

Select International Relations Theories and Their Treatment of the International Agreement to
Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean: Canada's Position

by

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This thesis applies four international relations theories to the International Agreement to Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean (the Agreement) to determine which theory best explains the Agreement and the Canadian government's justification for its ratification. Using both Rational (Realism and Liberalism) and Reflective (Constructivism and Pluralism) schools of thought, I ultimately conclude that the English School's theory of Pluralism provides the best framework for understanding the Agreement and Canada's perspective. Pluralism allows for insights into the general reasons for the Agreement's creation, Canada's inclusion of the Inuit Circumpolar Council Canada in negotiations and ultimately Canada's enthusiastic promotion of the Agreement. The other theories, either because of the ontology or epistemology they prefer, can shed light on only parts of the Agreement and/or Canada's perspective.

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Dedication:

To Breanna who read countless drafts and offered steadfast support. To Emma who convinced me to apply. To Mary Covey, my mother, who said she had never had anything dedicated to her before wink wink nudge nudge. To Alan Covey, my father, because he would be upset that I dedicated my thesis to my mother and not to him as well.

Table of Contents:

Abstract	i
Acknowledgements	ii
Dedication	iii
Table of Contents	iv
Chapter 1: Introduction	1
Methodology.....	7
Organization of Thesis.....	10
Chapter 2: Historical Currents of Arctic Cooperation	12
The Arctic & International Cooperation	15
Figure 1: Maritime Zones	25
The Creation of the Declaration & the Agreement	26
Understanding the Moratorium	30
Figure 2: Arctic “Donut” Hole in the High Seas	31
Fisheries Management	36
Chapter 3: Fishing for Rationalism: Applying Realism and Liberalism.....	41
Realism	44
Theory Overview	44
Cooperation	47
Advantages & Disadvantages of a Realist Framework	50
Liberalism	54
Theory Overview	54
Cooperation	56

Advantages & Disadvantages of a Liberal Framework.....	57
Rational Theories in the Global Commons	59
Chapter 4: A Reflective Response: Applying Constructivism and Pluralism	61
Constructivism.....	62
Theory Overview.....	63
Cooperation.....	65
Advantages & Disadvantages of the Constructivist Framework.....	67
Pluralism.....	72
Theory Overview.....	74
Cooperation	76
Advantages & Disadvantages of the Pluralist Framework	78
Reflective Theories in the Global Commons	80
Chapter 5: ‘The Great Iceless Race?’	85
Summary of Thesis	86
Recommendations	89
Expanding The Scope	90
Abiding By The Agreement	93
Contribution & Future Research	94
Bibliography	96
Appendix #1 (Agreement).....	109
Appendix #2 (Declaration).....	116

Chapter 1: Introduction

“History has taught that the exploitation of natural resources without adequate knowledge commonly leads to unsustainable harvests and negative or unknown effects on ecosystems.”¹
T.I. Van Pelt et al. in *The Missing Middle: Central Arctic Ocean Gaps in Fishery Research and Science Coordination*

The International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (henceforth referred to as the Agreement) was signed in 2018 by nine states and one international organization². The Agreement is lauded as revolutionary setting precedents in terms of the preemptive nature of the agreement, and the large scale impact that this agreement may have on the international community and on the Arctic ecosystem. The Agreement covers an area of high seas in the middle of the Arctic Ocean and bans fishing there for sixteen years³. The high seas are the areas of the world’s oceans that are not considered the property of or under the jurisdiction of any particular state⁴. The area described in the Agreement currently does not have any commercial fisheries taking place but, as a result of climate change, the area in question may become more accessible making fishing in the central Arctic Ocean a possibility. Many

¹ T.I. Van Pelt et al., "The Missing Middle: Central Arctic Ocean Gaps in Fishery Research and Science Coordination," *Marine Policy* 85 (2017): 80, doi:10.1016/j.marpol.2017.08.008.

² Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean,” Government of Canada, October 12, 2018, <http://www.dfo-mpo.gc.ca/international/arctic-arctique-eng.htm>.

³ Gloria Galloway, “Canada, Russia Expected to Unite for Moratorium on High Arctic Fishing,” *Globe and Mail*, May 15, 2018, <https://www.theglobeandmail.com/news/politics/canada-russia-expected-to-unite-for-moratorium-on-high-arctic-fishing/article25524466/>.

⁴ "United Nations Convention on the Law of the Sea," United Nations, 2018, https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

questions emerge as a result of the creation of this Agreement including why would states agree to a fishing moratorium when fish stocks around the world are rapidly deteriorating? The International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean seems to defy the current geopolitical climate bringing together North Atlantic Treaty Organization (NATO) states and its current adversaries and potentially ties them to an agreement for a significant period of time. Can current international relations theories account for this seeming anomaly? What is more, can international relations theories account for the various actors involved in the Agreement's negotiation especially the inclusion of indigenous peoples by Canada?

While theories that preference national interests or cooperation can explain the creation of agreements generally, they do not explain this preemptive agreement that includes some of the world's most powerful and biggest fishing states. To understand the nature of the Agreement, a closer examination of the role of key, mainly state actors are needed. This means that both rational and reflective international relations theories are needed to cover both traditional geopolitical actors (both states and international organizations) as well as theories that use contemporary ontologies such as ideas, norm entrepreneurs and regimes to understand the role of indigenous peoples.

The International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean is "a framework for all signatories to cooperate to better understand the area's ecosystems, and to prevent commercial fishing from occurring until adequate scientific

information is available to inform management measures”⁵. There were five original signatories to the ‘Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean’ henceforth referred to as the Declaration) in 2015 which eventually evolved into the Arctic High Seas Fisheries Agreement in 2018⁶. Those five original signatories were Canada, Denmark, Norway, Russia, and the United States - the five coastal Arctic states⁷. The current signatories to the Arctic High Seas Fisheries Agreement are: Canada, China, Denmark, the European Union, Iceland, Japan, Norway, Russia, South Korea, and the United States⁸. The Agreement has a sixteen-year life span with optional five-year renewals thereafter⁹. The Canadian chapter of the Inuit Circumpolar Council (ICC) approved of the Declaration and ICC-Canada was included as part of the Canadian negotiating team.

Agreements to manage global commons are not new; the current *state* signatories to the Agreement have also ratified the Antarctic Treaty of 1959¹⁰, the Outer Space Treaty of 1967¹¹, the Space Rescue Agreement of 1968¹², and all states with the exception of the United States

⁵ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

⁶ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

⁷ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

⁸ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

⁹ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

¹⁰ "The Antarctic Treaty," ATS, 2011, <https://www.ats.aq/e/ats.htm>.

¹¹ "United Nations Office for Outer Space Affairs," RES 2222 (XXI), accessed May 19, 2019, http://www.unoosa.org/oosa/oosadoc/data/resolutions/1966/general_assembly_21st_session/res_2222_xxi.html.

¹² "United Nations Office for Outer Space Affairs," Rescue Agreement, accessed May 19, 2019, <http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introrescueagreement.html>.

have signed onto the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹³ All of these international agreements try to regulate and standardize behavior in the “global commons” but these other examples of global commons’ treaties are markedly different from the International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean because they were created after activity was taking place in the area covered under the legislation. The Agreement predates any known fishing activity in the area and is, therefore, special. A pessimist would argue that praise for this agreement is premature - it is easy to sign onto a moratorium for something that is currently not happening. The true test of the Agreement will come once Arctic fishing becomes viable. The optimist would argue that this Agreement is the start of a new era of sustainable geopolitical cooperation, the signatories having acknowledged that the world needs to embrace sustainable practices pre-emptively instead of waiting until there is a problem and then legislating. Such simple comparisons, however, are not sufficient to explore why Canada and the other signatories would create such an Agreement. Instead, international relations’ theories are needed.

The traditional theories of international relations (IR) can readily explain why states might join but have a tougher time explaining why an IO, like the EU, would join and why states, like Canada, would consult with Indigenous groups such as the Inuit Circumpolar Council (ICC) of Canada. For these actors, reflective theories need to be considered in addition to the traditional theories in order to fully understand and explain the Arctic High Seas Fisheries Agreement.

¹³ "Law of the Sea," United Nations.

Due to the limited scope of a Masters' thesis, I selected two theories from the Rational school (Realism and Liberalism) and two theories from the Reflective school (Constructivism and Pluralism). Liberalism and Realism were selected due to their longstanding influence and relevance to IR as an academic discipline. The theory of Realism is expected to explain the Agreement as a cynic would: it is easy to agree to something that has not yet happened. In addition, the long-standing supremacy of the Realist theory means it is an important theory with which to begin any IR-based analysis. Realism points to likely fractures or "cheaters" in the future; namely the competitive nature inherent to the theory predicts that the cooperative nature of Arctic geopolitics will inevitably fall apart when fishing is viable or other geopolitical issues of national significance emerge. Realists are quick to point out that, security issues are completely ignored in the Agreement. The key sticking points for Realism, therefore, are the state interests involved and the changing state power levels which could undo any temporary agreements. The second Rational theory I chose was Liberalism, another foundational theory for the Rational School that is often used in contrast to Realism. Some advantages to using Liberalism are that the theory suggests that international agreements work, and that cooperation has the possibility of lowering tensions and building ties between different countries¹⁴. Liberalism also maintains that states can have multiple interests which are a very important point when dealing with the Agreement – both achieving national interests and fostering multilateral cooperation – are key descriptors of Canadian foreign policy preferences¹⁵. The allowance of

¹⁴ Benjamin Miller, "Democracy Promotion: Offensive Liberalism versus the Rest (of IR Theory)," *Millennium: Journal of International Studies* 38, no. 3 (2010): 566.

¹⁵ "Canada and the United Nations," Government of Canada, December 19, 2019, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/un-onu/index.aspx?pedisable=true&lang=eng; "The commitment to

multiple interests affords states the opportunity to set aside the more immediate benefits of new supplies of fish with promotion of environmentalism and the establishment of a sustainable fishery. The value that the theory of Liberalism places on democracies (especially Western ones), however, is problematic because not all signatories to the Agreement are Western democracies. Liberalism for example, can readily explain Canada's reasons to sign onto the Agreement but has a tougher time with China.

I chose Constructivism and the Pluralist theory from the English School as foils to the Rational theories. After all, the theory of Constructivism readily accepts a variety of actors as units of analysis. Especially for Canada, ideas about the Arctic as a key identity definer and Canada as a "leader" are easily understood because constructivism assumes, "*action must always be understood from within*".¹⁶ Finally, Pluralism is the best at accepting the influence of indigenous groups, like the ICC-Canada, as actors exerting influence on government decision-making. Given recent Government of Canada pledges to improve its relationship with indigenous groups, it is inconceivable that Canada would negotiate or sign an agreement tied regionally to the Arctic and covering an activity important to indigenous populations without their input.

multilateralism is the cornerstone of Canada's foreign policy and the United Nations is our most important forum for that commitment."

¹⁶ Jeffrey T. Checkel, "Theoretical Pluralism in IR: Possibilities and Limits," in *Handbook of International Relations*, eds. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (SAGE Publications, 2012): 326.

Methodology

The IR theories (Realism, Liberalism, Constructivism, and Pluralism) will be used to answer the same questions about the Declaration and Agreement in order to determine which best accounts for the Agreement's existence – especially Canada's involvement. In order to treat the theories similarly, I will use the following table as a guide to ensure that the same questions are asked of each of the theories about the Agreement ensuring rigor and consistency.

Theory	Thoughts on Cooperation	Seeks to	Advantages	Disadvantages	Global Commons
Realism	Cooperation will only occur if it is in the states' national interests to cooperate.	Explain	Long-standing influence of the theory	Skeptical of the sincerity and longevity of cooperation	States will act in self-interested ways in regards to the global commons.

Theory	Thoughts on Cooperation	Seeks to	Advantages	Disadvantages	Global Commons
Liberalism	Believes that cooperation is possible.	Explain	Has the inherent ability to believe in lasting cooperation which would allow for the states involved to become more interconnected and tensions to decrease.	Treats democracies and non-democracies differently	Has difficulty handling why indigenous groups would have negotiating power re: Global Commons
Constructivism	Cooperation can change because identities of actors change	Understand	Can accommodate why non-traditional international partners may cooperate.	Does not allow for predicting future behaviour; the theory only works retroactively.	It is the “norm” to have agreements concerning the global commons but not preemptive agreements

Theory	Thoughts on Cooperation	Seeks to	Advantages	Disadvantages	Global Commons
Pluralism	Believes that cooperation is possible under particular circumstances .	Understand	Allows states to pursue multiple interests	Concept of international society (or Arctic regional society) on which the theory depends is contested	Can accommodate different actors, like indigenous groups as partners in the Arctic Ocean because subnational entities are recognized

To complete the table in the proceeding chapters, I will turn to the main and foundational thinkers important to each of the IR theories.

All of the theories have differing views on cooperation which seems key to the Agreement and, indeed, much of the political activity in the Arctic since the end of the Cold War. Realist thinkers believe that states will cooperate if it is in their own self-interest to cooperate and if the state actors abide by the rules of the agreement, as “aggression is not innate but arises in part from uncertainty”¹⁷. In terms of the Agreement, realist thinkers would say that since no one can currently fish, all of the states will cooperate under the current conditions. Liberalism has a fundamental belief that international agreements work and therefore

¹⁷ Michael Williams, “Sceptical States: Hobbes,” in *The Realist Tradition and the Limits of International Relations* (Cambridge: Cambridge University Press, 2005), 42.

cooperation can exist. But this cooperation works best when all of the states involved are western democracies because they will share similar ideas about the need to cooperate on transnational issues. The reflective theories, in contrast, more interested in what ideas, actors and norms create the impetus for cooperative action.

There is no single theory that completely explains all elements of the Agreement, but the Pluralism theory comes the closest. Pluralism is able to describe how the Agreement, via an international society made up of states and other actors, can create rules but accepts that the different actors do so for different reasons.

The second part of the thesis is to examine Canada (both the state and more broadly to include other actors, like the ICC - Canada) and the role it played in the creation of the Agreement as the main lens. Canada, therefore, will be a particular focus state as one of the littoral Arctic states and creator of the Arctic Council – the preeminent Arctic policy forum. With the limits of a Master's thesis, I cannot review the creation of the Agreement from the viewpoint of all of the signatories and so Canada will be the particular state of concern. This points, however, to an important future avenue of research.

Organization of the Thesis

This first chapter outlines the thesis questions, methodology and organization of the thesis as well as outlining the central questions regarding the Agreement: why was it formed,

why was Canada involved, and what are the policy implications for Canada as we look to the future of the Agreement?

The second chapter entitled: 'The Historical Currents of Arctic Cooperation', will be a source-based historiography of the events and arguments, especially those of Canada, that led to the International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.

The third chapter entitled 'Fishing for Rational Theory: Applying Realist and Liberal Frameworks', turns to an application of the rational theories to the Declaration and Agreement to see if they can account for Canada's participation and arguments for each.

The fourth chapter entitled: 'A Reflective Response: Applying Constructivist and Pluralist Frameworks', will turn to the reflective theories in an attempt to understand the Agreement, its strengths and weaknesses and the role of Canada.

The fifth and final chapter, 'The Great Iceless Race?' summarizes the findings and based on especially Pluralism's treatment of the Agreement, posits some recommendations for how the Canadian state should view the future of the Agreement. Recommending that Canada should expand the number of signatories and abide by the terms set forth by the Agreement, this chapter concludes that the English School's theory of Pluralism cautions Canada to not ignore the other signatories and their interests.

Chapter 2: Historical Currents of Arctic Cooperation

“This is a proud moment for our country. Canada, once again, has demonstrated that it can work with its international partners on sustainable ocean stewardship and to ensure the protection of the Arctic’s fragile ecosystems.”¹⁸ — The Honourable Jonathan Wilkinson (then Minister of Fisheries, Oceans and the Canadian Coast Guard in 2018)

On October 3, 2018, Canada, along with China, Denmark, Iceland, Japan, South Korea, Russia, the U.S., and the European Union, signed the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean¹⁹. The Agreement was described as groundbreaking by the Department of Fisheries and Oceans Canada because it was the first time an “international agreement of this magnitude had been reached before any commercial fishing has taken place in a high seas area.”²⁰ In other words, it is a preemptive agreement and one of the first of its kind. In terms of international cooperation, the Agreement echoes the Arctic Council’s mandate and focus on environmental protection involving both Arctic and other states and valuing the knowledge that the Arctic Indigenous peoples possess about the natural world. Canada was a key player in the drafting of the Agreement, and its predecessor the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean which was signed on July 16, 2015²¹.

¹⁸ Fisheries and Oceans Canada, "Canada Signs International Agreement to Prevent Unregulated Fishing in the High Seas of the Central Arctic Ocean," Government of Canada, October 03, 2018, <https://www.canada.ca/en/fisheries-oceans/news/2018/10/canada-signs-international-agreement-to-prevent-unregulated-fishing-in-the-high-seas-of-the-central-arctic-ocean.html>.

¹⁹ "Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean," October 3, 2018, <https://www.dfo-mpo.gc.ca/international/agreement-accord-eng.htm>.

