

Monim Benaissa, Part time Professor, Researcher at Public Law Centre, University of Ottawa, Faculty of Law, Ottawa, Canada – Written evidence (UNC0007)

Reason for submitting evidence and Biography

As a Canadian citizen and subject of Her Majesty the Queen, it gives me great pleasure to write this paper on the new maritime challenges facing our contemporary society, in the hope that it will attract the attention of the Parliamentary Committee.

Biography

Monim Benaissa is a Part time Professor at University of Ottawa, Faculty of Law and Researcher in the fields of international governance and environmental institutions. His academic work encompasses both theoretical and empirical research focused on legal and political institutions, as well as applied studies dealing with issues relating to international ocean governance.

Monim identifies the most important issues affecting the future directions of international fisheries law, the protection of marine biodiversity, the delimitation of maritime borders, climate change and the oceans.

He is interested in his research on the United Nations Decade of Ocean Science for Sustainable Development by identifying the ocean legal knowledge necessary for sustainable development to feed the world's population under changing environmental, social and climatic conditions.

Monim taught a variety of classes on wide-ranging subjects that include international and comparative politics, the law of the sea, environmental law and the legal context of environmental issues.

Monim has been involved in a leading position in global research for several years, among others as:

Analyst / Lawyer at the International Legal Institute in Turin, Italy

Political Expert with Atlas Institute for International Affairs, London, UK

Member of Public Law Centre at University of Ottawa

Member of the Canadian Meteorological and Oceanographic society

Monim is also interested in Schools of Thought in Law and their role in the analysis and understanding of empirical cases. His most recent co-edited book is entitled: *The Legal Schools of Thought*, Les Éditions Revue de Droit de l'Université de Sherbrooke, 2021.

UK and the future of Arctic fisheries under 1982 UNCLOS

Summary

In this study, we will focus on a region that will receive special attention in the coming years, namely the Arctic Ocean. Because of the disappearance of the ice pack due to global warming, the Arctic Ocean will become an economic Eldorado for the new industrial powers. If the United Kingdom was one of the first Nations to discover the Arctic,¹ later, after the departure of the British from North America, this legend will be reversed. This situation has given rise to the appearance of new State actors. The Arctic has a unique geography, economy, and environment. It is a region that allows several influential States in the maritime field to impose their geopolitical weight, but also to assert their identity and protect their interests, including several European States, namely France, Germany, Italy, the Netherlands, Poland, Spain, China, Japan, and Korea. In effect, on one hand, while States such as China advocate for the freedom of the seas and the right to exploit natural resources in the Arctic Ocean, in the other hand this new economic power does not follow the same rules in the South China Sea.

Moreover, the international community is faced not only with the ecological effects of climate change on the Arctic, but also with the economic opportunities of the exploitation of natural resources in general and fish in particular. It is essential to understand which State actors are targeted by this climate change and this new economic reality, but also to understand the legal context related to the fishing activity. The new climatic reality and its consequences on the Arctic Ocean, is an element calculated by the signatory States of the 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean, which provides for a program of scientific research and assessment of the prospects for commercial exploitation of fishery resources. Distant States such as China and Japan are openly expressing their fishing interests in this Ocean. It must be noted that these are maritime powers that possess the technological and human means to play an essential role in the governance and management of fisheries resources in the Arctic Ocean. One may ask what are the main challenges for the effective implementation of UNCLOS in the Arctic Ocean for the upcoming years? What needs to be done for the UK to return to the Arctic and play its role as a major State actor? Even if there are several issues in the Arctic, we will focus on the fisheries sector, especially in its legal aspect.

Key Words: Arctic Ocean, UNCLOS, Fisheries, UK

¹ Hatfield, Philip J. *Lines in the Ice: Exploring the Roof of the World*. McGill-Queen's University Press, 2016.

