A wilderness treaty for the Arctic: Svalbard to the Inuit Nunaat, defining a sovereign wilderness

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Given the inherent endemism of the High Arctic and the proclivity of nations to vie over control of its lands and waters, the arrival of a treaty, which places protection of the endemic environment at its core, would be timely. The Arctic environment is changing, together with its identity as the home of indigenous peoples that are part of a contemporary reformulation of sovereignty. Treaty-formulation, which places the geography of the Arctic at its centre, also centralises her regional endemism and interconnectedness, a vital starting point for regional treaty-building.

Keywords: Svalbard Treat, Inuit Declaration, Arctic law, sovereign wilderness

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Introduction: mapping the Arctic

In 1606, Mercator crafted a map of the greater Arctic which showed four suspected bodies lying around a central ocean-bound North Pole. Perambulating this were the lands Asiae Pars, Americae Pars, Groenland, Iceland, Nova Zemla, Russia, and a mass clearly delineating the high latitudes of Scandinavia. The Arctic is the North Pole and the seas that have a unique system of currents that circumnavigate this centre before reaching out through the Chukchi Sea, Norwegian Sea past Iceland's Seydisfjordur, and the Northern passages past Banks and Ellesmere Islands (Mercator, *Septentrionalium Terrarum descriptio*).

The historical mapping of sovereign claims (regardless of the incentive for the exercise) was responsible for cementing legitimate nationhood and entrenching territorialised sovereignty (Branch 2011), and with it delineating and delimiting cultural and political belonging (Offen 2003). It has been used to segment territory, as a tool of proscriptive sovereign politics (Branch 2011). Cartographic representations developed into a more powerful tool for claiming sovereignty than taking possession (MacMillan 2003). Cartographic treaty-making, designed and premised upon the *geographic nature of* the region which the resulting maps seek to govern, is the argument of this paper. This may give gravitas to the idea that wilderness is its own sovereign and thus ought to form the basis of treaties, particularly where endemic environments persist. The Arctic is, after all, its own endemism, a "vast, circumpolar region of land, sea and ice" from "Inuit Nunaat…Greenland to Canada, Alaska and the coastal regions of Chukotka, Russia" (Inuit Circumpolar Council Canada 2009, hereafter Inuit Declaration 2009).

Geography is perhaps not a usual place to begin regarding the nature of international law or its accords. However, geography and its disciplinary ally, cartography, are necessary ingredients alongside

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law in founding decisions on delineation of space and its boundaries (Strandsbjerg 2012), as spatial aspect cannot be underestimated when it comes to understanding both the endemism of the Arctic and the specific ways in which it is changing. Arctic maps, among them ArkGIS and ArMap, are not only coming into vogue in providing information on the Arctic but are capable of plotting overlapping interests (for example shipping routes and wildlife corridors, Wilson 2016). Contestation for access to natural resources incentivises political interest in borders, and mapping those borders has both legitimised and delegitimised claims to and control of various land and resources in places such as Bolivia (Cronkleton *et al*. 2010). Whilst this may also apply to the Arctic, it is possible and hoped that cartography not only provides the basis for conciliatory politics in the Arctic (Strandsbjerg 2012), but also law and treaty-making. Regardless of which 'line' or latitudinal marker is best apt to describe the Arctic (and perhaps all in dynamic interplay), the use for an Arctic accord comes from recognising the endemism of both the waters and coastal regions of the Arctic. As such, basing an initial Arctic line as either the ten degree isotherm or the treeline makes the most sense (Llana *et al*. 2016).

An examination of two Arctic documents shows that both of these central factors – the endemic environment and a reformulation of the sovereign – are important for the evolution of the governance of the Arctic. The two documents to be discussed, as illustrative of the central role that protection of the endemic wilderness must play in delineating powers over the vast Arctic, are the Svalbard (or Spitsbergen) Treaty of 1920 and the Circumpolar Inuit Declaration on Arctic Sovereignty of 2009.

The need for treaties which reserve the *wilderness* as the central structural frame, (and thus the need to place geography at the centre of a discourse for an Arctic Treaty), has come to poignancy through the dynamic created between the economic incentives and conservation incentives for the Arctic. Specifically, the demands of mineral and other natural resource extraction (Lesser *et al*. 2017), population growth and the related need for job creation and the clash such expansion creates with the conservation of endemic species, rare wilderness flora and minority indigenous who continue to live outside the dominant ontology (based on the author's intensive participant observation in Longyearbyen in 2013). Such a clash brings to the fore the requirement for new collaborations: collaborations which are relevant, work to include local groups or custodian groups, and include the constant consultation required for a world with an environment full of living, changing entities. Embarking on a treaty-process centred on the wilderness places other human concerns and perspectives secondary, including those of the indigenous or extractors who seek development and access to new opportunities. The proposed treaty seeks to centralise a concern not of immediate monetary recompense to humanity.

