

Conclusions

The legal situation in the Arctic is based on the UNCLOS principles regulated for all of the seas in the world. The Five littoral states to the Arctic Ocean declare that this Convention, which they think gives them an advantage, is sufficient, and argue that no other arrangement is needed. Although there are many disputed areas in the Arctic, the most important of these is the continental shelf issue. Four other coastal states besides the US are in an effort to extend their 200 nautical mile continental shelf to 350 miles. For this, they have collected some evidence to support their thesis and applied to the Arctic Commission.

In the Arctic, the order is carried out not only with the politics of balance of power, but also through negotiation and reconciliation, where international law, especially the UNCLOS, is complied with cooperation is carried out through international organizations, especially the Arctic Council, and is concerned not only with material issues but also with environmental issues. While the melting of the glaciers due to climate change, which allows the use of new routes and access to underground resources, creates opportunities that can increase common welfare, however, it can cause conflicts if the process is not managed well.

The legal debates in the Arctic, the fierce competition of the states of the region to expand the continental shelf, and even the message that they will not refrain from resorting to military power for this cause are extremely negative factors for the development of regional peace and stability. For this, first of all, the claims of sovereignty in the Arctic must be addressed within the framework of the principles of equity and resolved within the scope of the UNCLOS. It can be said that any drilling activity to be done carries serious security risks that will threaten the entire ecosystem. Therefore, the littoral US should also determine the legitimate sovereignty area in international law by ratifying the UNCLOS.

In conclusion, the Arctic is addressed as an international security problem, as its results spread unpredictable threats in addition to the natural wealth it offers to the whole world. Therefore, the Arctic should not be seen only within the sovereignty areas of the states bordering the region. The UNCLOS should be seen as the most important source of international law to be complied with by the states of the Arctic in all respects, and should continue to be taken as the basis

for the security of the region. It should not be forgotten that the high seas and the ocean floors of the Arctic, on which there is no absolute sovereignty today, is *the common heritage of mankind*.

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