

Winkelmann, Ingo

Research Report

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Fixed Rules of Play for Dividing Up the Arctic Ocean

The Ilulissat Declaration of the Arctic Coastal States

Ingo Winkelmann

At the end of May 2008 the five countries bordering on the Arctic—Denmark, Canada, Norway, the Russian Federation and the United States of America (known as the “A5”)—adopted a carefully-worded declaration. Known as the Ilulissat Declaration after the place in Greenland where the conference was held, it outlines the kind of co-operation the A5 is considering. From the text one can also glean what principles will be applied regarding legal arrangements, research, managing natural resources and the ecosystem of the Arctic Ocean. In the declaration the A5 emphasise their supremacy in this area. They speak in favour of applying the international law of the sea to the Arctic but against the conclusion of a specific Arctic agreement. This sends an important signal to other potential Arctic players and to the international community, and is therefore also of interest to Germany, which for environmental, research and economic reasons cannot be indifferent to the Arctic region.

The A5 attended the *Arctic Ocean Conference* at the invitation of the Danish Minister for Foreign Affairs and the Premier of Greenland from 27 to 29 May 2008 in Ilulissat (Greenland). The United States was represented by its deputy secretary of state and the other A5 states by their foreign ministers (or in the case of Canada, the minister of natural resources). The conference resulted in a declaration consisting of seven paragraphs adopted unanimously on 29 May 2008. Although this declaration is merely a political document and as such not legally binding, it testifies to the wish of those participating in the conference to

establish common principles for how to treat the Arctic’s resources in the future and to signal to the rest of the community of states how the states directly bordering on the Arctic Ocean perceive forthcoming developments.

The Main Points of the Declaration

Commitment to the Law of the Sea

The A5 expressly declare their commitment to the law of the sea with explicit reference to legal issues pertaining to the Arctic such as the delineation of the outer limits of the

continental shelf, protection of the marine environment, freedom of navigation and marine scientific research. This commitment to the law of the sea is connected above all with the intention of all the A5 states to extend the outer limits of their national continental shelf as far as possible into the Arctic Ocean. According to the provisions of the United Nations Convention of the Law of the Sea of 1982, it is possible to extend this beyond 200 sea miles. The fact that the declaration avoids mentioning the Convention is probably due to the fact that the United States has yet to ratify it. This is probably also the reason why the US administration, which supports ratification against the US Senate, avoided sending a high-level delegation to the Arctic Conference.

Rejection of an Arctic Treaty

The A5 emphasise that there is no reason to develop a new comprehensive legal regime for the Arctic. They thus reject efforts to create a legal order for the Arctic analogous with the Antarctic Treaty conceived for the South Pole. In the view of the A5, who earlier in the document referred to their sovereignty and sovereign rights, this attitude makes sense, for further international regulation would, for the time being, constrain their handling of the Arctic, in particular the resources of the Arctic Ocean.

Protection of the Marine Environment in the Arctic

Although the declaration emphasises the unique nature of the Arctic ecosystem, the A5 remain cautious when it comes to naming concrete measures for preserving the Arctic environment. Instead they talk in general terms about “steps to ensure the preservation of the marine environment” that will be undertaken nationally, in co-operation among the A5 and with “interested parties”.

Cooperation Regarding Shipping Accidents

The declaration of the A5 merely states their “intent” to engage in co-operation with the International Maritime Organization on issues concerning Arctic navigation.

The A5 recognise the increased risk of accidents through tourism, shipping, research and resource development. They support bilateral and multilateral arrangements among “relevant states” for improved rescue measures in the event of accidents.

Research and Regional Co-operation

Finally research co-operation is to be intensified: data and analyses are, for example, to be exchanged among the A5 states and with other interested parties. The declaration concludes by describing the activities of the Arctic Council and the Barents Euro-Arctic Council as “relevant for the Arctic Ocean”.

The Status of the Declaration

In the Ilulissat Declaration the A5 make three things clear:

First: They wish to lead the way in resolving issues concerning the future of the Arctic Ocean: the use of mineral resources, new shipping routes, and protection of the ecosystem. The A5 assert their supremacy as states directly bordering on the Arctic Ocean vis-à-vis the “normal” Arctic states Iceland, Finland and Sweden together with whom they make up the Arctic Council (the Arctic 8). The three so-called “normal” Arctic states have no direct access to the Arctic Ocean. This also applies, *mutatis mutandis*, to Iceland, which is situated below the northern Polar Circle and is therefore “sub-Arctic”.