The recognition of an ecosystem as the basis for treaty formulation is arguably the next step in the evolution of international environmental law, hitherto built upon consensus around particular concepts of minimising harm to the environment. Such an advancement would require the acceptance of the value of wilderness as its own entity, beyond merely the provision of quantifiable ecosystem services (Costanza *et al*. 1997), which advocates of environmental protection have designed to encourage the more conservative economic minds to give some weight to the value of the environment. Principles such as the polluter-pays principle and the formulations around transboundary protocols have helped to develop, and been a necessary and positive step towards, better international environmental legal practice, however much its legitimacy has waned (Stevens 1994). In advocating for a treaty based on the endemism of the Arctic, this article advocates coincidentally for a greater utilisation of the realities of indigenous trade and livelihood when making international treaty arrangements for the Arctic. In so doing, it leaves a further question as to the nature of treaty-making and the value of science in international policy discussion.

The Arctic as a region

Delimiting the Arctic: the cartographic way

Delimiting the Arctic is primarily a task of dynamism. Defined variously by tree line, latitude, isotherm, or habitation, the modern Arctic encompasses a changing dynamic between ice, land and water, in

the many forms these take – peninsulas, islands, ice flows, glaciers. It would be easier to divest these pieces of any framing of the necessary boundaries of an Arctic Treaty yet that defeats the purpose of the proposition. A treaty on and for the Arctic must, in the author's opinion, be based primarily on the geophysical and climatic features that occur in different territories. This overrides historical indigenous claims and modern state claims. It must, because the Arctic, as place today, requires a boundary set on which areas bear similar hallmarks of vulnerability/resilience. It is this cross-border similarity that brings a geographic treaty into focus as a more realistic and pragmatic possibility: negotiations may consider the current environmental state of the Arctic and likely alterations that a changing climate will bring, taking into consideration state differences in development, natural resource exploitation and indigenous claims. Delimiting the Arctic for the purpose of the Treaty is a subject that would require its own negotiating table, but beginning with the wilderness – as areas of terra nullius or non-permanent human habitation – is the most important for a treaty on the Arctic. Establishing the beginning and end of such wilderness may be fraught with difficulty. For example, ascribing wilderness the value of non-human habitation either includes or discounts the nomadic indigenous who have an ulterior ontology of land, which places them as part of the land and does so legitimately where their presence has an impact within normal eco-dynamic parameters. Yet the idea of de-territorialising the sovereignties is the most controversial. A treaty would incorporate sub-regions of diverse states, and request them to adopt some form of collective endeavour or collective sovereignty.

A 'wilderness treaty' is different to simply an environmental protection regime as environment does not detach from human occupation. Such an approach would aim to preserve Arctic wilderness at the expense of human endeavour – the negotiating premise thus would change from compromise where, for example, indigenous argue against mineral exploration, to rather negation of national and human interest. This may have a far better chance of protecting the Arctic than one that begins with compromise between conflicting human desires. An environmentally-centred treaty may be based on zoning: those which are used for national park delineation. Wilderness remains the core of a treaty, grades of human occupation or environmental interference occur peripherally. But given that this periphery may be used to dwindle the core, mapping a treaty where wilderness remains a large percent of the geographic area would be wise.

Unified geography, Arctic identity: acknowledging consensus

Despite the diverse collectivities, ontologies and variations in the Arctic environment, its endemism – as mutually formative from and recognisant of the higher latitudes – can be demarked as a region vis-à-vis the rest of the world. The regional endemism can (and must) be acknowledged as a 'whole' for the purposes of a treaty.

The 'Arctic' is recognised in the Circumpolar Declaration as a vast region that extends from Greenland through the heart of northern America and Russia to the edge of the Sápmi lands in Scandinavia (Inuit Declaration 2009). Its variability and transience, the light, the interconnectedness of the seasons, people and animals is starkly apparent.

The region's endemism, including species' and peoples' differences, has consistent current documentation: across mammalian (Bluhm *et al*. 2011); invertebrate and plant species (Abbott 2008); the movement and moods of water and ice (Forbes *et al*. 2016); unique effects of climate change (Rouse *et al*. 1997; Reist *et al*. 2006; Gunderson *et al*. 2012; Linden 2016); geographical boundaries (Llana *et al*. 2016); thermal change (Araźny *et al*. 2016); and shifting sea-ice coverage (Bi *et al*. 2018). Species abundance are fragmented and effects of climate patchwork (Abbott 2008). Rain on snow events make nomadic livelihoods perilous (Forbes *et al*. 2016).

In the Arctic a "unified response is universally preferable to a patchwork of disjointed efforts" (Haas 1990, 38), taking into consideration both the nation-state demand for independence, security and access to the transit highways of the Northern Arctic and the vocal concerns and demands of the Arctic indigenous for absolute inclusion (Inuit Declaration 2009, Art. 3.11). Whether the Arctic can encourage a collective consensus will depend on the costs to national (*ibid*.), international and trans-national security and identity.