²⁰ Fisheries and Oceans Canada, "Canada Signs International Agreement."

²¹ Fisheries and Oceans Canada, "Canada Signs International Agreement."

This chapter lays the framework to understand the Agreement. The key questions that this chapter will answer are: what are the terms of the Agreement and what was Canada's role in its creation? These questions will be answered using a historiographic approach which involves a critical examination of (especially primary) sources to understand cooperation in the Arctic and how that cooperation evolved into the Agreement.

The International Agreement to Prevent Unregulated Fisheries in the Central Arctic Ocean is a legally binding fishing moratorium on the member states. Once the Agreement goes into force, all of the signatories will be prohibited from establishing **commercial** fisheries in the region. The area that the Agreement covers is considered the high seas, which means it is not under the jurisdiction and control of any state, and therefore, every state has equal opportunity to exploit the resources in the high seas of the central Arctic ocean. The Agreement was created before any commercial fisheries as taken place in the region, making the Agreement an example of international preemptive policy making. The only way to curtail states acting solely in self-interest is to create a binding international agreement that establishes legal protections for the region, which is what the Agreement aimed to do.

Once the Agreement is ratified it has an initial period of sixteen years with the possibility of subsequent five-year renewal periods²². The extensions would only be approved with unanimous approval of all the signatories²³. Unanimous approval is a high bar to reach in regards to any decision, but in the context of Arctic politics it echoes the way that the Arctic Council has

²² "International Agreement to Prevent Unregulated High Seas Fisheries."

²³ "International Agreement to Prevent Unregulated High Seas Fisheries."

been successfully governed. Ergo, the consensus element of the Agreement should not be considered an idealistic element but instead characteristic of the region.

The Agreement aims to meld scientific research and indigenous traditional knowledge respecting both traditions in an attempt to gather knowledge and create a possible future, sustainable fisheries management policy. The Agreement protects indigenous interests in the region by only limiting the fisheries moratorium to commercial fisheries. The scientific management element plays a large part in the Agreement. As Article Four of the Agreement is focused on the signatories creating a joint scientific and monitoring program²⁴. More knowledge is needed in order for a sustainable fishery to be established in the region, and this Agreement was created to halt the establishment of potential fisheries until a time when the region and its stocks are properly understood.

While the Agreement was signed in 2018 it has yet to go into force. As of 1 March 2020, Canada, the U.S., South Korea, the European Union, Russia, and Japan have ratified the Agreement²⁵, but Denmark, Norway, Iceland, and China have not. Until the final four states have ratified the Agreement the only thing stopping the establishment of commercial fisheries in the central Arctic ocean is the Declaration. Unfortunately, declarations have no legal compellence or enforcement feature, and the only states signed onto the Declaration are the Arctic Five (Canada,

²⁴ "International Agreement to Prevent Unregulated High Seas Fisheries."

²⁵ Ministry of Foreign Affairs Republic of Korea, "ROK Completes Domestic Ratification Procedure for Agreement to Prevent Unregulated High Seas Fisheries in Central Arctic Ocean."

U.S., Norway, Denmark, and Russia). In order for the high seas of the central Arctic ocean to be held under a legally binding fishing moratorium, the Agreement needs to enter into force.

The Arctic & International Cooperation

While the Agreement is revolutionary in terms of its preemptive nature, it is important to realize that the Arctic has been a place characterized by cooperation and collaboration, even during the Cold War. The Arctic's history of cooperation, especially the increased level and more profound cooperation since the end of the Cold War, is fundamental to understanding how and why the Agreement was created. The level of cooperation in the Arctic has been exemplified through the work of the Arctic Council which has managed to remain effective even through periods of rising geopolitical tensions around the world including when Russia annexed Crimea in 2014. Despite being suspended from many other fora, Russia remained and remains a key decision-maker in the Arctic Council.

There was a concern during the Cold War that the Arctic would turn into a battle ground because it is where the United States and the former Soviet Union share a maritime border and by the fact that the Diomed Islands separated the two superpowers by only 3.8km in the Bering Strait²⁶. There was a fear that a nuclear attack would be launched over the Arctic Ocean including over the Canadian Arctic, as a transpolar route was the shortest distance between major

²⁶ "Yesterday and Tomorrow Islands," NASA, accessed June 05, 2019, <https://earthobservatory.nasa.gov/images/91638/yesterday-and-tomorrow-islands>.

US and major Soviet targets²⁷. Luckily, even though tension remained high during the Cold War, especially between the Soviet Union and NATO allies (the U.S., Canada, Norway, Denmark and Iceland), cooperation still occurred in the Arctic. A few notable cooperative events between the former Soviet Union and the West include the Joint Norwegian-Russian Fisheries Commission, which was created in 1974 and came into effect two years later in 1976²⁸, the Polar Bear Treaty of 1973²⁹, and the Rovaniemi Conference of 1989 and the subsequent meetings (Yellowknife in April 1990, Kiruna in January 1991, Rovaniemi in June 1991), which culminated in the creation of the Arctic Environmental Protection Strategy (AEPS)³⁰. These agreements and examples of cooperation are all tied to ensuring that the eight Arctic states and others, despite differences in other issue areas, find ways to come together on environmental protection and sustainability in the Arctic, be it via creating sustainable fishing practices, preventing the extinction of polar bears, or the creation of the AEPS - a forum that was designed to increase and coordinate cooperation on the issue of environmental protection in an increasingly polluted Arctic Ocean.

The Joint Norwegian-Russian Fisheries Commission came into force in 1976 and was focused on creating sustainable fishing of the straddling stocks between Norway and the former

²⁷ Rob Huebert, "Canadian Arctic Security Issues: Transformation in the Post-Cold War Era," *International Journal* 54, no. 2 (1999): 205, doi:10.2307/40203373.

²⁸ "The Fisheries Commission," Joint Fish, accessed July 20, 2019, <http://www.jointfish.com/eng/THE-FISHERIES-COMMISSION.html>.

²⁹ "Agreement on the Conservation of Polar Bears", November 15, 1973, <https://polarbearagreement.org/resources/agreement/the-1973-agreement-on-the-conservation-of-polar-bears>.

³⁰ "History of the Arctic Council," Arctic Council, June 6, 2018, <https://arctic-council.org/index.php/en/about-us/arctic-council>.

Soviet Union³¹. This Commission is a good example of successful fishery management arrangement as the “stocks are in exceptionally good shape” today³². Confirmed adversaries during the Cold War, Norway and the Soviet Union, nevertheless, have been working together since the 1970s³³. In 1976 the Soviet Union and Norway had agreed to split caught quotas of fish in half and in 1978 they revisited the agreement from being originally just cod and haddock fish stocks to including capelin³⁴. The quota for capelin stock was to be split 60/40 in favour of Norway³⁵ - an unexpected split considering Cold War tensions. The Joint Commission continued even after the fall of the Soviet Union. In the early 1990s, when Norway suspected Russia was violating the established quota, the two countries amended the agreement to deal with quota enforcement³⁶. The longevity and success of the Joint Norwegian-Russian Fisheries Commission demonstrates that cooperation can and has existed between Russia and the West during times of tension at least as it relates to the Arctic economy and fisheries management.

The Polar Bear Treaty of 1973 was signed by the Arctic five littoral states (i.e. Canada, the United States, Russia, Norway, and Denmark) to attempt to prevent the extinction of the polar bear by protecting the ecosystems on which the bears are dependent, as well as limiting the

³¹ Andreas Østhagen, "High North, Low Politics—Maritime Cooperation with Russia in the Arctic," *Arctic Review on Law and Politics* 7, (2016): 86, doi:10.17585/arctic.v7.255.

³² Geir Hønneland, "Compliance and Postagreement Bargaining in the Barents Sea Fisheries," *Ocean Development & International Law* 45, no. 2 (2014): 186, doi: 10.1080/00908320.2014.898923.

³³ Geir Hønneland, "Compliance and Postagreement Bargaining," 186.

³⁴ Geir Hønneland, "Compliance and Postagreement Bargaining," 190.

³⁵ Norway received a larger share of the Capelin stock due to reasons of scientific backing in regards to migration and stock abundance as well as considering Norway's historical catch data; Olav Schram Stokke, "Management of Shared Fish Stocks in the Barents Sea," Food and Agriculture Organization of the United Nations, accessed December 25, 2019, <http://www.fao.org/3/y4652e/y4652e0e.htm#fn93>.

³⁶ Geir Hønneland, "Compliance and Postagreement Bargaining," 191.

hunting of the species³⁷. The polar bear was and remains, to this day, a defining symbol of the Arctic, a symbol behind which all of the Arctic five states could rally and support. The Polar Bear Treaty is an example of adversaries coming together to protect the Arctic, at least symbolically, via attention to the Arctic ecosystem. The Canadian government web page discussing the Polar Bear Treaty of 1973 mentions that the Treaty was “implemented in Canada in a combined effort by Indigenous Hunting and Trapping organizations” but it does not say to what extent (if any) the Arctic Indigenous peoples were consulted during the formation of the Treaty³⁸. Clearly, more meaningful consultation and negotiation with Arctic Indigenous peoples would take time.

The 1989 Rovaniemi Conference in Finland ultimately resulted in the creation of the Arctic Environmental Protection Strategy (AEPS) negotiated by the eight Arctic states and by select indigenous groups including the Inuit Circumpolar Council, the Nordic Saami Council, and the USSR Association of Small Peoples of the North (now called the Association of Indigenous Peoples of the North (RAIPON))³⁹. The AEPS was a Finnish initiative that was created when then General Secretary of the Central Committee of the Communist Party of the Soviet Union Mikhail Gorbachev gave a speech in Murmansk on 1 October 1987 calling for cooperation in the Arctic that was not governed by “the Polar chill of accumulated suspicions

³⁷ “Agreement on the Conservation of Polar Bears.”

³⁸ "Polar Bear Conservation: Multilateral Agreement," Government of Canada, April 01, 2019, <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/polar-bear-conservation-multilateral.html>.

³⁹ The Arctic Environmental Protection Strategy, June, 1991, http://library.arcticportal.org/1542/1/artic_environment.pdf.

and prejudices”⁴⁰ and that the Arctic should become “a genuine zone of peace and fruitful cooperation”⁴¹. While Western states were skeptical of Gorbachev’s sincerity, events within the Soviet Union soon suggested an Arctic regional organization might be possible and hasten rapprochement between the East and West not to mention the obvious deterioration of the Arctic marine environment. Finnish Ambassador Esko Raja-Koski was incentivized by the speech, saw an opportunity and pushed for the creation of the AEPS⁴². Finland is also to be applauded for taking the unusual step at the time to include three northern indigenous organizations to represent indigenous peoples. These included the Inuit Circumpolar Conference (ICC), the Nordic Saami Council and the USSR Association of Small Peoples (meaning minority) of the North.. While they did not enjoy the same status as the eight Arctic States, they were present at many of the discussions and were granted observer status along with three other non Arctic states (all in Europe) and three international organizations.⁴³ The AEPS is important because it was the precursor organization to the Arctic Council; the Arctic’s now pre-eminent intergovernmental forum launched by Canada in 1996 with Canadian indigenous leader and Canada’s Arctic Ambassador Mary Simon.

⁴⁰ “Mikhail Gorbachev’s Speech in Murmansk at the Ceremonial Meeting on the Occasion of the Presentation of the Order of Lenin and the Gold Star to the City of Murmansk,” accessed September 7, 2019, https://www.barentsinfo.fi/docs/Gorbachev_speech.pdf.

⁴¹ “Mikhail Gorbachev’s Speech in Murmansk.”

⁴² John English, *Ice and Water: Politics Peoples And The Arctic Council* (Toronto: Allen Lane, 2014), 114.

⁴³ David VanderZwaag, Rob Huebert, and Stacey Ferrara, “The Arctic Environmental Protection Strategy, Arctic Council and Multilateral Environmental Initiatives: Tinkering While the Arctic Marine Environment Totters,” *Denver Journal of International Law and Policy* 30, no. 131 (2002): 144 and The Arctic Environmental Protection Strategy, June, 1991, http://library.arcticportal.org/1542/1/artic_environment.pdf.

Canada was a champion of Arctic cooperation in the 1990s. Arctic experts Whitney Lackenbauer and Suzanne Lalonde note that “Canadian politicians and commentators often trumpet how their country led efforts to establish the Arctic Council through the 1996 Ottawa Declaration, which reflected Canada’ preoccupations with the environment and Indigenous peoples”⁴⁴. The creation of the fundamental intergovernmental forum that exists in the Arctic was known as the Canadian proposal⁴⁵. The Canadian government wanted an Arctic forum that facilitated cooperation on Arctic issues more broadly than just the environment⁴⁶. Specifically Canada was hoping that the Arctic Council would deal with questions of security, spurred on by Gorbachev’s call for Arctic disarmament,⁴⁷ and also “sustainable development” influenced by the agenda of the United Nations Conference on the Environment and Development (UNCED) held in Rio in 1992.

Thus, the Arctic Council is an intergovernmental forum that facilitates cooperation and coordination among the eight Arctic states with special consideration for the wishes of the six indigenous peoples groups⁴⁸ on the twin issues of environmental protection and sustainable development. The Arctic Council was created by the Ottawa Declaration of 1996.⁴⁹ “Canada was an early champion of the Arctic Council and promoted the inclusion of Indigenous Permanent

⁴⁴ P. Whitney Lackenbauer and Suzanne Lalonde, "Searching for Common Ground in Evolving Canadian and EU Arctic Strategies," in *The European Union and the Arctic*, eds. Nengye Liu, Elizabeth A. Kirk, and Tore Henriksen (Brill, 2017), 122.

⁴⁵ John English, *Ice and Water*, 135-7.

⁴⁶ John English, *Ice and Water*, 133.

⁴⁷ “Mikhail Gorbachev’s Speech in Murmansk.”

⁴⁸ "History of the Arctic Council.”

⁴⁹ "History of the Arctic Council”

Participants with a seat at the table”⁵⁰. The role for the Indigenous peoples greatly expanded from roles on the AEPS from passive consultation to active solicitation. Mary Simon, the Canadian Ambassador for Circumpolar Affairs, declared that “the Canadian delegation was very clear: if the indigenous peoples became only observers as suggested by the USA - and not permanent participants as agreed - Canada would walk out of the negotiations”⁵¹. Although Canada’s hopes that the Council would deal with Arctic security⁵² never came to fruition as a result of objections by the U.S., the Council’s twin mandates of environmental protections and sustainable development have proven fruitful areas of cooperation. The United Nations breaks sustainability into three components: economic, environmental, and social⁵³. The work of the Arctic Council spans these three components and the Arctic states, Observer states and organizations and the six Permanent Participants work together to tackle transboundary issues such as indigenous language promotion, elimination of black carbon and search and rescue protocols.

The Arctic Council fosters international cooperation while advancing knowledge on the council’s main issues through its six working groups: the Arctic Contaminants Action Program,

⁵⁰ P. Whitney Lackenbauer and Suzanne Lalonde, "Searching for Common Ground," 131-132.

⁵¹ Stig Brøndbo, "Interview with Mary Simon," UArctic, May 27, 2016, <https://www.uarctic.org/shared-voices/shared-voices-magazine-2016-special-issue/interview-with-mary-simon/>.

⁵² “Ottawa Declaration”, September 19, 1996, [https://oaarchive.arctic-council.org/bitstream/handle/11374/85/EDOCS-1752-v2-ACMMCA00_Ottawa_1996_Founding_Declaration.PDF?sequence=5&isAllowed=y](https://oaarchive.arctic-council.org/bitstream/handle/11374/85/EDOCS-1752-v2-ACMMCA00_Ottawa_1996_Founding_Declaration.PDF?sequence=5&isAllowed=y;).; The first footnote of the Ottawa Declaration that states “The Arctic Council should not deal with matters related to military security”.

⁵³ FAO, “The State of World Fisheries and Aquaculture 2016, Contributing to food security and nutrition for all”, Food and Agriculture Organization of the United Nations, (2016): 40.

the Arctic Monitoring and Assessment Programme, the Conservation of Arctic Flora and Fauna Working Group, the Emergency Prevention, Preparedness and Response Working Group, and the Protection of the Arctic Marine Environment Working Group⁵⁴. The Arctic Council has even managed to help negotiate three international agreements binding on the eight Arctic states. They include: the 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, the 2013 Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, and the 2017 Agreement on Enhancing International Arctic Scientific Cooperation⁵⁵. The 2011 Agreement is a formalization of common practice whereby the Arctic states all agree to cooperate in regards to air and marine search and rescue in the circumpolar Arctic⁵⁶. The 2013 Agreement details how the Arctic states should react and work together in the case of oil spill pollution both in terms of response and prevention⁵⁷. The 2017 agreement calls for great cooperation among the Arctic states in the field of scientific research which includes an acknowledgement of the importance of traditional indigenous knowledge⁵⁸.