1.Regulation of access to economic resources, including on the deep seabed and in the water column, fishing, and the protection of resources: the case of the Arctic Ocean

1-The activity of fishing in the waters of the Central Arctic Ocean is an area which has not been sufficiently studied. The most advanced scientific information on this sector and in this region dates back to the 2000s. The remoteness of the region and the expense of conducting research are probably the reasons for this lack of knowledge. Since the acceleration of the melting of the ice pack in the Arctic, States and state entities attracted to the activity of fishing have demonstrated not only a race to the gains of this activity, but also an involvement in related areas. These include their participation in the fight against climate change, scientific research, maritime rescue operations, as well as the study of the state of fish stocks in the Arctic Ocean. Some of these State and state entities, notably the European Union, have demonstrated a willingness to become more involved from a legal perspective.

2-Furthermore, the protection of biodiversity beyond national jurisdiction is an important issue for global conservation efforts. Approximately 61% of the world's oceans are areas that are not part of any exclusive economic zone (EEZ), including the Arctic Ocean, which makes them, in principle, susceptible to uncontrolled commercial exploitation.² With the melting of the sea ice in the central Arctic Ocean, the marine area around the North Pole beyond the EEZ of any coastal State is likely to be overfished in the future. The North Atlantic, Barents Sea and Bering Sea in particular are areas in which major fishing nations such as Asian and European States currently conduct their fishing operations, and which may extend into the Central Arctic Ocean in the future as the ice retreats.³ However, the regulation of fisheries cannot be accomplished exclusively by the Arctic States alone, but through the broadest possible cooperation under public international law.⁴ Although the Arctic Council has created an objective regime for the exploitation of natural resources in the Arctic by the bordering States, this does not apply to the Arctic as a whole. It must be remembered that beyond the areas under the sovereignty of coastal States, the waters of the Central Arctic are located mostly on the high seas over which the Arctic Council has no jurisdiction. Not all seabed resources in this area fall under the jurisdiction of the Arctic States. Thus, the Arctic high seas are not under the sovereignty of the bordering States. Through international cooperation this would be more appropriate.

² Vito de Lucia, «The Arctic environment and the BBNJ negotiations. Special rules for special circumstances? », (2017) 86 *Martine Policy* pp 234-240.

³ World ocean review, «The Arctic and Antarctic-Extreme, Climatically Crucial and In Crisis », (2019) pp 12-57.

⁴ Zheng Lei, «Freedom of Navigation in Arctic Routes: Regulations and Disputes », (2017) 63 *China Int' Stud.*

3-Given that the Arctic Ocean contains a very rich marine biodiversity, even if the Arctic States were to adopt a policy of preservation through the establishment of marine protected areas within their sovereign boundaries against overexploitation, the implementation of this policy would not be effective without the involvement of third States such as the United Kingdom. There are several types of marine protected areas: Large Marine Ecosystem (LME), Ecologically Significant Area, Arctic marine area. The delimitation of these protected areas seems difficult to achieve since it is not done on the basis of the same criteria. Attempts to appropriate the Arctic are of concern to the entire international community, especially to third party states involved in polar research, which is why these Countries are in favour of establishing an international regime for the Arctic. It should be noted that within the Arctic Council itself there are contradictions in the management of Arctic affairs. On the one hand, there is a call for multilateral cooperation, and on the other hand there is a race to protect national interests. Each Arctic state has its own vision of its vital interests⁵. The value of the fisheries heritage of the Arctic Ocean and the key role that the interested States are called to play in the coming decades in terms of fisheries management in the Arctic, requires the implementation of an effective legal framework. This must give priority to the safeguarding of exploitable biological resources and even the conservation of a broader marine biodiversity. Given the extremely limited data on fisheries resources in the Central Arctic Ocean, conservation of marine biodiversity must be based on science and modern global fisheries management practices.