Indigenous belonging: beginning with ontology

The land of Inuit Nunaat contains a people (Art. 1.3) whose identity is bound to the land through a unique knowledge of it and its ecosystems (Art. 3.4). The Arctic is the foundation for life; "[t]he Arctic is…home" (Art. 1.1), a home that embodies a claim for sovereignty (Art. 3.12) and self-determination. Under this Declaration, territorial identity is embedded in demands for partnership in resource development (Arts. 3.4 and 3.5) and discussion in rights to traverse the Arctic (Art. 3.6). The Inuit Declaration (2009) lays emphasis, not on protection and complete abstinence of development, but their absolute inclusion in arriving at sustainable use of the Arctic (Art. 3.11). The recognition of Inuit as stakeholders is closely bound with their unique knowledge (Art. 3.4), access rights and ownership rights to land and natural resources, and rights to conserve and protect their environment (Arts. 1.4 and 3.9). Indigenous difference is due to an ontological difference, that is; at base, a level the spiritual connection, as bound in ancestral kindredness with sacred land. Such ontology grants a solidity of place; that we exist in this place in this air surrounded by these lands and waters (Kolers 2009). Ontology is a question of recognising inherent identity, rather than tracing a path through (divergent) culture (Feibleman 1951).

One people, a collective

Various forms of collectivity are found in the terms used to describe Arctic indigenes: they are 'one people' (Saami Council 2018), with a collective and inclusive understanding of territory; Obshchina in Russia (Stammler 2005); Saami together with its Council in Scandinavia; and Inuit (as asserted in the Inuit Declaration 2009) and Eskimo in Northern America. Regional or collective indigenous identity defies Westphalian legal and political order (Stephenson 2017), and continues to exert a sovereignty, not delineated by the territorial sovereignty of the littoral nation-states (Lantto 2010), but by an intangible and as yet cartographically-challenged but real coalescent Arctic.

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Unified politico-geography, which encapsulates unified peoples across a geography, can find bases in autochthony (Kolers 2009) and geography (Tuan 1979) from a people with a unified political understanding of the world. This includes an understanding that conceives of political evolution as stages in development of an ecocentric (rather than state centric) paradigm (Cohen 1994; Chaturvedi 2019). Paradigm shifts in both geography and politics are needed to create a new geopolitic which responds to the ecological basis of living (Chaturvedi 2019).

The Inuit Declaration (2009) ties the sovereign rights of the Inuit to their autochthonous origins that "pre-dates recorded history" (Art. 1.2). The claims of the indigenous are asserted within the context of the geography and environment of the Arctic (Art. 1.5) and as part of the self-determination struggle over life, culture and territory (Art. 2.1) where the indigenous are "rooted and have endured" (Art. 3.11). Claims of 'rootedness' and endurance (Art. 3.11) are the very words of autochthonous claim. Inuit are free to determine their political status, socio-economic and cultural development, government and recognition of treaties and agreements, and land and resource development (Art. 1.4). Rights over lands and resources underlie many of the articles in the Declaration, indeed they are intimately bound with it being the "building blocks of Inuit rights" (Art. 2.2).

Arctic Inuit citizenry in the Circumpolar Declaration Articles 1.5–1.8 makes apparent an emerging tale in new sovereignty: that of layered sovereignty. The Inuit refer to their threefold citizenry of their nation-states; their sub-state indigeneity, (1.6, 1.7 and 1.8) and their collective citizenry of the Arctic (Art. 1.5), which reinforces an entitlement to be involved in all decisions involving the use and development of their land as declared in Article 1.4. The Inuit Declaration (2009) defines its sovereignty

as part statehood, part unattached to statehood. Supra-state sovereignties, trans-state sovereignties and overlapping sovereignties in the Declaration are bound to the use and protection of the land, seas and waters. Inuit citizenry of the Arctic states – as indigenous citizens of those states and as citizens of political subunits – is reinforced in three separate articles (1.6, 1.7 and 1.8), and their supra-national citizenship as part of the collective indigenous people of the Arctic is expressed once (Art. 1.5). Recognition of supra-, sub- and trans-state citizenry (Art. 2.1) in the Inuit Declaration (2009) lends itself to a de-territorialising of identity. Sovereignty and identity can be subject to boundaries of territory or can be de-territorialised, trans-state or liquid. Perhaps a question to be answered is, 'What defines a sovereign absent territorial boundaries?' An Aristotelian conception of peoples and identity is not defined by boundaries and borders marked out on a map (if ever they could be so). Perhaps it could be said that Aristotelian conception of peoples and identity is to be found today more in the drafting of a document of sovereignty by a 'peoples', where it expresses belonging to an identity with a connection to a space or landscape or passage of rite rather than in the politico-economic division of land, which historically has born more relation to the resources divided than the attachments of the people.