Fast forward to present day and the Arctic Council is still a valuable forum despite growing tensions between Russia and many of the Arctic NATO allies. For example, the Arctic Council remained active despite the Russian annexation of Crimea in 2014. In other words, despite the Western world condemning Russia for the annexation and occupation of Crimea, the meetings of the Arctic Council continued and Russia was not barred from the Council. Canada

⁵⁴ "About Us," Arctic Council.

⁵⁵ "Agreements," Arctic Council, December 6, 2018, <https://arctic-council.org/index.php/en/our-work/agreements>.

⁵⁶ "Agreements."

⁵⁷ "Agreements."

⁵⁸ "Agreements."

did boycott one meeting in April 2014 in protest of Russia's actions in Crimea, but the meetings with the Senior Arctic Officials ran as scheduled with the Russian delegation present⁵⁹. The Ukraine crisis has had relatively few impacts on Arctic politics, compared to other regions, as conflict spill-over is moderated by Russia's economic interests in the high north"⁶⁰. Russia continued to follow "the 'rules of the game' in the Arctic — while all the time 'breaking the rules of the game' in Ukraine"⁶¹. Thus, the Arctic geopolitical arena has remained somewhat isolated from the other geopolitical arenas, despite high tension between Russia and NATO Arctic states in other parts of the world. The Arctic has become a cooperative and collaborative geopolitical region even during times of great turmoil in the international community and in other geopolitical areas. It is this specialness of the Arctic that some political scientists suggest qualifies it as a regional if not international community.

In addition to bilateral and multilateral agreements and fora, the Arctic has also benefited from the United Nations Convention on the Law of the Sea (UNCLOS) - the preeminent law that governs all state behaviour in the oceans including the Arctic Ocean. UNCLOS outlines the authority that a coastal state has over different zones of maritime territory. While UNCLOS governs all of the world's oceans, its referent for rule-making begins with the land territory of coastal (also called littoral) states. The rule-making authority of coastal states diminishes the farther out to sea one travels. A coastal state's maritime territory starts with the Territorial Sea

⁵⁹ Michael Byers, "Crises and International Cooperation: An Arctic Case Study," *International Relations* 31, no. 4 (2017): 397, doi:10.1177/0047117817735680.

⁶⁰ Jon Rahbek-Clemmensen, "The Ukraine Crisis Moves North. Is Arctic Conflict Spill-over Driven by Material Interests?" *Polar Record* 53, no. 1 (2016): 2, doi:10.1017/s0032247416000735.

⁶¹ Jørgen Staun, "Russia's Strategy in the Arctic: Cooperation, Not Confrontation," *Polar Record* 53, no. 3 (2017): 314, doi:10.1017/s0032247417000158.

which is twelve nautical miles (nm) from its baseline⁶² and is considered sovereign waters meaning that the coastal state has very strong controls over the maritime territory and rule-making authority⁶³. The Exclusive Economic Zone (EEZ) is the next zone which extends from the low water mark out to 200 nm. In this zone the coastal state has first rights to all of the resources in the zone – natural and other resources from the subsoil and throughout the water column⁶⁴. The high seas is the area outside of a coastal state's EEZ. The high seas is considered part of the global commons and every state in the world, regardless of whether they are coastal or landlocked, has equal access to utilize the territory and its resources. All of the Arctic states, with the exception of the U.S., have ratified UNCLOS, but the U.S. does accept it as customary international law⁶⁵. Cooperation, therefore, seems to be part-and-parcel of the Arctic.

⁶² There are two ways recognized by law to calculate baselines – the normal method and the straight baseline method. Canada prefers the straight baseline method for its Arctic archipelago which is contested by the U.S. and many other states. See UN Convention on the Law of the Sea, Articles 5 and 7 for calculation details.

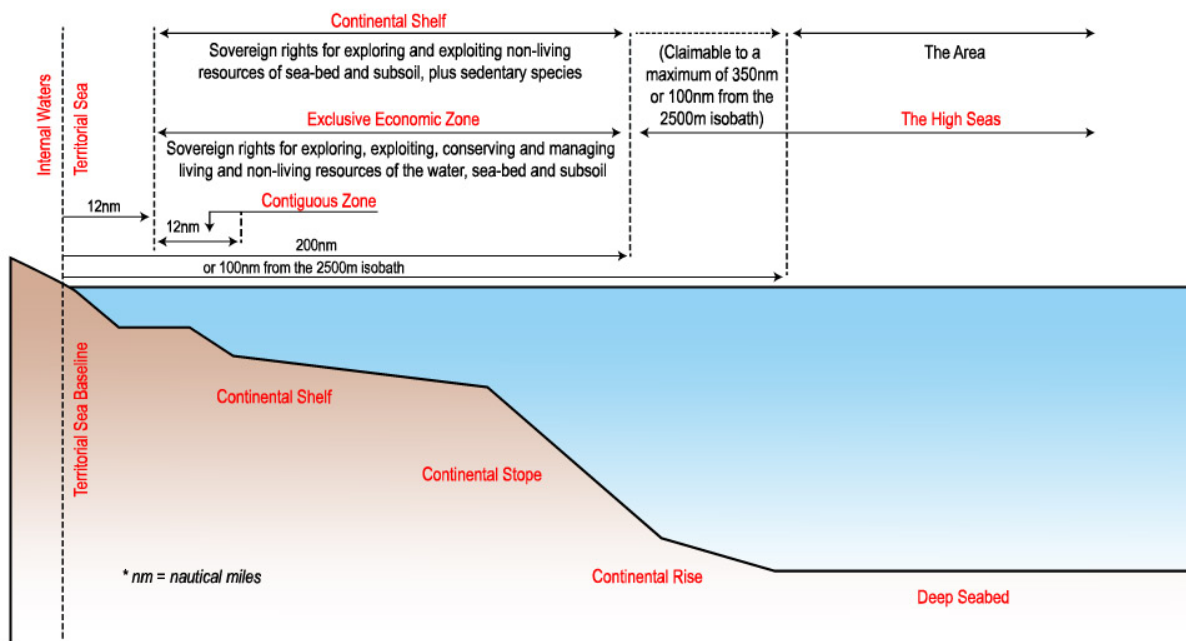
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁶³ “Make Law, Not War,” *The Economist*, August 25, 2012, <https://www.economist.com/international/2012/08/25/make-law-not-war>.

⁶⁴ “Make Law, Not War.”

⁶⁵ John E. Noyes, “The Law of the Sea Convention and the United States of America,” *Revue Belge de Droit International / Belgian Review of International Law* vol. 47, no. 1 (2014): 18.

Figure 1: Maritime Zones



(Fisheries and Oceans Canada, “Maritime sovereign rights, by zones, under the Law of the Sea Treaty,” Digital image, Sovereignty and UNCLOS Defining Canada’s Extended Continental Shelf, May 8, 2019, <https://www.dfo-mpo.gc.ca/science/hydrography-hydrographie/UNCLOS/index-eng.html>.)

The Agreement covers the high seas’ donut hole in the middle of the Arctic Ocean. Therefore no state has any rights or rule-making ability. Rather, the International Maritime Organization (a UN specialized organization) the International Sea Bed Authority (an autonomous international organization established under UNCLOS) and any international agreements (such as the Agreement) manage and may enforce the rules of UNCLOS in the donut hole as well as other high seas.

The Creation of the Declaration & the Agreement

The Declaration and the Agreement did not appear in isolation. The desire to create a preemptive fishing moratorium was in part due to a global scientific push and the desire to protect the potentially plentiful fish stocks from being overfished. As the ice has started to melt in parts of the Arctic Ocean in the summer months to a greater degree, the Arctic states' interests have started to align behind the desire to manage the previously inaccessible fishery. With the support of the Canadian Inuit Circumpolar Council, the Declaration and subsequent Agreement were created. In the ICC report *The Arctic We Want: Report on Activities*, it states that the "Inuit associated with ICC were an integral part of the negotiation process [of the Declaration] and will be a key partner in the creation of an enhanced knowledge system for the sustainability of future commercial fishing activities."⁶⁶ The Declaration came about through a series of five meetings on the topic of fish stocks in the central Arctic Ocean. The possibility of international discussions on the topic were initiated by the U.S. in 2007⁶⁷ and the first scientific meeting was held in 2011⁶⁸. It was readily accepted by the other state parties that international cooperation would be necessary in order to properly monitor the high seas of the Central Arctic Ocean

⁶⁶ "The ARCTIC WE WANT Report on Activities," INUIT CIRCUMPOLAR COUNCIL ALASKA, July 19, 2019, <https://iccalaska.org/wp-icc/wp-content/uploads/2019/07/FINAL-one-year-from-Utqiagvik-Declaration-report.pdf>).

⁶⁷ Constance Johnson, "Canada; Denmark; Norway; Russia; United States: Fishing Declaration Covering Central Arctic," The Law Library of Congress, July 21, 2015, <https://www.loc.gov/law/foreign-news/article/canada-denmark-norway-russia-united-states-fishing-declaration-covering-central-arctic/>). The U.S. initiated negotiations in 2007 at the urging of Senator Ted Stevens (R-Alaska), who advocated policies for sustainable fisheries. In 2008, the U.S. Senate passed a joint resolution directing the Department of State to seek an agreement that would extend existing U.S. fisheries policies for the Arctic to international waters

⁶⁸ "Report of a Meeting of Scientific Experts on Fish Stocks in the Arctic Ocean", June 3, 2011, https://www.afsc.noaa.gov/Arctic_fish_stocks_third_meeting/First%20Meeting%20Sci%20Experts%20Arctic%20Fisheries%2030%20Aug%202011.pdf.

because “it is challenging to conduct comprehensive monitoring of the whole central Arctic Ocean. Therefore, effective coordination among coastal states and other nations [would be] critical with respect to monitoring, research, and survey efforts.”⁶⁹ The scientific push for a fishing moratorium in the Arctic high seas was put into the international spotlight in 2012 when 551 Canadian scientists alongside 1,449 scientists from 66 other countries penned a letter asking for an Arctic fishing moratorium⁷⁰. The scientists wanted the moratorium to be in place until research could determine sustainable fishing levels for the region⁷¹. In order to buy more time for sustainable fishing levels to be determined a moratorium needed to be created given the transitory nature of straddling fish stocks.

The importance of Indigenous traditional knowledge (ITK) was clearly stated in minutes of the meetings leading to the creation of the Declaration. For example, in the report from the first meeting (2011) it says, “Traditional and local knowledge of the Indigenous Peoples represents an important knowledge base suitable for evaluating present integrity and future changes of Arctic ecosystems.”⁷² The Canadian government has stated that they “worked with Arctic Indigenous peoples throughout the negotiation process”⁷³. The Canadian delegation made sure to consult Indigenous Traditional Knowledge especially that of Herb Nakimayak, Vice-

⁶⁹ “Final Report, Third Meeting of Scientific Experts on Fish Stocks in the Central Arctic Ocean”, July, 2015, 9, https://www.afsc.noaa.gov/Arctic_fish_stocks_third_meeting/meeting_reports/3rd_Arctic_Fish_Final_Report_10_July_2015_final.pdf.

⁷⁰ Gloria Galloway, "Ten Governments Reach Deal on Sustainable Arctic Fishing," *The Globe and Mail*, November 30, 2017, <https://www.theglobeandmail.com/news/politics/ten-governments-reach-deal-on-sustainable-arctic-fishing/article37160834/>.

⁷¹ Gloria Galloway, "Ten Governments Reach Deal."

⁷² “Report of a Meeting of Scientific Experts on Fish Stocks in the Arctic Ocean.”

⁷³ "International Agreement to Prevent Unregulated High Seas Fisheries."

President of ICC Canada, who represented the Canadian chapter of the Inuit Circumpolar Council at many of the meetings. In addition Mr. Nakimayak was part of the Canadian delegation during the political negotiations as were representatives from the Greenlandic and Alaskan chapters of the ICC. Although the presence of the Inuit was felt strongly during the political negotiations for the Agreement, the indigenous presence was absent during the scientific meetings. As the report states from the final scientific meeting the “indigenous and local knowledge holders were not available to participate in the meeting”⁷⁴. Why is not clear although it is conjectured to be a combination of a lack of funding and personnel and a lack of appreciation for the role of ITK in “scientific” meetings. It is important to note that the report did go on to say that “it is critically important that indigenous and local knowledge holders be involved during the operationalization of the joint program of scientific research and monitoring.”⁷⁵ Suggesting that the parties to the Agreement may value indigenous knowledge and the prominence of the ICC during the political negotiations demonstrate that the Inuit were valued during the political process of the formation of the Agreement, but the fact that the Indigenous perspective was left out during the preceding scientific meetings does not reflect the rhetoric.

The Declaration was signed by the five Arctic coastal states (Canada, the United States, Denmark, Norway, and Russia) in 2015 in Oslo Norway. The Arctic Five announced that the ice cover in the high seas of the Arctic is melting, and that the states “share the view that it is

⁷⁴ “Final Report, Fifth Meeting of Scientific Experts on Fish Stocks in the Central Arctic Ocean”, April 28, 2018, https://www.afsc.noaa.gov/Arctic_fish_stocks_fifth_meeting/pdfs/Final_report_of_the_5th_FiSCAO_meeting.pdf

⁷⁵ “Final Report, Fifth Meeting.”

desirable to implement appropriate interim measures to deter unregulated fishing in the future”⁷⁶.

The Declaration goes on to say that the signatories:

desire to promote scientific research, and to integrate scientific knowledge with traditional and local knowledge, with the aim of improving the understanding of the living marine resources of the Arctic Ocean and the ecosystem in which they occur.⁷⁷

The Declaration was an important step towards the creation of the Agreement because the coastal states, including Canada, signaled to the world that they intended “to prevent unregulated commercial fishing in that area of the high seas by ships flying their flags, and to seek similar commitments from non-Arctic states”.⁷⁸ After the declaration was signed, the Inuit Circumpolar Council Canada issued a press release saying:

The Inuit Circumpolar Council (ICC) is heartened to learn that the five Arctic coastal states (Canada, Russia, United States, Denmark, and Norway) have agreed to sign a moratorium on commercial fishing in the Central Arctic Ocean (CAO). [...] ICC has been represented in the discussions between the coastal states and provided an Inuit perspective in this process.⁷⁹

Interest in the formation of a central Arctic fisheries Agreement sparked international cooperation even before the declaration was created.

⁷⁶ “Declaration Concerning The Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean”, July 16, 2015, <https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arctic-fisheries-16-july-2015.pdf>.

⁷⁷ “Declaration Concerning The Prevention of Unregulated High Seas Fishing.”

⁷⁸ Michael Byers, "Cold, Dark, and Dangerous: International Cooperation in the Arctic and Space," *Polar Record* (June 10, 2019): 3, doi:<https://doi.org/10.1017/S0032247419000160>.

⁷⁹ Inuit Circumpolar Council Canada, "ICC Applauds Adoption of Central Arctic Ocean Fishing Moratorium," Inuit Circumpolar Council Canada, July 17, 2015, <https://www.inuitcircumpolar.com/press-releases/icc-applauds-adoption-of-central-arctic-ocean-fishing-moratorium/>.

After the Declaration was announced, the need for a legally-binding international agreement was clear. While the Declaration was a useful signaling tool of the importance of sustainable exploitation of resources, the overwhelming sentiment was that there was still work to be done in order to prevent the emerging fishery from being overfished. The Inuit Circumpolar Council said that the “ICC has been represented in the discussions between the coastal states and provided an Inuit perspective in this process”⁸⁰ and Duane Smith the Canadian ICC President said “although this [was] a good start we need a binding international agreement”⁸¹. The difference between a declaration and an agreement are the mechanisms of enforcement only possible in “hard” law-like agreements.