4-The emergence of third-party fishing interests in the Arctic is a geopolitical reality that is slowly becoming a legal fact. For this reason, the issues can be addressed by an international organization to complement or reinforce the implementation of the international agreement for the prevention of unregulated fishing activities on the high seas of the Arctic Ocean. The increasing number of international issues in the Arctic, especially the need for the creation of an international organization for Arctic fisheries. The process and structure of the establishment of this institution is central to the emergence of third-party State interests in the Arctic. The activity of illegal, unreported, and unregulated (IUU) fishing makes it difficult for researchers and governments to gain an understanding of the true volume of this irregular practice. Researchers dealing with IUU fishing in the Arctic study a few subsets of species such as cod and haddock or king crab. The IUU fishing record of all species fished and traded in the Arctic Ocean is not available. For example, the International Council for the Exploration of the Sea (ICES) estimates that between 2002 and 2018 between 3.2% and 25.2% of the total catch of Arctic cod was not reported, and that in 2018 the IUU fishing of this species is unknown.⁶

⁵ Siron, R, Sherman. K, Skjoldal. H, et Hiltz. E., « Ecosystem-Based Management in the Arctic Ocean: A Multi-Level Spatial Approach », (2008) 61 pp 86-90.

5-Clearly, Central Arctic waters have attracted fishing interests since the signing of the 2018 Unregulated Fishing Ban Agreement. This agreement brought together for the first time Arctic and non-Arctic States, but considered as fishing powers, notably China, Japan and the European Union. Even if this agreement reinforces the legal regime of fishing, this instrument is not permanent. It can be said that it has temporarily frozen the fishing activity in the waters of the Central Arctic. It can be seen from this Agreement and from the will of the signatory States that the race to commercial exploitation is not ruled out but is postponed. The fact of having this agreement for the moment does not mean that these States are disinterested in the region, but on the contrary, their commitments can be considered as an opportunity to mark their presence.⁷ This legal coordination on fisheries not only has a positive impact on the countries concerned by the Arctic region, but it is also a policy that is consistent with international fisheries law and the implementation of its mechanisms, in particular the provisions of the 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as the Code of Conduct for Responsible Fisheries of the United Nations Food and Agriculture Organization (FAO).

2.UK and the Arctic: What will be the most important international partnerships and alliances for the UK in addressing these challenges and upholding its interests with regards to the law of the sea in this region?

6-The United Kingdom as a European power has developed a general Arctic policy for several decades. British interests in the Arctic can range from environmental protection to security issues. That said, this policy faces challenges at the national level as demonstrated by its differences with Scotland, and at the regional level following Brexit. These challenges have an impact on British interests in the Arctic, particularly on the exploitation of fisheries resources. The British government has realized that the consequences of climate change are not limited to the Arctic but will affect the Country as well. For this reason, scientific research has always been considered a motivating factor for involvement in the Arctic. The Country has always sought to balance defense issues as a global military power with economic and scientific interests in the Arctic, although Scotland prioritizes economic benefits over other aspects. Prior to the referendum, Scotland expressed its differences with the UK on the future of its Atlantic, Arctic, and European relations.⁸ Scotland's choice to

⁶ Bahri, T., Vasconcellos, M., Welch, D.J., Johnson, J., Perry, R.I., Ma, X. & Sharma, R., eds. 2021. *Adaptive management of fisheries in response to climate change*. FAO Fisheries and Aquaculture Technical Paper No. 667. Rome, FAO.

⁷ Vylegzhnin, Young, «The Central Arctic Ocean Fisheries Agreement as an Element in the Evolving Arctic Ocean Governance Complex», (2020) 118 *Marine policy*.

⁸ Duncan Depledge and Klaus Dodds, «The United Kingdom, Scotland and the Arctic', Arctic Institute», December 2017, <https://www.thearcticinstitute.org/united-kingdom-scotland-arctic/>.

remain in the EU during the Brexit referendum demonstrates a difference in the foreign policy pursued by the UK and Scotland. It can be said that the UK is developing its Arctic policy as a power. The UK has a global presence in the Arctic to ensure energy supply, maintain its military role in NATO⁹. Pointing out that the UK's military presence in the Arctic dates back to the 19th century, through the two world wars, the Cold War, and the commitment within NATO to deter Russia in this region.¹⁰

7-It is clear that the UK's Arctic policy has developed as the geopolitical situation in the region has evolved. The post-cold war period was characterized by a transition to peace, thus with less military orientation. Since scientists warned of the consequences of global warming on the Arctic, the UK has turned to a scientific policy characterized by a commitment to the International Polar Year. However, since the Russian flag was planted on the Arctic seabed, the UK has repeatedly expressed its concern about Russia's threats to its Arctic allies, notably Norway and Canada. Between the policy of deterrence against Russia and cooperation with it within the framework of the Arctic Council, the various departments of the British government are trying to find a balance. It remains to be said that this Country is adapting with the development of the situation in the Arctic. The Crimean crisis had pushed Western allies, including the UK, to change their positions to face possible challenges in the Arctic.