Using the spatial conception of law, following Strandsbjerg (2012), where attachment to land forms a geographical understanding which then founds the basis of boundary delimitation, it can be understood that sovereignty precedes the space – or territory – which it occupies, or mutually forms the territory it occupies (Kolers 2009). Alternatively, that space may precede sovereignty agrees with Tuan's (1979) idea that space, amorphous and natural, occurs before the human relation to it and, thus, any conjectures placed upon that space by the human.

Reformulation of the sovereign

Collective sovereignty seems anathema to sovereignty (Kolers 2009).[1] Although sovereignty continues to evolve, a sovereignty which prefers the collective over the individual is not anti-sovereign (Lauderdale 2009). Indeed, the sovereign in the Inuit Declaration (2009) is a collective Arctic indigenous citizenry (Arts. 1.5-1.8), based on unique knowledge (Arts. 3.4, 3.6) and internationally aligned claims to self-determination and disposition of mineral wealth (Arts. 1.4, 2.2, 2.4, 3.13). In particular, Article 3.11 specifies the right to be partners in sustainable development. The Declaration claims the right to "freely dispose of our natural wealth and resources" (Art. 1.4), a statement that reflects a right articulated in the International Covenant on Civil and Political Rights (ICCPR) and recalls the UNDRIP "right to conservation and protection of *our* environment" (Art. 1.4, emphasis added).

Rights over lands and resources: rights to subsistence hunting (Art. 2.2), and to fishing, health and sustainable development (Art. 3.5) demonstrate deep belonging and possessory belief in indigenous place and being *as* Arctic. Arend (1999, 38) notes the "great deal of debate within the academic community about the precise meaning of 'sovereignty'...". Sovereignty has been bound up with self-determination in the Arctic (Inuit Declaration 2009, Arts. 4.3, 2.2, 2.4, 3,13). The right to self-determination in the International Covenant on Human Rights has transformed political geography (Thornberry 1989; Shadian 2010), and it contributed to changing the geopolitics of regions especially sub-state groups claiming their own governance. While the Inuit Declaration (2009) admits the existence of the Arctic states, the reference to Inuit Nunaat and to autochthonous claims (the Arctic is both 'home' (Art. 1), and the place where the indigenous "are rooted and have endured" (Art. 3.11)), directly challenges the concept of nation-states (as territorial and juridical entities, rather than nations of peoples), with borders drawn as seen on maps of the world. "Sovereignty means that all states are juridically equal; accordingly, they can be bound by law only through their consent. In the absence of a law to which states have consented, they are therefore *legally allowed to do as they choose*" (Arend 1999, 38, emphasis added).

Altered sovereignty de-territorialises the notion, and the proliferation of documents redefining the nature of sovereignty as indigenous self-determination must be given due weight in the new era of exploration in the Arctic.[2] Territory – bound to the control over and access to land and natural resources, and therefore in the determination of entitlements and even 'rights' over these assets – is still important and, so being, important for identity. Identity and livelihood make understandable the centrality and steadfast connection of territory to a peoples. That identity is necessarily bound to the

lands and waters, in which it is heralded, is due its recognition. The very much more than notional (indeed very real) loss of understanding of this inherently shared dynamic in the development of the modern nation-state does not alter its essentiality.

Consequently, where national politics is responsible for drawing boundaries to constitute the Arctic, there are far-reaching implications to the local indigenous. Inclusion as an Arctic peoples' is based on national politics and perceptions. Geographical work on Canadian federal boundary-drawing of the Arctic has resulted in de-territorialised, marginalised and ostracised identities (Bennett *et al*. 2016). The prospect of de-territorialised sovereignty affects the relationship between nation-states and self-determining minority groups and changes the understanding of entitlement to land and natural resources. The State sovereign is no longer entitled to access and control absolutely, which has a bearing on the practical meaning of sovereignty.

Where sovereignty is no longer state-centric, any collaborative framework needs to consider the indigenous and other sovereigns and their desires (Szablowski 2010). Insertion of prior informed consent is an example, used particularly in conjunctures of indigenous and mining interests.

The increasing involvement of trans- and sub-state Arctic indigenous in the Arctic world has not so much altered, but reconfigured, the conservative and ethnocentric understanding of what sovereignty is. The layering of citizenry and identity further removes the boundedness of sovereignty from territorial components. Contrariwise, sub-, trans- or multi-state collectives, indigenous or otherwise, are not specifically mentioned in the Svalbard Treaty (1920). This omission may be understandable given the fact the archipelago has no native inhabitants – at least not in the 'traditional' sense, thus no Inuit, Sami or other Eskimo has a sustained autochthonous claim. Furthermore, no person is entitled to be born or to die on the island.[3] Rights to inhabit the land may surface in future years. Being or becoming Svalbardian involves the same questions of belonging, identity, and landed ontology that are at the heart of indigenous autochthonous claims.