Understanding the Moratorium

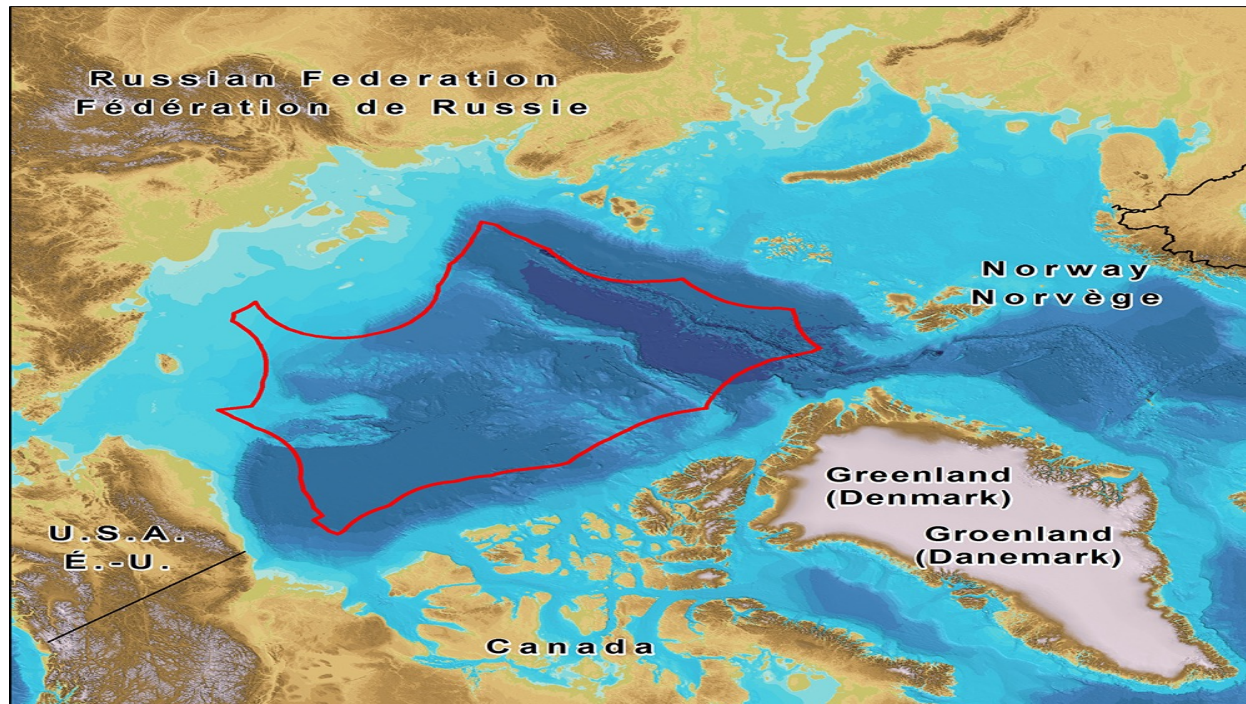
The borders for the Agreement are determined by the boundary of the central Arctic Ocean’s high seas. In the following image the area of the Agreement is located within the red line. The high seas are not under the jurisdiction of any state, and therefore every state can legally conduct themselves in terms of their self-interest. There are no continental shelf claims in this donut hole and therefore the Agreement resides solely and completely within the high seas.⁸².

⁸⁰ Inuit Circumpolar Council Canada, “ICC Applauds Adoption.”

⁸¹ Inuit Circumpolar Council Canada, “ICC Applauds Adoption.”

⁸² Even if there was a ‘theoretical’ continental shelf claim under the donut hole, the coast state would only have rights to natural resources in the subsoil, not within the water column. The location of the donut hole, however, is far beyond any, even theoretical continental shelf submissions.

Figure 2: Arctic “Donut” Hole in the High Seas



(Fisheries and Oceans Canada, “Arctic-Arctique,” Digital image, International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean. May 15, 2019. <https://www.dfo-mpo.gc.ca/international/arctic-arctique-eng.htm>.)

Canada ratified the Agreement on May 29, 2019⁸³. Canada advocated for the Agreement because it matched the current Trudeau Government’s policy objective of sustainable ocean management especially in the Arctic region⁸⁴. As demonstrated with the following statement by Fisheries and Oceans Canada:

This agreement demonstrates Canadian leadership with its partners for responsible stewardship of the central Arctic Ocean and is part of Canada’s broad efforts to

⁸³ Fisheries and Oceans Canada, "Canada Ratifies Landmark International Agreement to Prevent Unregulated Fishing in the Central Arctic Ocean," Government of Canada, May 29, 2019, <https://www.canada.ca/en/fisheries-oceans/news/2019/05/canada-ratifies-landmark-international-agreement-to-prevent-unregulated-fishing-in-the-central-arctic-ocean.html>.

⁸⁴ "Canada's Oceans Strategy," Fisheries and Oceans Canada, 2017, <https://dfo-mpo.gc.ca/oceans/publications/cos-soc/index-eng.html>.

contribute to international oceans governance and to combat illegal, unreported, and unregulated fishing (IUU).⁸⁵

Once the Agreement is officially ratified by all ten signatories, it has an original lifespan of sixteen years and once that lifespan has been reached the signatories can agree to extend the agreement in five year increments⁸⁶. Canada is currently one of the six signatories that have ratified the Agreement, Russia, the United States, the European Union, Japan, and South Korea are the five other signatories that have ratified the Agreement as of 1 December 2019⁸⁷. The Agreement does not come into force until all of the signatories have ratified the document⁸⁸ which means that the world is waiting for China, Iceland, Denmark, and Norway to do so. All of the signatories are considered equal members of the agreement and therefore until all ratify the Agreement, it will not go into force.

This Agreement shall enter into force 30 days after the date of receipt by the depositary of all instruments of ratification, acceptance, or approval of, or accession to, this Agreement by those States and the European Union listed in Article 9, paragraph 1.⁸⁹

If and/or when the Agreement does come into force, the parties to the Agreement will meet at least every two years to review implementation progress and the scientific information developed through a joint program of scientific research and monitoring⁹⁰.

⁸⁵ Fisheries and Oceans Canada, "Canada Ratifies Landmark International Agreement."

⁸⁶ "Agreement to Prevent Unregulated High Seas Fisheries"

⁸⁷ Ministry of Foreign Affairs Republic of Korea, "ROK Completes Domestic Ratification Procedure for Agreement to Prevent Unregulated High Seas Fisheries in Central Arctic Ocean," Ministry of Foreign Affairs Republic of Korea, October 30, 2019, http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=320797&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=

⁸⁸ "Preventing Unregulated Fishing in the Arctic: EU and Partners Meet to Further the Implementation of Historic Agreement," European Commission, June 03, 2019, https://ec.europa.eu/fisheries/press/preventing-unregulated-fishing-arctic-eu-and-partners-meet-further-implementation-historic_en.

⁸⁹ "Agreement to Prevent Unregulated High Seas Fisheries".

The preemptive nature of the Agreement is important because it was created before large-scale commercial fishing operations started in the region. All of the signatories have interests in the Arctic, and all but the EU are involved in the Arctic Council (the Arctic five as member states, and Iceland as a non-littoral Arctic member state, and China, Japan, and the Republic of Korea as observers). While the EU has applied for Observer status on the Arctic Council, its application has yet to be accepted. It is also important to note that while Arctic states Sweden and Finland are not parties to the Agreement they are members of the E.U. and so are still considered beholden to the terms of the Agreement as are all current EU states (28 in total).

The Agreement, when in force, will be monitored by all of the signatory states observing the area in question in order to ensure that all members abide by the terms of the agreement⁹¹. It is important to note that, at the moment, the area is not fully accessible year round due to the presence of ice. States are currently unable to fish there and so the question of enforcement will not become an issue until the ice cover melts to allow for greater access. Once or even *if* fishing becomes a profitable venture in the region, the “observation” element of the treaty will take on new significance and importance. This element of enforcement and state observation will be addressed in subsequent chapters of this thesis.

⁹⁰ “Agreement to Prevent Unregulated High Seas Fisheries”.

⁹¹ Levon Sevunts, "Canada Ratifies International Moratorium on Commercial Fishing in the High Arctic," Radio Canada International, May 30, 2019, <http://www.rcinet.ca/en/2019/05/30/canada-ratifies-international-moratorium-on-commercial-fishing-in-the-high-arctic/>.

The Agreement is also considered unique because of the role traditional Inuit knowledge had in its formation⁹². In the words of the Inuit Circumpolar Council Canada's Vice President Herb Nakimayak, the Agreement is "the first agreement of its kind that involves Indigenous people"⁹³. The Canadian government ensured that indigenous voices were included throughout the negotiation of the Agreement and the Canadian delegation included Herb Nakimayak to represent the Canadian chapter of the Inuit Circumpolar Council⁹⁴. While preventing the region from being exploited for *commercial* fisheries, traditional indigenous use of the region is protected under the Agreement according to Nadia Bouffard (Canada's director general for fisheries renewal at Fisheries and Oceans Canada)⁹⁵. Director General Bouffard also stated that before the formalization of the Agreement there were several years of consultation with various indigenous organizations⁹⁶. Canada had and continues to have a fundamental role in the Agreement⁹⁷. The Canadian Government believes that the next step the members should be taking is inviting other states to sign on⁹⁸ in order to increase the number of states legally bound to the conditions of the Agreement. As the aim of the Agreement is to:

prevent unregulated fishing in the high seas portion of the central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks⁹⁹

⁹² "Inuit Traditional Knowledge Shaped Commercial Fishing Ban for the High Arctic," CBC news, December 04, 2017, <https://www.cbc.ca/news/canada/north/traditional-inuit-knowledge-and-arctic-fishing-ban-1.4429897>.

⁹³ "Inuit Traditional Knowledge Shaped Commercial Fishing Ban."

⁹⁴ "International Agreement to Prevent Unregulated High Seas Fisheries."

⁹⁵ "Inuit Traditional Knowledge Shaped Commercial Fishing Ban."

⁹⁶ "Inuit Traditional Knowledge Shaped Commercial Fishing Ban."

⁹⁷ Levon Sevunts, "Canada Ratifies International Moratorium."

⁹⁸ Levon Sevunts, "Canada Ratifies International Moratorium."

⁹⁹ "Agreement to Prevent Unregulated High Seas Fisheries."

the more states are bound to the terms of the Agreement, the better. The aim of the Agreement is in line with Canada's work in the Arctic political arena as an advocate of environmental protection and sustainable development in the region.

The area that the Agreement covers is the central Arctic high seas that is encircled by the exclusive economic zones (EEZs) of the Arctic littoral states Russia, Canada, United States, Norway, and Denmark¹⁰⁰. The size of the area in question covers around 2.8 million square kilometers¹⁰¹. High Seas are considered part of the global commons which means that all states have equal opportunity to utilize the area and its resources. Article 86 of the United Nations Convention on the Law of the Sea (UNCLOS) states that the global commons "apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State"¹⁰² The freedoms that all states have in the high seas is set out in Article 87 of UNCLOS which confirms:

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.

¹⁰⁰ "Agreement to Prevent Unregulated High Seas Fisheries."

¹⁰¹ Bob Weber, "Canada to Join International Moratorium on High Arctic Commercial Fishing," CBC news, October 02, 2018, <https://www.cbc.ca/news/canada/north/canada-joins-high-arctic-fishing-moratorium-1.4847673>.

¹⁰² "Law of the Sea."

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.¹⁰³

The Agreement covers: “fish, mollusks and crustaceans - except those belonging to sedentary species”, which are defined in Article 77 of the UN Convention of the Law of the Sea as “organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil”¹⁰⁴. The Agreement does not cover other resources - either natural or manmade – such as oil, petroleum or any non “fish” related resources.

Fisheries Management

Considering that Canada had a very high profile cod fishery collapse in the early 1990s - a fish stock, that in 1987 was worth 126 million dollars¹⁰⁵ and was considered “one of the world’s greatest fish stocks”¹⁰⁶ – it is perhaps not surprising that Canada is keen to see the Agreement come to fruition. In fact, “the collapse of the Atlantic Canadian cod fishery in the 1990s is one of the most commonly cited examples in the world of overfishing and its economic,

¹⁰³ “Law of the Sea.”

¹⁰⁴ “EU and Arctic Partners Enter Historic Agreement to Prevent Unregulated Fishing in High Seas – Frequently Asked Questions,” European Commission, October 03, 2018, https://ec.europa.eu/fisheries/eu-and-arctic-partners-enter-historic-agreement-prevent-unregulated-fishing-high-seas---frequently_en.

¹⁰⁵ Canada, Parliament, House of Commons, Standing Committee on Fisheries and Oceans, *The Northern Cod: A Failure of Canadian Fisheries Management*, 1 sess., 38 Parliament, 2005, Committee Report 4, 1 <https://www.ourcommons.ca/DocumentViewer/en/38-1/FOPO/report-4/>.

¹⁰⁶ Canada, Parliament, House of Commons, Standing Committee on Fisheries and Oceans, *The Northern Cod*.

social and cultural implications”¹⁰⁷. Canada (and other states) want to prevent commercial fishery from collapsing for the same reasons. It is no wonder then that the Canadian state was a champion of the Declaration and the Agreement in order to ensure a sustainable fishery off Canada’s northern-most coast.

Around the world, fish stocks are being depleted and so fisheries management is becoming more and more important, as demand for fish rises while supply declines¹⁰⁸. The Food and Agriculture Organization of the United Nations (FAO) has reported that “over thirty percent of global fish stocks are at present overfished, and approximately sixty percent are deemed to be fully fished.”¹⁰⁹ As the demand for fish increases¹¹⁰ and the global fish stocks are depleted there is an increasing risk on new surfacing stocks to be over-exploited¹¹¹ and “this agreement increases the likelihood that any future commercial fishing activity in this area will be sustainable.”¹¹² The global fish trade has increased 245 percent between 1976 to 2014¹¹³. The top ten countries which import the most fish in 2014 are all signatories to the Agreement and six out

¹⁰⁷ Fisheries and Oceans Canada, "Global Consequences of Overfishing," Government of Canada, February 03, 2006, <https://www.dfo-mpo.gc.ca/international/isu-global-eng.htm>.

¹⁰⁸ Richard Caddell, "Precautionary Management and the Development of Future Fishing Opportunities: The International Regulation of New and Exploratory Fisheries," *The International Journal of Marine and Coastal Law* 33, no. 1 (2018): 257, doi:10.1163/15718085-13310013.

¹⁰⁹ Richard Caddell, "Precautionary Management and the Development of Future Fishing Opportunities," 200.

¹¹⁰ Richard Caddell, "Precautionary Management and the Development of Future Fishing Opportunities," 257.

¹¹¹ Richard Caddell, "Precautionary Management and the Development of Future Fishing Opportunities," 202.

¹¹² Fisheries and Oceans Canada, "International Agreement to Prevent Unregulated High Seas Fisheries."

¹¹³ FAO, "The State of World Fisheries and Aquaculture 2016," 51.

of the top ten fish exporters also signatories¹¹⁴. The fact that the world's biggest fish importers are signatories to the Agreement means that, in theory, the Agreement is more likely to be successful in protecting fish stocks.

The inclusion of the precautionary principle in the Agreement¹¹⁵ (i.e. desiring to prevent fishing from even starting) is another key reason why this moratorium is so revolutionary. The aforementioned principle is also present in the Inuit Declaration entitled, "Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat"¹¹⁶. It was not enough that the Arctic littoral states implement fishery legislation within their individual maritime territory "because any conservation measures undertaken by the coastal state could be rendered ineffective by unregulated fishing just outside its EEZ"¹¹⁷, such as was the case in the overfishing of cod off the Grand Banks in the Atlantic Ocean. According to the Canadian Department of Fisheries and Oceans, "Canada believes in a collaborative and precautionary approach when it comes to protecting our oceans – especially in fragile areas like the central Arctic Ocean"¹¹⁸. The lobbying done by the Government of Canada and support they showed

¹¹⁴ FAO, "The State of World Fisheries and Aquaculture 2016," 53.

¹¹⁵ "DESIRING, consistent with the precautionary approach, to prevent the start of unregulated fishing in the high seas portion of the central Arctic Ocean while keeping under regular review the need for additional conservation and management measures"; "Agreement to Prevent Unregulated High Seas Fisheries."

¹¹⁶ Section 8.6 of the Declaration reads "In accordance with relevant provisions of the *Rio Declaration on Environment and Development*, the precautionary principle and the polluter pays principle must be applied in all stages of project planning, assessment, implementation and reclamation."; Inuit Circumpolar Council, "A Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat," 2011, <https://iccalaska.org/wp-icc/wp-content/uploads/2016/01/Declaration-on-Resource-Development-A4-folder-FINAL.pdf>.

¹¹⁷ Michael Byers, *International Law and the Arctic* (Cambridge: Cambridge University Press, 2014), 181.

¹¹⁸ Fisheries and Oceans Canada, "Canada Signs International Agreement."

towards the Agreement matches how the state wants the area to be governed. Similarly, China, in a press statement, said that Japan, the Republic of Korea, alongside China “welcomed the conclusion of negotiations on the draft agreement to prevent unregulated fishing in the Central Arctic Ocean and pledged to follow up the agreement”¹¹⁹. The Norwegian Minister of Foreign Affairs Ine Eriksen Søreide, said in regards to the Agreement that it “is important for managing the seas around the North Pole and it adds to the global effort to curb unregulated fishing”¹²⁰. The European Union released a statement saying “The agreement is fully in line with the long-held position of the European Union, namely that no commercial fisheries should begin in the Arctic high seas before a science-based and precautionary management regime is in place.”¹²¹ The Republic of Korea’s statement says that “the agreement on the draft Agreement is expected to create a good environment for the ROK government’s New Northward Policy by helping expand the ROK’s participation in global cooperation on the Arctic”¹²² and that “It is significant that the ROK, a country not bordering the Arctic Ocean [...] played a role for the first time in establishing international regulations on the Arctic Ocean [...] which has been mainly handled by countries bordering the Arctic Ocean through the Arctic Council”.¹²³ Since 2009 the U.S. decided to prohibit fishing in the American Arctic EEZ, and so “[a]t a time when U.S. vessels cannot fish within the U.S. EEZ, the United States has negotiated this new fisheries agreement

¹¹⁹ "China, Japan, ROK Agree to Strengthen Research Cooperation on Arctic," The State Council The People's Republic of China, June 9, 2018, accessed July 21, 2019, http://english.gov.cn/news/international_exchanges/2018/06/09/content_281476178062562.htm.