Second: The A5 intend to respect the provisions of the international law of the sea, which among other things includes procedures to extend the boundaries of the national continental shelf. Observers had been sceptical about this intention after a

member of the Russian Duma planted a Russian flag in the ocean floor near the North Pole as a publicity stunt in August 2007. There was also some uncertainty about the position of the United States, which is not a signatory to the UN Convention on the Law of the Sea. A loophole remains all the same: for in the event of conflicts involving overlapping claims to national extensions of the continental shelf the declaration refers only in rather vague terms to [the possibility of] an *orderly settlement*.

Third: The A5 do not want a specific multi-lateral Arctic agreement. They thus oppose numerous demands voiced mainly by ecological interest groups. Advocates of such an agreement believe that a standard Arctic agreement would bring together the existing numerous and fragmented regulations in a more binding form. According to press reports the Danish foreign minister proposed in the run-up to the conference that the A5 should impose a moratorium on the exploitation of Arctic mineral resources. He failed to convince the other members, however.

Open Questions

A wedge seems to have been driven between the members of the Arctic Council, with the A5 acquiring an image as a special group among the “Arctic 8”. It remains to be seen whether this rift will continue or even deepen in the future.

Another mystery is how the environmental protection regime in the Arctic can be made clearer, more binding and more effective. Even the Arctic Council (a body that has yet to acquire a clear institutional shape), which is responsible for this issue and has been trying since 1996 to get a strategy put in place for the protection of the Arctic environment, is mentioned only in passing.

How much latitude there will be for third parties in future cooperation—and indeed who these third parties might be—remains unclear. The declaration uses the

wording “interested parties”, but it mentions neither the observer states in the Arctic Council nor the civil organisations of indigenous peoples participating in it nor the European Union and the United Nations by name. Scientists fear that their research activities may be constrained if large sections of the Arctic Ocean floor are divided up among the A5.

Whether the A5’s rejection of a specific Arctic agreement will become a permanent stance is not yet apparent. The demands of important civil society players for an “Arctic protected area” are likely to become louder in the near future. This would keep up or even increase the political pressure on the A5.

German Interests in the Arctic

The Ilulissat Declaration confirms previous evaluations of the situation—namely, that it will probably not be easy to persuade the coastal states of the Arctic Ocean to become more open to participation by third parties in addressing the coming challenges in the Arctic region. The official statement of the German and British foreign ministers of March 2008, according to which it is “of decisive importance ... to put in place structures for the Arctic region, based on international law, aimed at the co-operative and peaceful exploitation of resources and at preserving the ecological heritage of mankind”, remains valid. The Federal Republic of Germany must continue to be active in asserting its own environmental, energy, shipping and research interests in the Arctic. Instruments that might be used for this are:

- ▶ Germany’s status as an observer in the Arctic Council, which seems to have potential for expansion.
- ▶ Its position as a party to the Spitzbergen Treaty. This gives its signatories rights to the economic exploitation of the island of Spitzbergen, which in principle also extend to the continental shelf of Spitzbergen (this is disputed by Norway). In any event Germany is a potential eco-

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SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3-4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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nomic factor on and around this island and already has an Arctic research station there.

- ▶ Expansion of the activities of the German Arctic research program (Alfred-Wegener Institute).
- ▶ Germany's good bilateral relations with all the A5 states.
- ▶ Germany's participation in formulating the EU Arctic Strategy due to be ready at the end of 2008.
- ▶ As a party to the UN Convention on the Law of the Sea, Germany could, if necessary, bring its case before the Commission on Limits of Continental Shelf, which decides on the further allocation of the continental shelf/ocean floor to members of the A5.

national environmental, shipping and energy questions.

What Happens after Ilulissat?

The Ilulissat Declaration mentions no further planned steps. The A5, however, affirm their intention to continue to "contribute actively to the work of the Arctic Council and other relevant international fora". There is much to suggest that the A5 will continue to meet for ad-hoc coordination sessions. These might take place under the auspices of the forthcoming meeting of the Arctic Council and would certainly help to promote the participation of high-ranking representatives of its member states.

Whether the international institutional debate on the Arctic intensifies will depend on two things: first, whether and to what extent the UN addresses the issue; and second, on what attitude the EU and its member states take. Only recently the High Representative of the EU referred expressly to European security interests in the region. The EU Commission also seems to have discovered the Arctic as an issue and is in the process of formulating its own Arctic strategy. The EU, however, has little claim to border on the Arctic, since the only part of the EU with an Arctic coast is the autonomous region of Greenland. Therefore it is likely to focus more on inter-