Altered territoriality and rights of access

The connection between sovereignty and territoriality (geographical boundedness) as the foundation of nation-state diplomacy and international law is being nowhere better challenged than in the Arctic; specifically due to the increasing geopolitical interest and a shifting climate (Gerhardt *et al*. 2010).

Altering the nexus between territory and sovereignty will have implications for rights of access yet it may also leave a void where the reformulation of treaty can occur. As the ice melts and shifts, nation-states vie to cement their authority in the push northwards, seeking and claiming spaces to which they can ascribe their sovereignty (Knecht & Keil 2013), irrespective of the threat of demarked territory becoming physically indeterminate. Different sovereignties are already admitted between the Svalbard Treaty (1920) that acknowledges States as sovereign and the Inuit Declaration (2009) that, instead, acknowledges the Arctic indigenous peoples who have been the custodians of the lands. A treaty for the Arctic will have to frame embedded geopolitical interests and the encumbering national interests in a reformulated sovereign.

The re-emergence of indigenous sovereignty is breaking the inherent link in international law between territory and state-based sovereignty: the modern nation-state is being made indeterminate through the determined efforts of indigenous peoples to assert their claims for the same. That is, the concept of sovereignty itself is undergoing metamorphosis. For the Arctic, should this sovereignty prove more collective, there may be added weight to treaty-making in the region on a geographic basis. The urge for collective thinking would need to overcome adverse pan-Arctic thinking of the littoral powers (Knecht & Keil 2013). As with Reisman's (1990) claim that law must avoid being anachronistic with regards to human rights standards, international law must also remain relevant in its understanding of the Sovereign; and, as a result, with who and what can be the central players for designing Treaties. This does not avoid the controversies that occur where cartography is used for political ends in deciding sovereignty, in particular where there is tension in the different political spatialities that arise when speaking of sovereignty (Strandsbjerg 2012), which may include non-territorially based identities. Yet where we acknowledge that *attachment* to land (or sea) forms the boundaries of a space and hence that territoriality (or rights to control space) proceeds autochthony,

rights of access to space and resources will be shaped differently. Further, where we acknowledge that the sovereign also must avoid being anachronistic, the possibility of recognising the wilderness as sovereign may come into being.

A model for governance of the region: the Svalbard Treaty

Governance of the Arctic as a whole is fraught with difficulties not least of which is the competing political sovereignties of both the littoral states and any observer states who have an interest in the growing economics of the region. A major Treaty has attempted to negotiate a path between the economic and political interests of the States in the region whilst still attempting to steer a path for protection of the wilderness in her endemic virtue. This was the Svalbard (formerly Spitsbergen) Treaty (1920).[4] Geographically, the Svalbard Treaty governs the Archipelago of Svalbard, including Bear Island and all islands between 10 and 35 degrees longitude and 74 and 81 degrees latitude. Stated thus in the first article, this region is governed as a whole (Art. 1). Svalbard has strict regulations surrounding the presence of humans on parts of its wilderness, so the importance of Norwegian sovereignty under the Treaty cannot be understated for her role as prime custodian. The Svalbard Treaty (1920) places the sovereignty of the Kingdom of Norway and her inherent power to make provision for protecting the wilderness of Svalbard (Art. 2) in alignment.

The USA and Canada have their own treaty in relation to the Arctic, (Government of Canada 1988) a brief agreement for cooperation on icebreaker-based scientific research.

A balance?

Norwegian sovereignty is expressly maintained in relation to fishing, hunting and private property, shipping and access to marine facilities, levying of duties on mineral exports, and land claims. Norwegian sovereignty extends to preservation and reconstitution of the fauna and flora and territorial waters (Art. 2). It still grants equitable access rights to the seven High Contracting Parties and provides that governance of the Arctic requires "an equitable regime, in order to assure [its]... development and peaceful utilisation". In this the Svalbard Treaty (1920) appears to strike a remarkably mature balance in protecting Norway's sovereignty and respecting the private interests of sovereign powers through such granting of access to the Region.

On Svalbard, the proximally aligned concerns of endemism, intrinsically valuable, and the securitisation of interests of nations vying for political access rights to the terrain is prominent. Yet Svalbard itself represents an opportunity for the new geo- and eco-politic of an eco-centric rather than state centric model, where there is an understanding of the fluidity and dynamism of the Arctic geography and, in turn, the possibility of its altered and de-centralised governance (Chaturvedi 2019, 448–449).