¹²⁰ "Agreement on Unregulated Fishing in the Arctic Ocean," Government.no, December 1, 2017, <https://www.regjeringen.no/en/aktuelt/agreement-on-unregulated-fishing-in-the-arctic-ocean/id2580484/>.

¹²¹ "Preventing Unregulated Fishing in the Arctic: EU and Partners Meet."

¹²² "New Regulations Established to Prevent Unregulated High Seas Fisheries and Facilitate Scientific Research in Arctic Ocean," Ministry of Foreign Affairs Republic of Korea, December 1, 2017, http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=319529.

¹²³ "New Regulations Established to Prevent Unregulated High Seas Fisheries."

for the central Arctic Ocean that reduces the chance that foreign vessels will fish just beyond the U.S. EEZ”¹²⁴. While the individual signatories may have had slightly different reasons to sign onto the treaty, it is vital that all members ratify the agreement quickly so that fishing moratorium can be in force in the Central Arctic Ocean.

In conclusion, the Agreement is in line with the general environmental cooperation that has been part of the Arctic region and the Agreement aligns well with Canada’s priorities. The Agreement was not created in a vacuum and represents a continuation in a series of binding Arctic agreements. The fact that no state is currently fishing due to the ice cover in the area means that this Agreement is unique. With an understanding of the Agreement and Canada’s role in its creation established, this thesis now turns to an investigation of four international relations’ theories and their take on the Agreement in the next two chapters.

¹²⁴ "U.S. Signs Agreement To Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean," U.S. Department of State, October 1, 2018, accessed July 21, 2019, <https://www.state.gov/u-s-signs-agreement-to-prevent-unregulated-commercial-fishing-on-the-high-seas-of-the-central-arctic-ocean/>.

Chapter 3: Fishing for Rationalism: Applying Realism and Liberalism

“One of the major factors contributing to the current predicament of global fisheries is illegal, unreported and unregulated (IUU) fishing. Illegal fishing undermines efforts to conserve and manage fish stocks. This situation leads to the loss of both short and long-term social and economic opportunities, and to negative effects on food security. [...] The Government of Canada recognizes the threat that both overfishing and IUU fishing pose to global food security.”
Fisheries and Oceans Canada¹²⁵

The Rational school of thought is well established and has been prominent within the discipline of international relations since its creation in the interwar period. While there are many theories and sub-theories that comprise the aforementioned school of thought, this chapter will closely examine two theories within the Rational school, the theories of Realism and Liberalism. Realism and Liberalism were chosen to represent the Rational school of thought as they are the theories readily acknowledged to be the two foundational theories of Rationalism. Realism is widely understood to be “the dominant theory of international relations”¹²⁶ and Liberalism “has a strong claim to being the historic alternative”¹²⁷. Realism is viewed as the primary foundational theory to which all other theories have either endeavored to improve or refute and Liberalism is considered the primary contrasting theory within the Rational school. Both assume that states are rational actors which act with imperfect information.

¹²⁵ Fisheries and Oceans Canada, “Overfishing and Food Security,” Government of Canada, Fisheries and Oceans Canada, June 8, 2012, http://www.dfo-mpo.gc.ca/international/media/bk_food-eng.htm.

¹²⁶ Tim Dunne and Brian C Schmidt. “Realism.” in *The Globalization of World Politics An Introduction to International Relations*, ed. John Baylis, Steve Smith, and Patricia Owens, 5th ed., (Oxford: Oxford University Press, 2011), 85.

¹²⁷ Tim Dunne, “Liberalism.” in *The Globalization of World Politics An Introduction to International Relations*, ed. John Baylis, Steve Smith, and Patricia Owens, 5th ed., (Oxford: Oxford University Press, 2011), 102.

This chapter has three sections. The first section deals with the theory of Realism; giving a brief overview of the theory, how the theory views international cooperation, as well as the advantages and disadvantages of using this theory to shed light on the Agreement. Section two will look at Liberalism using the same breakdown as was used in regards to Realism in the previous section. The third and final section will compare and contrast the two rational theories in order to determine which is better able to explain the Agreement and Canada's participation. Before we begin to discuss Realism and its competitor Liberalism, we need to recognize the strengths and weaknesses of using theories to both explain and understand events in the world.

Theories help make sense of a complicated world by reducing and simplifying the units of analysis under investigation. Using theories to explain and understand events and phenomena is common for all disciplines including international relations. Theories allow a researcher to consider a wide variety of information while acknowledging the inherent biases/assumptions/compromises that inevitably are needed to standardize and compare issues and events across different theories. Theories are a “simplifying device that tells you which [factor] matters the most”¹²⁸. What theory loses in validity it often makes up for in reliability and robustness. Theories have been described as different sets of reading glasses the researcher uses while they write¹²⁹; the research focuses on different events, actors, processes and phenomena depending on which theoretical pair of glasses they are using. This means researchers who use

¹²⁸ Tim Dunne, Patricia Owens, and John Baylis, “Introduction,” in *The Globalization of World Politics An Introduction to International Relations*, ed. John Baylis, Steve Smith, and Patricia Owens, 5th ed., (Oxford: Oxford University Press, 2011), 3.

¹²⁹ Tim Dunne, Patricia Owens, and John Baylis, “Introduction,” 3.

different theories can talk past each other instead of realizing the similarities within theories. Theories are also products of their time, which means that the majority of established western political science theories contain Eurocentric, pro-liberal democracy biases as well as colonial language and tendencies. Theories are valuable tools for the researcher but it is important to acknowledge that theories do contain flaws and those flaws need to be acknowledged and challenged in order to create balanced academic research. A flaw in using theories according to Doyle and Ikenberry is that “[w]hat theory surrenders in order to answer the broader questions are the particularities of the moment and the individual. They miss insights into how individuals, groups, and states assess willingness to bear risk.”¹³⁰ Importantly, Doyle and Ikenberry point out that “[t]heory can lend coherence to observations and [...] to explain why one interpretation is more plausible than another”.¹³¹ Theories are therefore a very powerful tool at a researcher’s disposal, but as they are a constructed tool, they are as flawed as the assumptions used to construct them.

While Liberalism and Realism have historically been contrasted against each other, they still belong to the same school of thought, the Rational School, and therefore the two theories do share some commonalities. The two theories share the view that the international arena is in a state of anarchy. Both theories also hold the belief that actors are rational, in other words that the

¹³⁰ Michael W Doyle and G. John Ikenberry, “Introduction: The End of the Cold War, the Classical Tradition, and International Change,” in *New Thinking in International Relations Theory*, ed. Michael W Doyle and G. John Ikenberry (Boulder, Co: Westview Press, 1997), 9.

¹³¹ Michael W Doyle and G. John Ikenberry, “Introduction,” 10.

unit of analysis will act in a self-interested manner¹³². Realism and Liberalism both seek to explain events. This is contrasted with the Reflective theories, which will be the topic of the next chapter and which seek to understand actions and behavior of different actors. In both cases, neither schools are meant to be used to predict the future. They can, however, provide hints as to what might be problem issues/actors down the line. In the conclusion, therefore, I will explore some policy advice for the Government of Canada and the Agreement.

Realism

Realism is a set of theories under the Rational school of thought and is one of the longest standing theories in international relations. Its roots can be traced back to philosophers such as Thucydides and other prominent scholars such as Machiavelli, Thomas Hobbes, Hans Morgenthau and even neo Realists such as Kenneth Waltz, and John Mearsheimer. Through the framework of Realism (assumed to be an amalgamation of the classic variant mainly but with elements of the structural and neo forms), this section will outline the strengths and weaknesses of using this theory to explain the Agreement and Canada's choice to join.

Theory Overview

Realism is a catchall for a few versions of a theory based upon the fundamental objective of the survival of the state above all else. There are three major subcategories of Realism,

¹³² Steven Weber, "Institutions and Change," in *New Thinking in International Relations Theory*, ed. Michael W. Doyle and G. John Ikenberry (Boulder, CO: Westview Press, 1997), 233.

namely, Classical Realism, Structural Realism, and Neo-Realism. The core of Classical Realism goes to the belief that “the drive for power and the will to dominate are held to be fundamental aspects of human nature”¹³³. Neo-Realism brings domestic politics into traditionally internationally-based realist theory¹³⁴. Structural Realism has numerous sub-theories such as Offensive and Defensive Structural Realism, all of which focus on the power distribution within the anarchical system rather than the “state of nature” assumed to be conflict prone¹³⁵.

Realism, in broad terms, has three main ideas: statism, survival, and self-help.¹³⁶ Statism refers to the fact that the state is the central actor and unit of analysis¹³⁷. In other words, Realism deals with macro-level political decisions and actions because it is concerned about how states deal with other states on the international level. Realism does not look too deeply inside the state but tends to treat all states like “billiard balls” of different sizes based on capabilities. State decisions are not based upon what is good for a specific individual but instead what benefits the survival of the state as a whole¹³⁸. As survival is the primary goal for states, the theory is able to explain a lot of state behavior by returning to this singular idea. If survival is the goal, inferences about morality (there is none), how and why decisions are made (to maximize power to survive), and how objectives are prioritized (to ensure survival) can be easily explained. It is important to understand that for Realists, regardless of how powerful a state is, survival is never

¹³³ Dunne and Schmidt, “Realism,” 89.

¹³⁴ Dunne and Schmidt, “Realism,” 92.

¹³⁵ Dunne and Schmidt, “Realism,” 91.

¹³⁶ Dunne and Schmidt, “Realism,” 87.

¹³⁷ Dunne and Schmidt, “Realism,” 93.

¹³⁸ Dunne and Schmidt, “Realism,” 94.

guaranteed¹³⁹. Therefore, it is important to maximize the state's power while at the same time being careful about the relative power of other states around the globe that could challenge, balance, or threaten the state's survival. Smaller states need to make a decision about how to deal with hegemons and either balance, bandwagon or remain nonaligned¹⁴⁰. The third main idea of Realism is self-help which refers to the belief that the survival of the state is the sole responsibility of the state itself; that other states cannot be relied upon for a state's survival¹⁴¹. The state cannot and should not rely on other states for its own survival because all states are self-interested and want to ensure their own survival as well. The tenet of self-help brings up the notion that power is relative and relational.¹⁴² Power for the purposes of this thesis will be defined as the ability to wield influence including but not limited to military force, economic might and political/rule-making leverage. The theory of Realism regards the national interest of the state to be the accumulation of power. Power for Realists is a concept viewed as a zero-sum game. In other words, it matters how much power your state holds in relation to the levels of power other states hold. While an individual who believes in Liberalism would view an arrangement as mutually beneficial if both state A and B grow in power, Realists would disagree due to the fundamental belief that power is relational and finite. Due to this finite level of power, the potential for conflict is never abated as states will constantly work towards their national interests, maximizing the state's power supplies at the expense of the other states in the international arena.

¹³⁹ Dunne and Schmidt, "Realism," 86.

¹⁴⁰ Wivel, Anders. "Balancing against Threats or Bandwagoning with Power? Europe and the Transatlantic Relationship after the Cold War." *Cambridge Review of International Affairs* 21, no. 3 (2008): 292. <https://doi.org/10.1080/09557570802253419>.

¹⁴¹ Dunne and Schmidt, "Realism," 96.

¹⁴² Dunne and Schmidt, "Realism," 94.

While this thesis is using a more classical version of Realism, all the variants are pessimistic when it comes to the potential for international cooperation. That being said, cooperation can be possible if it is seen in the national interest and survival of the state. The question then becomes, how important is controlling unregulated fishing in the Arctic Ocean for states?

Cooperation

Realism views international cooperation simply; if it is in the state's interest they will cooperate and if not, the state will only cooperate if it costs the state nothing and is an agreement from which they can easily defect. If a state is already fulfilling the "cooperative requirements" of an agreement with no threat to its survival or diminishment of power then a state is free to choose to join a cooperative agreement as it would legitimize the actions that the state is currently undertaking, and could convince other states to abide by the rules as well. This hypothetical agreement could be in the interest of the state because it binds other actors to the decision of the state in question but does not compel the originating state to follow the rules—cheating and defecting are always assumed risks for Realists. Canada benefits, from a Realist viewpoint, from signing onto the Central Ocean Fishing Agreement and from increasing membership in the Agreement because it increases the likelihood that other state actors will not fish in the region, at least in theory. Furthermore, it does not cost Canada anything to join and does not prevent Canada from defecting, cheating and/or leaving the Agreement at any time. International agreements are assumed to be short lived by Realists because states will only

follow the terms of any agreement when it benefits their individual state, putting all of the signatories in a constant state of unease never sure for how long the terms will be respected. Charles Glaser said that “anarchy discourages cooperation because it requires states to worry about the relative gains of cooperation and the possibility that adversaries will cheat on agreements”.¹⁴³ Glaser also says, however, that non-allied states may cooperate when dealing with issues of low political salience.¹⁴⁴ It could be that in the case of the Arctic Ocean Fishing Agreement, it is considered a low salient issue as no fishing is yet possible. High importance issues are issues relating to the national security of the state and for Glasner cooperation is far more suspect. Should fishing in the High Arctic become possible, then Realists would expect that the Agreement would readily fall apart. When the potential cooperation is between non-traditional allies it is even less likely that the cooperation will occur and/or be sustained as is the case of the Agreement. The history of trust and distrust that exists between the members of the Agreement is limited. “Relations between Russia and the Arctic NATO members are still marked by a largely lacking sense of trust and confidence”¹⁴⁵ which suggests that the Agreement is doomed to be short-lived. This lack of confidence in cooperation, even in the face of high levels of collaboration since the end of the Cold War, may have more to do with the changing level of importance of fishing than it does to the allied/adversarial relationship of the current members to the Agreement.

¹⁴³ Charles L Glaser, “Realists as Optimists: Cooperation as Self-Help,” *International Security* 19, no.3 (1994): 50.

¹⁴⁴ Glaser, “Realists as Optimists,” 57.

¹⁴⁵ Kristian Åtland, “Interstate Relations in the Arctic: An Emerging Security Dilemma?” *Comparative Strategy*, vol. 33, no. 2 (2014) 152.

Cooperation requires, at the most fundamental level, the belief that all parties will abide by the terms of the agreement. In other words, the states have to be able to trust and rely upon each other. If states are going to act in their own interest, as counselled by the Realist theory, and the levels of trust between the different signatories are low, cooperation seems extremely unlikely. It may seem like a win for international cooperation, therefore, to create an agreement that solidifies something that none of the signatories are currently doing, but this is too simplistic a picture of international cooperation. Once an international agreement is signed there is a fear that other states will break the agreement and take advantage of the signatories who are following the international rules and benefit greatly from cheating.

If the agreement was focused on a different issue, like preventing the ice caps from melting by requiring states to stop all fossil fuel use and stop all fossil fuel burning activity, it could be easily argued that cooperation would be in the interest of the states clearly feeling the deleterious effects of climate change. This version of an agreement is doomed to failure, as predicted by Realists, because the agreement touches on activities that 1) matter to the states; 2) is already common practice. As the Arctic fishing Agreement is not of high salience, does not seem to involve security or to be of national interest (as no fish are exploited for the high Arctic as of yet), then there is no cost to joining. In other words, for Realists, this agreement is easy to join because it does not touch on issues of national interest, is something they are all already doing, and they know they can defect at any time should they feel that fishing is possible and will contribute to their power and survival.

Advantages & Disadvantages of a Realist Framework

The application of a Realist framework can explain why Canada and, indeed the other states, joined the Agreement. This explanatory power of Realism explains its longevity within the discipline of international relations. The concepts of Realism “have contributed to the growth of the most powerful structures through recent centuries, shaping the collective human consciousness about living globally”¹⁴⁶.

Realism can also handle the lack of enforcement that is a feature of the Agreement.¹⁴⁷ Since there is no central authority that oversees the Agreement (akin to anarchy in the international systems), there is no official body to enforce the contract if members decide that they no longer want to abide by the terms of the Agreement. Realism can also handle the fact that states are the primary members of the Agreement and that the Agreement is limited in scope and objectives – the Realist likely reduces the Agreement to one of doing what that the states are already doing – indeed, what no state can do.

In addition to Canada, Realism can explain why a fishing giant, like China, would agree to a 16-year moratorium. First, the Agreement does not come into effect until all states ratify the

¹⁴⁶ Ken Booth, “International Politics: The Inconvenient Truth.” in *Realism and World Politics*, ed. Ken Booth, (New York, NY: Routledge, 2011), 339.

¹⁴⁷ The closest provisions that are included in the Agreement are Art.3 Sec.5: “The Parties shall ensure compliance with the interim measures established by this Article, and with any additional or different interim measures they may establish pursuant to Article 5, paragraph 1(c).” and Art.8 Sec.2: “The Parties shall take measures consistent with international law to deter the activities of vessels entitled to fly the flags of non-parties that undermine the effective implementation of this Agreement.”; “Agreement to Prevent Unregulated High Seas Fisheries.”