⁹ Haftendorn, Helga. "NATO and the Arctic: Is the Atlantic Alliance a Cold War Relic in a Peaceful Region Now Faced with Non-Military Challenges?" *European Security* (London, England), vol. 20, no. 3, Taylor & Francis Group, 2011, pp. 337-61.

¹⁰ Nick Ritchie, «Rethinking Security: A Critical Analysis of the Strategic Defense and Security Review», (2011) (87) 2 *International Affairs* pp 355-76.

¹¹ Andrew Foxall, «We have Proved it, the Arctic is Ours: Resources, Security and Strategy in the Russian Arctic», in Richard Powell and Klaus Dodds (eds), *Polar Geopolitics? Knowledges, Resources and Legal Regimes*, Cheltenham: Edward Elgar 2014 pp 93-112.

¹² Jon Barnett, «Security and Climate Change», (2003) (13) 1 *Global Environmental Change* pp 7-17.

¹³ Elizabeth Nyman, « Protecting the Poles: Marine Living Resource Conservation Approaches in the Arctic and Antarctic», (2018) 151 *Ocean and Coastal Management* pp 193-200.

¹⁴ Lassi Heininen (ed.), *Future Security of the Global Arctic: State Policy, Economic Security and Climate*, Basingstoke: Palgrave Macmillan 2016.

8-While the UK has taken seriously the issue of its rights under international law in terms of economic exploitation, including shipping, fishing and energy resources, and tourism¹¹, yet this Country has shown an interest in becoming more involved in protecting the Arctic environment.¹² Moreover, the Brexit has affected the UK's Arctic policy to some extent. The UK was obliged to respect European legislation on fishing. After the Brexit this is no longer the case. UK is now independent of European fisheries policy; however, it will no longer have access to European funds for scientific research in the Arctic. In general terms the UK will still need Arctic allies outside the EU, but within the framework of NATO, namely Norway, Iceland and Canada. For the UK, although the Arctic is an area of cooperation within the framework of the Arctic Council, the far North Atlantic, the Baltic Sea and Scandinavia remain sources of concern for the UK's security, due to the continued presence of Russian military activities in these regions. The UK takes into account consideration of other sources of threat, as the Arctic is increasingly of interest to other States and third powers such as China, Korea, India and Japan. The participation of offshore actors in the negotiation of the Central Arctic Ocean fisheries moratorium has reiterated a sensitive point, that the management of the northernmost waters is a global matter.¹³

9-Clearly, less geographically delineated terms such as "International Arctic" may prove more useful in the future than "Circumpolar Arctic" as actors seek to identify the emerging geographic, geopolitical and geoeconomics complexity in the region.¹⁴ As a result, with its immense natural reserves such as rich fisheries, and its geographic proximity to the European continent, the Arctic will continue to attract more and more attention from third-party States.

Conclusion

Although Arctic issues are dominated by the involvement of Arctic States, recent years have seen a modest opening to other non-Arctic States, leading to a multiplication of visions on Arctic issues. Yet this modest role is likely to grow with climate change. If, under the Law of the Sea, the Arctic States exercise sovereignty over the exclusive economic zone, with global warming and the disappearance of the central Arctic ice pack, which is an international zone, there will be an increase in navigation activities, scientific research, environmental protection, and the exploitation of fisheries resources.

The signing of the 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean is only the beginning of the involvement of third States, which soon will open the door to a multilateral governance that considers the fisheries interests of third States and State entities. Finally, it allows third States such as the UK to have rights and obligations over this space under the same international law. The reality of climate change has caused the geography of the Arctic Ocean to shift in favor of third States and State entities.

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