Entitlements and access to the natural resources of the Arctic – the realpolitik of the sovereign territory – form the majority of the Svalbard accord. Land and mineral rights well-defined include the tariffs that can be levied by Norway (Art. 8) and the aforementioned hunting and fishing rights (Art. 2). Yet the majority of the accord defines rights to space and what lies within that space to be exploited for economic gain. Perhaps this is a weakness of the Treaty. In stipulating so quickly, albeit brashly, the protection of the environment, the Treaty undoes its hallmark of inventiveness by quickly succumbing to a problem, which belies the stated intentions of preservation of the environment. It grants too much space – Arts. 2, 6, 7, 8 and 9 plus considerable annexes, in a document of only 10 articles – to a different issue. It is easy to agree on the protection of the environment as a principle when stated broadly, but much more difficult to agree on the economic and political entitlements bound up in land and resources, giving space in the treaty to codify areas where "territorial disputes arouse extraordinary passions" (Malanczuk 1997, 157).

A Treaty between states also governs a particular geopolitical and environmental region. The Svalbard Treaty (1920) attempts to govern wisely the Polar space, a space which not only evidences the changing nature of stakeholders but also the rise of new ones. Based on the geographical region of Svalbard, the Svalbard Treaty (1920) acknowledges territory, and the resources and potential in trade it holds, as more than simply lines on a map: it is antecedent to law.

National interests, both of the littoral and non-littoral states, may potentially hamper efforts to govern the Arctic as a region via collective effort as each protects its own security and economic interests, particularly given the expansion of natural resource and scientific efforts in the region. Indeed, governance may require a new politics as well as a new geography (Chaturvedi 2019, 449). Political strategy to: a) develop the exploration of mineral reserves, primarily oil and liquefied natural gas (LNG) (Armstrong 1983; Masters 2016);[5] b) develop the viability of shipping with a focus on four Arctic shipping routes (Humpert & Raspotnik 2012); c) protect national access to shipping routes and mineral exploration sites (Masters 2016); d) develop emergency response, search and rescue; and e) explore telecommunications, thwarts national consensus on the region. The security of the Arctic are twofold, individual state security or military security (De Neve *et al*. 2015) and collaborative security, "relating to the 'common security' of multiple regional states…[including] threats of piracy, terrorism and environmental disasters in the region" (De Neve *et al*. 2015, 1), and is at the behest of the abilities of diplomats to negotiate to the disadvantage of national interests (Haas 1990). Yet in the Arctic, nations are expanding their interests northward (Gerhardt *et al*. 2010). In the Svalbard Treaty (1920), despite the preference given to Norwegian control over environmental matters, there is inherent the clash of environmental ideals with socio-economic and political demands upon space. Territoriality is here not only politically fraught with dangers of non-state autonomy and statehood, but also may not suffice to give credit to the current contestations over land, natural resources and eco-space (Kuels 1996).

Governance: the 'what' and 'who' of Arctic Treaty-formulation

The purpose of treaty formulation is to, prima facie, decide the 'what' and 'who' of treaty formulation and its balance vis-à-vis states. Central to the question is whether the Arctic may in fact be governable as a 'region', given the competing demands for natural resources claims, shipping route control and increasingly understanding of the complexities surrounding the indigenous Arctic.

The indigenous/wilderness paradigm is a difficult issue seeing as, where the indigenous claim to be part of the land (and respect for their ontology would be accepting this), their presence could still be part of a wilderness. Not so for those who do not share this ontology – though it is not decided on whether one is indigenous or not. Where the indigenous no longer live in wilderness areas at a pace and in a way that places them within the rate of change of the ecosystem, then perhaps complete exclusion is justified. Then, how does one determine rate of change where their presence is already a fact?

Other than the need for a form of reduced state sovereignty in preference to a collective sovereignty amongst states, the treaty would clearly need to involve all Arctic states with land and seas in the Arctic, determined again on where the delineation is. The geographic scope of the Treaty is determined on its primary objective of protecting through legal and political means the Arctic as a place of non-human endeavour. Of course, states with resources in the High North are not going to consign their state rights to a treaty where wealth is at stake and so this, rather than nullifying the need for a treaty, may reduce its geographic scope. However, leaving geography as the primary determinant serves another purpose; trade in the region needs to depend on borders being drawn accurately, not just according to political whim, to account for movement of vectors and carriers of disease. Disease incursions have been found to be latitudinally or climactically based, and trade needs to take account of this (Laaksonen *et al*. 2010; Omazic *et al*. 2019).

Finally, addressing the tools of enforcement of an Arctic Treaty is yet another area of difficulty. As with all collaborative structures, enforcement is also a matter for collaboration and assignation. At the very least, a monitoring body will be needed and such a function may fall to the Arctic Council or to another body set up with this as its strict mandate.