Agreement. As of 1 December 2019, China had yet to do so. China could sign onto the Agreement indicating interest and seeming to be a community player but it ultimately has a veto on whether or not the Agreement comes into force. In 2018, China released a white paper entitled ‘China’s Arctic Policy’ in which it declared that “China is an important stakeholder in Arctic affairs. Geographically, China terms itself a “near-Arctic State””¹⁴⁸ and has been increasingly interested in becoming more and more integrated into the region. China is in the process of constructing a nuclear icebreaker, which is expected to be the world’s most powerful nuclear icebreaker¹⁴⁹ and invested heavily in industry, tourism, development, and resource extraction located above the Arctic Circle. For China, a seat at the table to this Agreement is important. If the state ratifies the Agreement, then it could strengthen its position as an observer in the Arctic Council. If the state does not ratify the agreement, then it could be considered to be in their best interest to sit in on the negotiations, and then break the Agreement before it comes into effect, thereby receiving a head-start into fish extraction in the central Arctic Ocean.

The time limit of the agreement for Realists is far too “idealistic”. If the world fish stocks are declining, sticking firm to a 16-year moratorium is do-goodism to the extreme. If the region becomes more and more accessible, and fishing and nautical technology continues to improve, states will most likely defect from the Agreement. Barring a dramatic change in the

¹⁴⁸ “Full Text: China's Arctic Policy .” The State Council The People's Republic of China, January 26, 2018.
http://english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm.

¹⁴⁹ Humpert, Malte. “China to Use First Atomic Icebreaker as Test for Future Nuclear Aircraft Carriers.” High North News, March 22, 2019.
<https://www.highnorthnews.com/en/china-use-first-atomic-icebreaker-test-future-nuclear-aircraft-carriers>.

international environment, Realism would posit that the most likely states to violate the agreement would China, Japan or South Korea – the major fish importers of the world.

Realism can more readily explain why the Arctic littoral states signed onto the agreement. The Arctic states would be concerned with their domestic fisheries being overfished due to straddling stocks, which has been known to occur when domestic fisheries border an international fishery. In fact that U.S. has stated that “at a time when U.S. vessels cannot fish within the U.S. EEZ, the United States has negotiated this new fisheries agreement for the central Arctic Ocean that reduces the chance that foreign vessels will fish just beyond the U.S. EEZ”¹⁵⁰. This domestic-focused fear combined with the fact that there are no commercial fisheries in the central Arctic Ocean are most likely the reasons why the Arctic five signed the agreement.

The fact that the Arctic littoral states, especially the two largest Arctic states (Canada and Russia), continue to use Realist rhetoric to describe their Arctic policies, actions, and reactions especially to appeal to domestic audiences¹⁵¹, is telling. Canadians, especially, like to hear that

¹⁵⁰ Office of the Spokesperson, “U.S. Signs Agreement To Prevent Unregulated Commercial Fishing on the High Seas of the Central Arctic Ocean,” U.S. Department of State, October 1, 2018, <https://www.state.gov/u-s-signs-agreement-to-prevent-unregulated-commercial-fishing-on-the-high-seas-of-the-central-arctic-ocean/>.

¹⁵¹ Famous examples of this can be seen in the infamous 2007 Russian Flagpole Plant at the North Pole; C. J. Chivers, “Russians Plant Flag on the Arctic Seabed,” *The New York Times*, August 3, 2007, <https://www.nytimes.com/2007/08/03/world/europe/03arctic.html>). Former Canadian Prime Minister Steven Harper approached the Canadian Arctic through ‘use it or lose it’ rhetoric. In 2007 in a speech announcing the creation of new AOPS Harper said ““Canada has a choice when it comes to defending our sovereignty over the Arctic: Either we use it or we lose it.”; Steven Chase, “Myth versus Reality in Stephen Harper's Northern Strategy,” *The Globe and Mail*, May 12, 2018, <https://www.theglobeandmail.com/news/national/the-north/myth-versus-reality-in-stephen-harpers-northern-strategy/article16397458/>.

“the true north is strong and free”. Realism is not a perfect theory to explain the Agreement. Realism, for example, completely ignores individuals or indigenous rights. It cannot explain, for example, why Canada would invite the ICC to participate in negotiations. And, other than the physical size of Canada’s Arctic coast line, Realism would have a hard time recognizing Canada’s Arctic leadership status. Militarily, it is much weaker than the U.S. and Russia and economically, it cannot bully its way into forcing others to join.

The fact that Realism does not speak to the influence that the indigenous groups had on Canada during the negotiations of the Agreement, is a serious and arguably fatal flaw regarding the theory in terms of this particular case study. The importance of the Inuit is demonstrated in the rhetoric that the Canadian government has disseminated regarding the Agreement. In the statement that the Canadian Government released on October 3, 2018, it exclaims that “Indigenous peoples will continue to play an integral role in the implementation of this Agreement and their traditional knowledge will be an important source of information moving forward”¹⁵². As well, the statement the government released on May 29, 2019 after it ratified the Agreement, Canada stated “the Agreement also provides for the participation and inclusion of Arctic Indigenous peoples and their communities, recognizing the critical value of their local knowledge in the conservation of the Arctic Ocean”¹⁵³. Thus, the fact that Realism does not account for the influence that the Canadian government credits the indigenous populations in the negotiations is a major point against Realism as the most useful theory to explain the Agreement.

¹⁵² Fisheries and Oceans Canada, “Canada Signs International Agreement to Prevent Unregulated Fishing.”

¹⁵³ Fisheries and Oceans Canada. “Canada Ratifies Landmark International Agreement.”

Liberalism

Liberalism draws from the philosophical musings of great thinkers such as Locke, Mill, Rousseau, Smith, and Kant. Through the Liberal framework I will explore what of the Agreement it can explain.

Theory Overview

Liberalism, like all theories, was created in a particular point in time and for a particular purpose. Realism was created as a response to Idealism¹⁵⁴, and Liberalism was a response to Realism. Liberalism had a particular issue with Realism's world view which espouses perpetual war. Instead, "the Liberal view of world politics is one of a cultivable "garden" that combines a state of war with the possibility of a state of peace"¹⁵⁵.

Liberalism is a theory that does not believe war is a forgone conclusion in a system of anarchy, and instead suggests that states can work together in the state of anarchy as long as certain conditions are met described as the 'liberal tripod'. The 'Liberal tripod' includes: democracy, international organizations and interdependence.¹⁵⁶ Liberal democratic states, for example, are "inherently peaceful," and engage in warfare only with illiberal and undemocratic

¹⁵⁴ Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Clarendon Press, 1990), 10. Idealism was never a fully articulated theory but rather the title given to interwar scholars accused by Realists of being utopian in their thinking about state power and war.

¹⁵⁵ Michael W Doyle and G. John Ikenberry, "Introduction," 11-12.

¹⁵⁶ Edwin Van De Haar, "The Liberal Divide over Trade, Peace and War," *International Relations* 24, no. 2 (2010): 132, <https://doi.org/10.1177/0047117809362401>.

states”¹⁵⁷ in the pursuit of human rights and democratic values.¹⁵⁸ Democratic states, therefore, are a condition for peace and cooperation and, according to Francis Fukuyama, represent “the end of history”.¹⁵⁹ To aid states, Liberalism views institutions as key actors (along with states) to develop values such as tolerance of differences, justice, order, and liberty¹⁶⁰ and to problem-solve transnational issues. Liberalism’s champions are the UN, international courts and international rules, like the UN Convention on the Law of the Sea (UNCLOS) which promote the ideals of rule following. International organizations are highly prized by Liberalism because they are seen to be tools that are used to spread democracy to illiberal states and provide fora for cooperation¹⁶¹.

Unlike Realists, Liberal theorists believe that power is a non-zero-sum gain (or relative) which creates the opportunity for cooperation because states can share capabilities without threatening the survival of states. For example, if state A has guns and state B has butter, they can share/trade the guns and butter and consider both states as better off. A Realist would only focus on the fact that one state had fewer guns and would, therefore, be vulnerable to potential attack by the other state. In contrast Liberals encourage free trade, because, in addition to the

¹⁵⁷ Bruce Buchan, “Explaining War and Peace: Kant and Liberal IR Theory,” *Alternatives: Global, Local, Political* 27, no. 4 (2002): 407, <https://doi.org/10.1177/030437540202700401>.

¹⁵⁸ The Liberal Democratic Peace Theory suggests that liberal democracies will not go to war with one another. It has spurred variants such as the McDonald’s Peace Theory – a tongue-in-cheek theory that suggests states which have McDonald’s Restaurants will not go to war with one another. Neither has held true. Tim Dunne, “Liberalism,” 104.

¹⁵⁹ Francis Fukuyama, “The End of History?” *The National Interest* 16 (1989): 4.

¹⁶⁰ Tim Dunne, “Liberalism,” 103.

¹⁶¹ Bruce Buchan, “Explaining War and Peace,” 2.

relative gains achieved by all, the more interdependent states become, the less likely they are to go to war¹⁶².

Cooperation

Liberals believe and promote international cooperation as helpful to achieving peace within the world. Liberals have no trouble understanding why cooperation led the states in question to draft the Agreement. It is after all, a proven tool to decrease potential tension in the region. As Canada is a liberal democracy and proud champion of the Liberal tripod, it is logical that Canada would join the Agreement enthusiastically and encourage others to do the same.

That being said, not all states which have joined the Agreement are liberal democracies and Liberalism, like Realism, has a hard time accommodating the input and decision-making power of groups like the ICC which are not ‘international organizations’ made up of sovereign states but rather represent a peoples which cross state boundaries and ascribe to their own values and ideas about sovereignty. Liberals tend to look past the role of the ICC and abandon discussions of national interests when describing the reasons why illiberal democracies have joined the Agreement. Liberals can readily explain and advocate why there is an Agreement, but not with the particular actors which have been central to its creation.

¹⁶² Tim Dunne, “Liberalism,” 105.

Advantages & Disadvantages of a Liberal Framework

Liberal theorists share the fundamental belief that international agreements/institutions work, which is still relevant to the Agreement even if there is no international organization attached to either its formation or enforcement. Because Liberalism is not fixated on power and state survival, states can have multiple interests allowing the signatories the freedom to sign the Agreement even if it means states will not benefit financially but rather, simply to protect the global commons. Instead, Liberals focus on the cooperation that builds ties between the signatories which may promote peace.

More generally, it could also be argued that the theory of Liberalism provides the right framework to understand Arctic geopolitics because of the success that international organizations and international law have had in the region. All of the states have managed to abide by the United Nations Convention on the Law of the Sea (UNCLOS)¹⁶³ in the Arctic to date. The Arctic Council has also been a successful and influential international forum in the circumpolar Arctic. The success and use of international institutions and law, key cornerstones of Liberalism, means that this theory does have its uses. Unfortunately, there are complications in using the theory of Liberalism to fully explain the Agreement and Canada's role.

First, Liberalism is more comfortable explaining why like-minded democracies would readily agree to a moratorium but has difficulty explaining why authoritarian regimes, like

¹⁶³ While the United States has not ratified UNCLOS, they have accepted it as customary international law and have respected the principles outlined in UNCLOS.

China, would also sign on. Invariably, the liberal democracies will look beyond the Agreement to other issue areas, including human rights, and a tension will inevitably surface. How can liberal democracies tie themselves to China when it is accused of disappearing and reeducating one million Uighurs? China's record of human rights abuses towards minorities¹⁶⁴ would be a major point of concern for the ICC because the Inuit are a minority in Canada and in the world. As well, China's interpretation of UNCLOS and dismissal of the Permanent Court of Arbitration's confirmation of China's violations of the UNCLOS in the South China Sea with respect to the Philippines¹⁶⁵ means that Liberals have a rogue state on their hands in terms of China's likelihood to respect the terms of the Agreement.

The enforcement, or more accurately the lack thereof in regards to the Agreement is problematic for Liberalism. Agreements are strongest when there are clear rules and mechanisms of enforcement which are totally absent in the Agreement.

The other difficulty for Liberalism vis-à-vis the Agreement is that it espouses a moratorium. If trade is the secret to interdependence and a peaceable world, Liberalism is silent on banning all activity (and hence interaction) as a path to peace.

¹⁶⁴ Kenneth Roth, "World Report 2019: Rights Trends in China," Human Rights Watch, January 17, 2019, <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet>

¹⁶⁵ The Chinese Government adhered to the position of neither accepting nor participating in these arbitral proceedings Permanent Court of Arbitration; "Press Release on the South China Sea Arbitration: The Republic of the Philippines vs. the Peoples' Republic of China," July 12, 2016, <https://pca-cpa.org/wp-content/uploads/sites/6/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.

Rational Theories and the Global Commons

The global commons, or the world's global resources, is at the heart of the Agreement. The goal of the Agreement is to protect the world's fish stocks which might, in the future, reside in the Arctic Ocean outside of the economic exclusive zones (EEZ) of coastal states. While Realism takes the pessimistic view and would focus on the "tragedy" of the commons, Liberalism represents the optimists bent on protecting the commons. Global Commons are supposed to, according to a humankind perspective, "include equal participation, rational use of resources, environmental stewardship and equitable sharing of financial and economic benefits"¹⁶⁶. The global commons are supposed to provide value to all states regardless of where the state is located. Realists are quick to point out that the problem with the use of the global commons by the international community is that a "tragedy of the commons" is often the result of any state behaviour. A "tragedy of the commons" is the belief "that unrestricted access to a resource ultimately dooms the resource to over-exploitation"¹⁶⁷. In other words, history, according to tragedy supporters, has proven that if there is an exploitable resource in the global commons, that resource will be overexploited, and thus Realists fully expect the Agreement to fail. Liberals, on the other hand, are more likely to see the moratorium hold, notwithstanding the problem that a key non-liberal democracy (China) is crucial to the Agreement's success.

¹⁶⁶ Michael W. Lodge, "The Common Heritage of Mankind," *International Journal of Marine and Coastal Law* 7 (2012):738, doi:10.1163/15718085-12341248.

¹⁶⁷ Scott Shackelford, "The Tragedy of the Common Heritage of Mankind," *Stanford Environmental Law Journal*, 28 (2009): 118.

Canada's decision to ratify the Agreement can be viewed and explained by elements of both Liberalism and Realism. With a nod to Liberalism, Canada has had a long history of advocating for an increase in international institutions and international law as a way to create rules and predictability in state behavior. If no states can fish, no states can exploit a vital resource and create tension. Canada was a lead advocate for the formation of the Arctic Council, the preeminent Arctic forum for international dialogue and cooperation. Canada's role in the Agreement is just the logical continuation of Arctic international trouble shooting and problem solving that has been ongoing in the region for years.

In terms of the Realist theoretical perspective, Canada signed the Agreement as it does not pose a threat to the Canadian state and it is easy to agree to not do something that the state is not doing. Considering that, under the theory of Realism, power is viewed as a zero-sum gain and that it is currently not financially feasible for Canada to engage in a commercial fishing operation in the central Arctic Ocean, it is in the interest of maintaining power in the central Arctic Ocean that states abide by the terms of the agreement. Neither theory, however, can readily explain why the ICC played such an important role nor why Canada continues to include them in official negotiations.

In conclusion, both Realism and Liberalism provide interesting insight to partly explaining the Agreement but neither can fully account for the range of actors involved and both are likely to be wary of the future of the Agreement given the shaky commitment albeit for different reasons. It is time, therefore, to consider two theories from the Reflective school, and Canada's role.

Chapter 4 — A Reflective Response: Applying Constructivist and Pluralist Frameworks

“Problems, challenges, and opportunities for cooperation do not simply emerge from the environment to confront states but are instead constructed by those social processes.”¹⁶⁸
 - Steven Weber

Reflectivism is a school of thought that is commonly contrasted to the Rational School. While Reflectivism has many theories under its umbrella, this chapter will focus on two theories: Constructivism (which is the bridge between the Rational and Reflective schools) and Pluralism. These two theories were chosen to represent the Reflectivist school due to their relevance to the case study as well as their status as respected theories. The two theories, while belonging to the same school of thought, are quite different and allow important and unique insight into the Agreement. At the core of Constructivism is the understanding that identity is socially constructed, and that our identity is based on what others interpret and not just what we interpret about ourselves¹⁶⁹. Pluralism, on the other hand, focuses on the importance of inter-state agreements (often via institutions) to tackle transnational issues¹⁷⁰. Both theories are important foils to the Rational school as they consider more than just state actors and they apply a different logic – the logic of appropriateness rather than the logic of consequences. Rather than who has more power, the question becomes what do the actors believe is the appropriate behaviour in a given situation? In other words, in what situation would states cooperate and trust that all

¹⁶⁸ Steven Weber, “Institutions and Change,” 239.

¹⁶⁹ Ted Hopf, “The Promise of Constructivism in International Relations Theory,” *International Security* 23, no. 1 (1998): 175, <https://doi.org/10.2307/2539267>.

¹⁷⁰ John Williams, “Pluralism, the English School and the Challenge of Normative Theory,” in *System, Society and the World Exploring the English School of International Relations*, ed. Robert W. Murray, 2nd ed. (Bristol, England: E-International Relations, 2015), 105.

signatories to an agreement would abide by its terms¹⁷¹. This provides new insights into the creation of the Agreement.

This chapter will be broken into three sections. The first section will look at the Reflective theory of Constructivism. In the analysis of Constructivism, the chapter will look at what the theory is, the Constructivist view on international cooperation, and finally consider the epistemological opportunities and challenges of this theory in regards to the Agreement. The next section will look at the second theory: the theory of Pluralism. Following the same format as the section on Constructivism, this chapter will explain what Pluralism is, how Pluralism views international cooperation, and how it helps us better understand the Agreement. The third and final section will compare and contrast the two theories and apply them to the idea of the Arctic as a Global Commons. I conclude that the English School's Pluralism theory is the Reflective theory that offers the best insight into the Agreement as a state-centric tool, but Constructivism helps us understand why Inuit Organizations played such an important role in influencing the arguments of the Canadian delegation during the course of the negotiations of the Agreement.

Constructivism

The theory of Constructivism is the “hottest” IR theory these days. According to Ted Hopf it “offers alternative understandings of a number of the central themes in international

¹⁷¹ Michael Barnett, “Social Constructivism,” In *The Globalization of World Politics An Introduction to International Relations* , edited by John Baylis, Steve Smith, and Patricia Owens, 5th ed., 151. Oxford: Oxford University Press, 2011.

relations theory, including: the meaning of anarchy and balance of power, the relationship between state identity and interest, an elaboration of power, and the prospects for change in world politics.”¹⁷² Constructivism is a relatively new theory, especially compared to Liberalism and Realism, and draws from other disciplines such as sociology. Rather than detracting from Constructivism’s validity and usefulness, its newness and interdisciplinary nature provides a different insight. Constructivism is a unique type of theory that is neither fully rational nor reflective but likes to view itself as a bridging tool between the two schools¹⁷³. For the purpose of this thesis, it will be grouped as a reflective theory because it more closely resembles the reflective school in terms of the logic of appropriateness that it shares with Pluralism and the other Reflective theories – it being a social theory first and foremost¹⁷⁴.

Theory Overview

Constructivism has many different variants, but for the purpose of this thesis the definition put forth by Adler in ‘Seizing the Middle Ground: Constructivism in World Politics’ will be used. Adler defines Constructivism as “the view that *the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world*”¹⁷⁵. In other words, nothing exists without

¹⁷² Ted Hopf, “The Promise of Constructivism,” 172.

¹⁷³ Martin Weber, “Between ‘Ises’ and ‘Oughts’: IR Constructivism, Critical Theory, and the Challenge of Political Philosophy,” *European Journal of International Relations* 20, no. 2 (April 2013): 520, <https://doi.org/10.1177/1354066112466573>.

¹⁷⁴ Michael Barnett, “Social Constructivism,” 154.

¹⁷⁵ Emanuel Adler, “Seizing the Middle Ground: Constructivism in World Politics” *European Journal of International Relations* 3, no. 3 (1997): 322, <https://doi.org/10.1177/1354066197003003003>.

context; how actors are perceived will determine the framing of their actions. This serves as a succinct definition of a theory that tends to be abstract because Constructivism is interested in ideas and norms, rather than states and examples of force like military might. The definition is also useful because it clearly outlines the three, key ideas of the theory; International relations between states are constructed, actions are viewed through pre-existing normative opinions, and identities are dynamic.

Constructivism is a theory that is based on the notion that all rules and norms are socially constructed. “The state is still in some sense the principal actor in the story, but it makes no sense to talk about states separately from one another from their environment. States “exist” only in conjunction with other states and with their environment.”¹⁷⁶ Regardless of the intentions of State A, what matters is how other states view the action of State A and State A is influenced and changed via its interactions with other states. This idea is illustrated by the following quote attributed to Dimitri Simes by Richard Nixon, “The Soviet “leopard” may have changed its spots, but it was still a leopard.”¹⁷⁷ In other words it did not matter what the new Russian state says or does, history, experience and interaction states had with the old Soviet state means that they will be wary of Russia’s current intentions. “Meaningful behavior, or action, is possible only within an intersubjective social context. Actors develop their relations with, and understandings of, others through the media of norms and practices. In the absence of norms, exercises of power, or actions would be devoid of meaning.”¹⁷⁸ Russia needs years of positive action with states before some will change their “idea” of the old Soviet leopard. Furthermore,

¹⁷⁶ Steven Weber, “Institutions and Change,” 234.

¹⁷⁷ Michael W Doyle and G. John Ikenberry, “Introduction,” 4.

¹⁷⁸ Ted Hopf, “The Promise of Constructivism,” 173.

actions do not occur in a vacuum; every action is a product of history and context. Actions are interpreted based on who took the action and the relationships that the actor has now and via the historical context.

Constructivist theory requires the analyst to think of the identities of actors as dynamic and consider the sum total of the experiences of others with the particular actor in question before one can understand the actions of the actor. The function of identity is a key feature of the theory of Constructivism. The identity that a state possesses is an important signaling feature that tells other states how to interact with the state (or non-state actor), in addition to reinforcing the attitudes and behaviors your state/non-state actor is expected to have and operate, both domestically and internationally, within certain contexts.¹⁷⁹ This identity is also constructed and is a product of the time that is created; the longer a state holds a particular identity (e.g. ally or enemy) the more indisputable that identity becomes. Constructed identities broadcast the values and guiding framework that your state abides by in international dealings¹⁸⁰.

Cooperation

Constructivism is a theory that holds neither positive nor negative intrinsic beliefs regarding the nature of international cooperation and so Constructivists are not wed to cooperation as good or bad. The context matters. Instead,

Determining the outcome will require knowing more about the situation than about the distribution of material power or the structure of authority. One will need to know what

¹⁷⁹ Ted Hopf, "The Promise of Constructivism," 175.

¹⁸⁰ Ted Hopf, "The Promise of Constructivism," 175.

about the culture, norms, institutions, procedures, rules, and social practices that constitute the actors and the structure alike.¹⁸¹

Due to the dynamic and fluid nature of identity, one cannot assume a particular actor will automatically accept or reject cooperation. It matters instead, the past experiences of the actors in question. That being said, once started, international cooperation is less likely to break down based upon how stable the identities are of the states involved in the agreement. Instead, “durable expectations between states require intersubjective identities that are sufficiently stable to ensure predictable patterns of behavior”¹⁸². In other words, during the Cold War, it was not expected that the U.S. and Soviet Union would cooperate – while there were a few agreements (with respect to polar bears and some limited arms agreements), by-in-large the states were wary of each other. Today, however, it depends on the issue and the context. Cooperation continues so long as states abide by the terms of the cooperation, and so long as all signatories involved act in such a way that reinforces the terms set forth decreasing the possibility of signatories acting in a manner that suggests they are frightened of the cooperation falling apart or are ready to bolt from the agreement.

Constructivists believe that actions and events hold meaning through the social context in which they exist, and international cooperation can be viewed similarly. Just because State A and State B have a history of cooperating that does not mean that the two states will cooperate every time. States may be more likely to cooperate if they have a history of cooperation but that does not mean that cooperation is inherent. Constructivism would say that over a period of cooperation states A and B would have developed mutual friendly and/or ally labels for the

¹⁸¹ Ted Hopf, “The Promise of Constructivism,” 173.

¹⁸² Ted Hopf, “The Promise of Constructivism,” 174.

other, making the future cooperation costs lower for both states. This means that superficial cooperation (for example, a signature on an agreement to continue to not to do something one is not doing – as is the case of the Agreement) can still be incredibly beneficial in the international system, especially amongst non-traditional allies. When states agree to superficial cooperative agreements in which the signatories are not required to change from their current course of action, these superficial agreements can have long-term benefits to the international system. When states work together it decreases the level of uncertainty and has the possibility of building ties between the signatories. Ergo, long-term international cooperation, even superficial cooperation, provides benefit to the international system and for non-traditional cooperative partners it has the possibility to change non-positive identity associations.

Advantages & Disadvantages of the Constructivist Framework

There are many advantages to using Constructivism to understand why Canada signed onto the Agreement, and how the agreement was created. Canada, like all other states, desires to be perceived in a particular way both internationally and by its domestic audience. In order to maintain a reputation as a peaceful, rule-following nation it is logical that Canada would pursue action and rhetoric that would reinforce that desired identity¹⁸³. Along the same lines, the notion of identity as described within a Constructivist framework also explains the influence that the Inuit possessed within the Canadian delegation during the course of the negotiations. The Canadian government has sought to forge better relations with indigenous peoples, and therefore, it is logical that the Inuit Circumpolar Council were present during the diplomatic negotiations

¹⁸³ Steven Weber, “Institutions and Change,” 234.

and that the Canadian delegation included a representative of the Canadian chapter of the ICC, Herb Nakimayak as part of its formal negotiations. Likewise, beings as the ICC has long called for stewardship of resources, it is consistent with the ICC delegation that they take an active part in the terms of the Agreement. As well, the newly signed Arctic Scientific Cooperation Agreement, which came into force in 2017, specifically notes that Arctic states will consider Inuit and indigenous traditional knowledge (Article 9).¹⁸⁴Article 9 states:

Article 9 - Traditional and local knowledge

1. The Parties shall encourage Participants to utilize, as appropriate, traditional and local knowledge in the planning and conduct of Scientific Activities under this Agreement.
2. The Parties shall encourage communication, as appropriate, between holders of traditional and local knowledge and Participants conducting Scientific Activities under this Agreement.
3. The Parties shall encourage holders of traditional and local knowledge, as appropriate, to participate in Scientific Activities under this Agreement.¹⁸⁵

Canada views the Central Arctic Ocean agreement to be “a framework for Canada and other parties to: take into account Indigenous and local knowledge [...] ensure the engagement and participation of Arctic Indigenous peoples”¹⁸⁶. Canada’s commitment to the indigenous populations in the Arctic has also been demonstrated in the international community by the Canadian government’s support for the ICC lobbying for effective participation and inclusion of the indigenous groups in the Arctic Council¹⁸⁷. Constructivism can explain the element of

¹⁸⁴ “Scientific Cooperation Agreement Enters into Force,” Arctic Council, June 21, 2018, <https://arctic-council.org/index.php/en/our-work2/8-news-and-events/488-science-agreement-entry-into-force>).

¹⁸⁵ “Agreement on Enhancing International Arctic Scientific Cooperation,” Arctic Council, May 11, 2017, <https://oaarchive.arctic-council.org/handle/11374/1916>.

¹⁸⁶ Fisheries and Oceans Canada, “International Agreement to Prevent Unregulated High Seas Fisheries.”

¹⁸⁷ P. Whitney Lackenbauer and Suzanne Lalonde, "Searching for Common Ground," 131-132.

indigenous participation within the Canadian delegation with the greatest conviction compared to the other theories discussed so far within this thesis.

Adler mentions that Constructivism “can illuminate important features of international politics that were previously enigmatic and have crucial practical implications for international theory and empirical research”¹⁸⁸. Through the analysis of identity and actions, the behavior of states can be understood. Constructivism is therefore able to create space for the potential of the possible. A strength to using the Constructivist framework is that it can clarify reasons for seemingly unlikely international cooperation and with non-traditional actors.

One of the interesting questions on how this agreement came into existence is why China would agree to a fishing moratorium in the central Arctic Ocean limiting the potential of China to fish in an area of the high seas when it is the world’s biggest importer of fish? It makes sense if one considers that China has branded itself a “near Arctic State,”¹⁸⁹ a claim that some Arctic littoral states have protested focusing on both the littoral and “near” adjectives. Signing onto an Arctic Agreement is in keeping with the Chinese identity as an “Arctic” state. The more integrated (and implicated) the Chinese state can become in Arctic geopolitics, the more likely the label of “near Arctic State” will become salient amongst other actors in the international arena. The U.S. Secretary of State Pompeo said in May 2019 that “there are only Arctic States

¹⁸⁸ Emanuel Adler, “Seizing the Middle Ground,” 322.

¹⁸⁹ The State Council The People's Republic of China, “Full Text: China's Arctic Policy,” The State Council The People's Republic of China, January 2018, http://english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm.

and Non-Arctic States. No third category exists”¹⁹⁰ directly challenging China’s identity. Nevertheless, for the identity that China wishes to construct of itself, the more Arctic agreements China accedes too, the more evidence it creates and support for its identity as an Arctic state. International Arctic legislation and Arctic geopolitical decisions may force the other states to accept China as a “near Arctic state” in the long-run. The same argument also explains why Canada would be a strong supporter of the Agreement’s identity as a steward of natural resources and Arctic State is reinforced by acceding to the Agreement as well. Canada has also long been an Arctic cooperation norm entrepreneur rallying others to see the benefit of working together in the Arctic to achieve common, collective goals. Canada is quick to remind the world that its leadership (and that of Mary Simon) resulted in the creation of the Arctic Council.

Like all political studies theories, Constructivism is better at analyzing events that have happened rather than predicting the future. Constructivism can only make predictions *if* the identities of the various actors remains stable. The constructed identity of the signatories can shed light onto why a state would sign onto the Agreement. The Canadian government announced in its press release that:

The Arctic and its future is a priority for the Government of Canada. This agreement demonstrates Canadian leadership with its partners for responsible stewardship of the central Arctic Ocean and is part of Canada’s broad efforts to contribute to international oceans governance and to combat illegal, unreported, and unregulated fishing (IUU). IUU fishing is a global issue affecting fish populations and the health and sustainability of our oceans.¹⁹¹

¹⁹⁰ “Looking North: Sharpening America's Arctic Focus - United States Department of State,” U.S. Department of State (U.S. Department of State, May 6, 2019), <https://www.state.gov/looking-north-sharpening-americas-arctic-focus/>.

¹⁹¹ Fisheries and Oceans Canada, “Canada Ratifies Landmark International Agreement.”

This press release to announce that Canada ratified the Agreement demonstrates that the Canadian state believes the Agreement is congruent with its identity construction. Constructivism also allows for the inclusion of the ICC within the Canadian delegation. Including an Inuit representative within the Canadian delegation allowed for the state to advance the government's stance on valuing Indigenous Traditional Knowledge in relation to the Canadian North. The Agreement is a way for Canada to reaffirm the state's status as an Arctic leader. When the Canadian government released its press release in regards to the signing of the Agreement, the press release concluded with the following line: "This is a proud moment for our country. Canada, once again, has demonstrated that it can work with its international partners on sustainable ocean stewardship and to ensure the protection of the Arctic's fragile ecosystems."¹⁹² The Canadian government has demonstrated the value of the agreement with regard to national Arctic identity, and so the Constructivist lens, with its emphasis on identity formation, provides important insight into the question why Canada signed on to the Agreement.

Constructivism can handle many aspects of the Agreement except that it has a flaw as well. According to Ronen Palan, a theory "that asserts, but never proves, the primacy of norms and laws over material considerations, in domestic and international politics"¹⁹³ as is the case with Constructivism, is a major problem. The Agreement is unique – there has been no other preemptive agreement of this scale. How then can it be evaluated by a theory which depends on "norms"? Just as Constructivism views state identities as dynamic entities that require a

¹⁹² Fisheries and Oceans Canada, "Canada Signs International Agreement to Prevent Unregulated Fishing."

¹⁹³ Ronen Palan, "A world of their making: an evaluation of the constructivist critique in International Relations", *Review of International Studies* (2000), 26, 575–598.

combination of time, action, and reaction to solidify “norms” need to be understood in the same way. Considering the unique proactive nature of the Agreement, the standard norms that would apply to an international fisheries agreement do not apply. In addition, as the Agreement has not yet come into force, Constructivism can only predict that in time, all things being constant and equal, the Agreement will come to go into force. Realists would never be so sanguine and even Liberals would point out that key states have yet to ratify the Agreement.

Detractors of Constructivism will argue that because the Agreement forces a new set of rules and norms to be created and that the Agreement has yet to even come into force, the value of Constructivism in this context is highly speculative. Given, the rapidly changing geopolitical events in the world (Russia’s testing of hypersonic missiles for example) introduces far too many variables and uncertainty in the anarchic system for Constructivism to fully proclaim that the Agreement is a “fait accompli”. Realists and Liberals alike would be very skeptical about the power of “ideas” only as the primary driver of the Agreement. For Realists, one must not overlook the power imbalance of the states in question and for Liberals, the domestic government makeups. The moment China or the U.S. defects, the Agreement is dead for both Realists and Liberals – the only difference would be the reasons for the defection.

Pluralism

The type of Pluralism explored in this chapter is the English School’s Pluralism. The English School first came to prominence in the early 1980s based on work by scholars in the

1950s.¹⁹⁴ Pluralism is a sub-theory within the English school and is sometimes called “Liberal Realism”. Like Constructivism, it is more interested in ideas than concepts of power and uses the logic of appropriateness as opposed to the logic of consequences which is why it is placed in the Reflective School¹⁹⁵. Likewise, Pluralists do not view the anarchic world system as deterministic and so it shares much in common with Constructivists. As well, history and context are important for the English School¹⁹⁶. Like Realism, however, the English School believes that while the anarchic system can create the potential for conflict, a society of states can develop common rules to overcome the potentially destructive forces of power and anarchy. Pluralism celebrates the diversity of states suggesting that states may remain independent but accept some commonly held rules¹⁹⁷. Solidarists, the other subgroup within the English School which is often a foil to Pluralism, maintain that states should focus less on their independence and instead fight for common goals, such as human rights for all via common ideals such as the Responsibility to Protect¹⁹⁸.