Wilderness as the basis for a treaty of the Arctic

The major concession required in governance over the Arctic going forward is the recognition that the remote wilderness requires protection. Geographically, designation of wilderness – those areas free of permanent settlements of habitation and the resulting permanent day-to-day human-induced disturbance and retaining some detachment from modern human industrial influence, including

areas once explored for resource potential – specifically exclude the indigenous who have a particular spiritual-geographical-biographical connection to land (Allan *et al*. 2017). Part of geographical presence within the framework for wilderness treaty-making would include the mapping of human pressures spatially and temporally in known wildernesses (such as The Human Footprint map; Allan *et al*. 2017).

Treaties framed around wilderness values are an important part of protecting the common heritage of humankind. Wilderness as the basis for treaty-formation would need to ascribe to wilderness a juridical concept taking into consideration both 'wilderness values', which have been discussed socio-economically with difference drawn between the concept of landscape and that of wilderness (Brown & Alessa 2005, 14–18; Brown & Raymond 2007; Raymond *et al*. 2009), and build upon international environmental law's work in delineating categories relating to ecological space (Dudley *et al*. 2012). The work of the IUCN may be useful in this regard, in which the wilderness has its own category (1b).

The protection of the wilderness has grown internationally out of the need to protect some *other value* represented by the environment. The distinction from other categories of space or landscape is still taking shape and in this, the history of wilderness protection and its evolution in the national jurisdiction of the United States may be instructive.

Protection of the wilderness and wilderness areas has been discussed most particularly in the United States, which has a history of judicial (for example, Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240; Oregon Nat. Desert Ass'n v. Bureau of Land Mgmt., 625 F.3d 1092) and academic discussion around the spiritual values of the wilderness. The Code of Federal Regulations (USA) (36 C.F.R. § 293.2) ascribes the values of "solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation", specifically to wilderness. The congressional hearings pre-dating the enactment of the Wilderness Act 1964 (16 U.S.C. §§ 1131–1136 (2006)), the major piece of legislation governing the designation and protection of wilderness zones in the United States, delineated the spiritual values of the wilderness as: "preservation of land as it was created by God, wilderness as a place of encountering God, wilderness as a place of spiritual renewal, and wilderness as a place of escape" (Nagle 2005, 955). Highly pertinent to the Arctic in grappling with the struggle between human habitation and the preservation of places of natural wonder, the Act states:

> An area of wilderness is... an underdeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which... generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable (§ 1131(c)).

Of further importance was that, under the wilderness system set up under the Wilderness Act, Congress has enacted statutes to protect wilderness areas, more than half of which (56 million acres) are in Alaska and protected by the Alaska National Interest Lands Conservation Act (ANILCA) (Nagle 2014). The relevance of the discussions and definitions given to wilderness in its application to Arctic and sub-Arctic terrain provides some basis for dialogue.

Recognition of an ecosystem as the basis for treaty-formulation already exists in the Protocol on Environmental Protection to the Antarctic Treaty (1959), another endemic area which may serve as a model for the Arctic, where Article 3 addresses the specific "wilderness" of Antarctica:

> The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

It is a strongly worded Article as far as acknowledging the intrinsic value of Antarctica's wilderness is concerned. Activity in the treaty area is to take place with consideration of those aspects which comprise an ecosystem, mentioned in Article 3(2)(b) including, at final Subarticle 3(2)(b)(vi) "degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance". In the author's opinion, it is an after-thought, seeking to describe in very general and ideal terms that subliminal part of Antarctica that, perhaps, ought not to be dressed down to a scientific or environmental quality.

Whilst it is far from certain what consensus is to be had for wilderness *value*, a geographic premise for international environmental law may simply be a better way to consider the values of the wilderness as its own entity and on its own merit, and to build a consensus. Treaty process attempts to build consensus through epistemic development (Haas 1990). The development of a consensus based around mutual recognition of wilderness values pertaining to a form of spirituality relevant to the Arctic is not the subject of this article, but rather whether an area deserving of wilderness status and common protection can be used to frame a consensus process around geography and the formation of a geographically based treaty.

In the Antarctic Treaty System the overriding issue is whether scientific investigations alter or impede sovereign claims. More importantly, scientific investigations most certainly will affect wilderness status. Using Codling's (2001) view, wilderness status ought not be ascribed to any part of the Antarctic continent that has permanent habitation nor any other permanent visible evidence of human activity.

Indeed, in the Antarctic Treaty (1959) consensus was built upon scientific investigation rather than the protection of the wilderness of Antarctica for its own uniqueness. Scientific investigation and international scientific cooperation form the basis of the Antarctic Treaty (1959), the remainder the exclusion of nuclear or military endeavours on the continent and the agreement for observers to monitor the abidance with the treaty. Wilderness and sovereign claims over land and natural resource rights appear second concerns to scientific exploration. The Antarctic Treaty System is an interesting lesson in devising a treaty on the basis of agreed science which made the treaty, in its own distinct way, a geographically-premised treaty.

The protection of the Arctic wilderness, by comparison, as an entity in itself is not often examined closely and not covered well in international legal documents (Jeffery 2009). There are indications that the environment, as distinct from wilderness, has been a key consideration in past deliberations of the peak international body concerning the Arctic, the Arctic Council. However, environment encompasses places even where human habitation occurs, where wilderness distinctively retains some detachment from modern human industrial influence. Task forces on Arctic marine oil pollution prevention and on black carbon and methane indicate a level of environmental preparedness. For the present, the key considerations for the Task Forces of the Arctic Council are on telecommunications infrastructure and scientific cooperation (Arctic Council 2015) so wilderness concerns seem distant.

It may seem duplicitous introducing a treaty system when the idea of conservation management over remote areas might just as well cover the same (literal) terrain. However, a treaty exists to co-opt sovereigns to be part of a system which protects our common heritage. The importance of a geographic treaty lies in the provision of balance: for the common heritage of humankind, the demands of extraction, population, conservation of endemic species, and inclusion of minority indigenes who live under a different guise of being. It is the view of the author that a treaty such as this is not limited by subject-matter and so can address all with equanimity. The development of a code based on wilderness as the central concern, which keeps sustainable use of natural resources and concurrent human presence as an issue to the periphery, will undoubtedly reach across a tension between collaboration and sovereignties which may be where the best environmental and wilderness protection is conferred. Collaboration, as codified in the Svalbard Treaty (1920) through stipulations of state equality and in the Inuit Declaration (2009) through ownership and responsibility for environmental impacts, might additionally provide a model to achieve a balance on the rate of use of the Arctic's resources.

Conclusion

With far greater access now to the Arctic and the likely increasing sovereign interest in its natural resources, the Arctic has become a barometer of our ability to protect the last wildernesses and a training-ground for moderating the eyes that look to access the natural resources they hold. For itself, the Arctic contains a dynamic endemism where species of flora and fauna only exist in this region and that such endemism is in sensitive flux to changes in use, temperature and geomorphology needs, at the very least, to be respected. The recognition of an ecosystem as the basis for treaty-formulation creates new recognition of the central role of Arctic endemism in governance of the geography and is central to the evolution of wilderness as its own Sovereign. In the Arctic, there is a unique opportunity

to strike a new balance between respect for the wilderness as a central concern and respect for resource development that simultaneously engages the sovereignty claimed by indigenous peoples and the entitlements claimed by nation-states.

The Arctic has a unique position in which the intersection of environment, industry, commerce and preservation occur, in such a microcosm that issues often seen as geographically disparate are closely and at once seen both in their synchronicity and in their divergence. The presence of permafrost and transport impacts over time; the benefits of local coal mining in the production of energy; the necessity of local management of endemic species; and the realities of 'belonging' are seen together. Men and women of the Arctic live on the peripheral rim of the Arctic wilderness; they were once part of economic enclaves which had its own territorial clarity, its own self-determination solidified through devolved governance and some form of economic and political autonomy, or an internationally recognised form of voluntary association. Now they are in danger of being increasingly integrated into state-based decision-making. Thus the reason and basis for a new treaty framed around the geographical boundaries of wilderness, where the defenders and gatekeepers of the Arctic wilderness, may not be as staunch in either their isolation or autonomy to keep the boundary.

Treaty-making based upon geography would delineate borders differently, ascribe values to wilderness and alternative landscape ontologies, and question the nature of sovereignty. Modelling a treaty for the Arctic on its wilderness provides a relevant, necessary and stable fulcrum upon which to build a system for cooperation; capable of including multiple sovereignties both local and regional and considering multiple objectives for Arctic development, whilst minimizing the risk of ignoring or forgetting the central concern of wilderness protection by placing this concern at the centre. Where a treaty recognises prima facie the wilderness, then humankind has a chance to grant this wilderness recognition as a whole and separate entity with being and essence.

Notes

[1] According to Kolers (2009), sovereignty is an abstract concept. The *power* to express sovereignty is born out in one's control of territory: the idea of boundedness and territory.
[2] Statements by various indigenous groups, the compelling judicial advancements in awards and acknowledging tribal jurisdiction over certain matters, and the formation of tribal-based collectives such as the Arctic Athabaskan Council; http://www.arcticathabaskancouncil.com/aac/, the Aleut International Association, the Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North, and the Saami Council. These six are the six permanent (indigenous) participants of the Arctic Council.
[3] Knowledge gained from participant observation. The author lived on Svalbard in 2013.
[4] The Svalbard Treaty (1920) was once known as the Treaty of Spitsbergen. Spitsbergen is but one island in the archipelago, the largest that lies to the southern edge. Svalbard is the current name of the entire archipelago.
[5] A conference was held as early as 22–24 September 1982 in Oslo on Arctic energy resources with focus predominantly on oil and gas. Even then the environment and social impacts of exploration and exploitation were considered alongside techniques for exploration.

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