¹⁹⁴ Barry Buzan, “The English School: an Underexploited Resource in IR,” *Review of International Studies* 27, no. 03 (2001): pp. 472, <https://doi.org/10.1017/s0260210501004715>.

¹⁹⁵ Christian Reus-Smit, “Constructivism and the English School,” In *Theorising International Society English School Methods*, edited by Cornelia Navari, 58. New York, NY: Palgrave Macmillan, 2009.

¹⁹⁶ Cornelia Navari, “Introduction: Methods and Methodology in the English School,” in *Theorising International Society English School Methods*, ed. Cornelia Navari (New York, NY: Palgrave Macmillan, 2009), 10-11.

¹⁹⁷ Christian Reus-Smit, “Constructivism and the English School,” 70.

¹⁹⁸ Barry Buzan, *From International to World Society?: English School Theory and the Social Structure of Globalisation* (Cambridge, UK: Cambridge University Press, 2010), 41.

Theory Overview

The English School is comprised of three key concepts: the international system, the international society, and world society¹⁹⁹. The International System, sometimes referred to as the Realist component, is focused on the element of anarchy in international politics and the element of power politics between states.²⁰⁰ The International Society is focused on rules, norms, state interests and identity²⁰¹ which states construct and follow to foster cooperation and prosperity²⁰². The International Society is the part of the English School that has managed to capture the interest of theorists²⁰³. The World Society is another fascinating component of the English School which probes the elements of universalism and cosmopolitanism²⁰⁴. The World Society, the International Society, and the International System are all features of the English School. The prominence that a particular theorist places on each category will determine the aforementioned theorist's place within the English School.

Pluralism emerges from the International System component, as part of the principal ideological divide within this subsection of the English School. Pluralism, and its counterpoint Solidarism, fundamentally differ in how they view international law that governs state relations.

¹⁹⁹ Barry Buzan, *From International to World Society?*, 6-7.

²⁰⁰ Barry Buzan, *From International to World Society?*, 7.

²⁰¹ Barry Buzan, *From International to World Society?*, 7.

²⁰² Alex J. Bellamy, "The English School," in *International Relations Theory for the Twenty-First Century An Introduction*, ed. Martin Griffiths (New York, New York: Routledge, 2007), 79.

²⁰³ Barry Buzan, "The English School: an Underexploited Resource," 475.

²⁰⁴ Barry Buzan, *From International to World Society?*, 7.

Pluralism utilizes positive law²⁰⁵, is state-centric²⁰⁶ and believes in the supremacy of the non-intervention principle²⁰⁷. Solidarism on the other hand, believes in natural law²⁰⁸, allows space in the conversation for both state and non-state actors²⁰⁹, and advocates for the idea of universalism²¹⁰. In other words, Pluralist thinkers believe that states can work together via international law while maintaining state individuality²¹¹. Solidarists are more focused on a system of universality²¹², which would remove the need for the element of state individuality that Pluralists require. This is not to say that Pluralism does not have paternalistic qualities; after all, the theory has intellectual influences in the Rational School theory of Realism, but does not require the universality that is fundamental to Solidarism.

The Pluralist side of the English School was chosen for this thesis because it can handle the fact that many different types of states (democracies and autocracies as well as non-state actors and institutions like the EU) joined the Agreement. Solidarism, which focuses on universality, prefers and is more comfortable explaining why liberal democracies would join but not a mixture of states. In addition, Pluralism advocates for the presence of a cooperative international society, even if it is at a more minimal level compared to the Solidaristic all-or-nothing argument. As well, and arguably most importantly, the Pluralist point of view argues for

²⁰⁵ H. Bull, "The Grotian Conception of International Society," in *Diplomatic Investigations Essays in the Theory of International Politics*, ed. Herbert Butterfield and Martin Wight (Cambridge, MA: Harvard University Press, 1966), 67.

²⁰⁶ Barry Buzan, *From International to World Society?*, 46.

²⁰⁷ Barry Buzan, *From International to World Society?*, 55.

²⁰⁸ H. Bull, "The Grotian Conception," 67.

²⁰⁹ Barry Buzan, *From International to World Society?*, 53.

²¹⁰ Barry Buzan, *From International to World Society?*, 48.

²¹¹ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2010), 11.

²¹² Nicholas J. Wheeler, *Saving Strangers*, 12.

Positive Law instead of Natural Law. Natural Law is considered innate intrinsic law while Positive Law is the system of laws created by humankind as is the Agreement. The fact that Pluralism directly deals with the type of law that the Agreement falls into is a major reason why Pluralism was chosen to represent the English School instead of Solidarism.

Cooperation

Pluralism does see value and possibility in cooperation amongst international actors. As Pluralism does allow for a degree of cooperation in the international arena, and “stresses the instrumental side of international society as a functional counterweight to the threat of excessive disorder”²¹³, the decision to create an Agreement to curtail fishing in the Arctic Ocean is a natural outcome of such a theory. Pluralism does not expect that states will all adopt the same values and goals but does expect “the creation of practical rules designed to manage interaction between the component units”²¹⁴ as feasible. Therefore, a belief in the possibility and feasibility of international cooperation is implicit under positive law, as states have to work together to create new laws.

International cooperation as a facet of positive law is clearly seen in the case of the Agreement. In order to prevent international discord in the central Arctic Ocean, the five Arctic coastal states started to cooperate. Due to the international scientific outcry about the status of fish stocks in the world, there was the impetus for the creation of the Declaration. After the

²¹³ Barry Buzan, *From International to World Society?*, 47.

²¹⁴ Alex J. Bellamy, “Introduction,” in *International Society and Its Critics*, ed. Alex J. Bellamy (Oxford: Oxford University Press, 2005), 10.

Declaration was signed by the “Arctic Five”²¹⁵, the number of signatories expanded to include interested parties outside the Arctic littoral states in cooperative discussions to create a binding international law that would temporarily prohibit commercial fishing in the high Arctic seas.

While the Agreement has been decreed by some to be a revolutionary piece of positive law, it is important to not overestimate the terms the signatories have crafted. Article 4.2 says

The Parties agree to establish, within two years of the entry into force of this Agreement, a Joint Program of Scientific Research and Monitoring with the aim of improving their understanding of the ecosystems of the Agreement Area and, in particular, of determining whether fish stocks might exist in the Agreement Area now or in the future that could be harvested on a sustainable basis and the possible impacts of such fisheries on the ecosystems of the Agreement Area.²¹⁶

This point about joint scientific cooperation is not new: the signatories are already working together with regard to scientific interests in the Arctic through the Arctic Council and renewed their scientific Arctic relationship through the 2017 Agreement on Enhancing International Arctic Scientific Cooperation²¹⁷. Even though the Agreement, once entered into force, is supposed to last sixteen years, the signatories are also allowed to withdraw from the Agreement at any time²¹⁸, a point that is not unique to international agreements. The Agreement is designed to preference science to determine a sustainable way to access the fisheries in the region even though no state has commercial fisheries operating in the region to date²¹⁹. Ergo, while this agreement is significant in terms of its peremptory nature, what the signatories actually signed

²¹⁵ “Declaration Concerning The Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean”, July 16 2015, <https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arctic-fisheries-16-july-2015.pdf>.

²¹⁶ “Agreement to Prevent Unregulated High Seas Fisheries.”

²¹⁷ “Agreements,” Arctic Council.

²¹⁸ “Agreement to Prevent Unregulated High Seas Fisheries.”

²¹⁹ Fisheries and Oceans Canada, “Canada Signs International Agreement to Prevent Unregulated Fishing in the High Seas.”

fits within the Pluralist view of international cooperation via channels of communication and cooperation that have been previously established in the Arctic.

Advantages & Disadvantages of the Pluralist Framework

An advantage of using the English School's theory of Pluralism is its acceptance of other actors in addition to states. Previous theories, especially those from the Rational School, struggle to explain the inclusion and prominence placed on the Inuit as part of the Canadian delegation as well as the presence of the Inuit Circumpolar Council which represented the interests of the Inuit from Canada, the U.S., Russia, and Greenland in the negotiation process of the Agreement. Canada specifically notes indigenous participation in the Agreement stating that Canada "worked with Arctic Indigenous peoples throughout the negotiation process"²²⁰. The Inuit Circumpolar Council did say in their Press Release with regard to the Declaration that the "ICC has been represented in the discussions between the coastal states and provided an Inuit perspective in this process"²²¹. The element of "society" can shed light on this point because society is about bringing individuals and groups into politics. John Williams in his article *Pluralism, Solidarity, and the Emergence of World Society in English School Theory* says:

world society is associated with a political system in which states are not the predominant actors, although this does not mean they disappear; where political activity

²²⁰ Fisheries and Oceans Canada, "International Agreement to Prevent Unregulated High Seas Fisheries."

²²¹ Inuit Circumpolar Council Canada, "ICC Applauds Adoption of Central Arctic Ocean Fishing Moratorium."

is principally focused upon individuals, rather than institutionalised collectives; and where normative progress is understood in universal terms.²²²

Pluralism is still considered to be a state-centric theory, and therefore can readily understand that only states and the EU signed the Agreement, but the theory will acknowledge the contribution of non-state actors in the process leading to the creation of the Agreement. This describes the relationships between the Canadian state, the Inuit residing within Canadian borders, and international negotiations, as the Inuit were consulted as part of the Canadian delegation. Nadia Bouffard from Fisheries and Oceans Canada said that “numerous Indigenous organizations were consulted during nearly three years of consultation”²²³. The Inuit Circumpolar Council Canada Vice President Herb Nakimayak stated that, “In the past Inuit have always advocated for Indigenous and traditional local knowledge to be a part of any decision-making process. [...] This agreement is [...] the first of its kind that actually has that”²²⁴. The presence of the Inuit during negotiations were not deemed as a threat to the Canadian state, and the diversity of Inuit knowledge and experiences were brought to the international stage but firmly rooted within the context of Canada’s state sovereignty.

Despite the strong positives for using the English School’s theory of Pluralism, the theory is not without its shortcomings. The most damaging is the “fuzziness” of the concept of society. Who is part of it? Who is not? Who decides? The Rational school, in particular, is not comfortable with such open-ended and woolly concepts. Another problem with Pluralism in the

²²² John Williams, “Pluralism, Solidarism and the Emergence of World Society in English School Theory,” *International Relations* 19, no. 1 (2005): 20, <https://doi.org/10.1177/0047117805050060>.

²²³ “Inuit Traditional Knowledge Shaped Commercial Fishing Ban.”

²²⁴ “Inuit Traditional Knowledge Shaped Commercial Fishing Ban.”

context of the Agreement is that it does not give answers to how to prevent cheating in the international society²²⁵. Due to the nature of international agreements existing in the international political sphere there is no way to ensure that states will comply with the terms of the agreement that they sign. And in the case of this Agreement, lack of enforcement is specifically a purposeful feature. Liberals would also fault Pluralism for assuming liberal and autocratic states could find issues on which to agree²²⁶. Pluralist theory says that states can cooperate on shared interests due to the mutual recognition of the members' respective sovereignties²²⁷, and while that can be an extremely valuable way to ensure international cooperation begins, it does not necessarily lay the groundwork for a long-standing cooperative international agreement. The fact that the Agreement deals with democratic and non-democratic regimes complicates the picture when trying to understand the possibility of a lasting agreement. Ergo, a big downfall for the English School's theory of Pluralism is the fact that it cannot fully account for why cooperation can be maintained over time. Realists would suggest Pluralists are simply modern "Idealists" while Constructivists would say that cooperation is what states make of it.

Reflective Theories and the Global Commons

The theories of Constructivism and Pluralism illuminate how states act vis-à-vis the Global Commons in a different way from the Rational theories. Rational theories focus on gains to be had by the state - either zero (Realism) or non-zero gains (Liberalism). Pluralism would

²²⁵ Dale Copeland, "A Realist Critique of the English School," *Review of International Studies* 29, no. 3 (2003): 433, <https://doi.org/10.1017/s0260210503004273>).

²²⁶ Dale Copeland, "A Realist Critique," 435.

²²⁷ Dale Copeland, "A Realist Critique," 438.

see the possibility of positive law governing the Global Commons while Constructivism relies more on describing what types of state identities would cooperate. Both Constructivism and Pluralism are more comfortable with Indigenous participation in rules surrounding global commons than are the Rational theories.

Constructivism has no problem with the idea of a global commons. Indeed, many agreements have been created over thousands of years to govern global commons and have taken on special status and becoming customary law. This means that even if actors do not ratify an agreement they are bound to them as is the case of the U.S. and UNCLOS. One of the first universally recognized international laws laid the foundation for respectable behavior of ships at sea by Hugo Grotius.²²⁸ In some cases, the agreements covering the global commons and humankind are so special and widely accepted that they are termed *jus cogens* norms which means that they cannot be changed by other agreements are rules – so fundamental are they to human understanding of decent behavior such as the illegality of crimes against humanity and genocide.

Constructivism gives insight into the Global Commons in a slightly different manner as it does not have an overarching statement that fits the management of all global commons. For Constructivists, the identity of the actors involved will change the outcome of the solution, unlike Realism which believes state actors act in self-interested ways primarily. Constructivism allows for many roles for a state. For example, a state “may not be seen as another “state” at all,

²²⁸ Grotius wrote on War and Peace (*De Jure Belli ac Pacis*) in 1625 and *Mare Librum*.

but instead as an ally, friend, enemy, co-guarantor, threat, a democracy, and so on”²²⁹. In terms of the Central Arctic Ocean and the Agreement, the actors involved are Canada, U.S., Russia, Japan, China, South Korea, the E.U., Iceland, Norway, and Denmark. Canada would most likely view traditional allies like the U.S., the E.U., Iceland, Norway, and Denmark, as friendly and trustworthy thereby abiding by the terms of an international agreement dedicated to protecting the global commons from over exploitation. While non-traditional partners to Canada, such as Russia and China, would be viewed with extreme caution – Canada would likely need to adopt a “trust but verify” modus operandi with them. Like Realism, therefore, Constructivism will anticipate a rocky road for the Agreement should technology develop to allow for lucrative fishing.

When looking at what the Agreement actually sets out to do and the terms that the signatories agreed upon, Constructivism can still understand why Canada ratified the Agreement but would not view the Agreement as revolutionary. If state relations are constructed based on a combination of identity and actions then this agreement, in terms of Arctic politics, would be considered in line with the history of international Arctic cooperation since the late 1980s and the start of the Arctic Environmental Protection Strategy. The Agreement asks the signatories to cooperate in terms of scientific research; something all the signatories are already doing through their work in the Arctic Council. That it is pre-emptory in nature, however, is a stumbling block but time may prove whether or not it is a one-off occurrence. Constructivism can describe the Canadian perspective on this Agreement because the Agreement allows Canada to strengthen its identity as an Arctic leader while at the same time not forcing the state to change any of their

²²⁹ Ted Hopf, “The Promise of Constructivism,” 194.

pre-established activities. Constructivism would see the agreement as a way for the Canadian state to build and strengthen their desired identity in the Arctic and allow for the influence that the indigenous peoples had on the political negotiations.

Finally, there is the problem that Constructivism assumes the intentions of the actors are genuine. There is no hidden agenda. China has signed to the Agreement because there is a reason/idea propelling China to sign onto the Agreement. But what if China has multiple reasons or duplicitous reasons or has not even decided one way or the other but does not want to miss out on an opportunity? This last point where a state wants to be involved in crafting agreements without deciding if they want to be bound by the terms is not unheard of in international politics. A famous example of this is when the United States was key in the creation of the United Nations Convention of the Law of the Sea, but never ratified the convention. It is hard for other actors to interpret the identity of a state if it can have multiple and even hidden agendas which constructivism allows in principle but not practice. Constructivism's eclectic methodology makes it hard to determine which, if any options, are most likely.

The focus on positive law allows Pluralism to do a better job of understanding the Agreement when looking at the peremptory nature of the agreement. The signatories of the Agreement did not agree to anything that they were not previously doing (or not doing as is more accurate). The states agreed to collaborative scientific research in order to determine sustainable fisheries requirements in the central Arctic Ocean and to not run commercial fisheries in the area of the agreement. Scientific collaboration between the states in question is already happening through the work of the Arctic Council and none of the signatories have commercial fisheries in

the central Arctic Ocean. Thus, Pluralism is able to provide a level of unique insight due to its reliance on positive law as a way for international cooperation to occur and for states to remain true to their individual interests while still being able to simultaneously cooperate, in addition to providing some insight into the recognition that the ICC and traditional knowledge played in the political negotiations.

While both of the Reflective theories demonstrate unique insights in regards to understanding Canada and why it signed and ratified the Agreement, the English School's Pluralism is the stronger theory between the two. Pluralism is the stronger theory because it describes the peremptory nature of the agreement through the importance that Pluralism places on positive law. Pluralism also is able to give insight in regards to the limitations of the Agreement by the fact that the agreement is simply solidifying actions that the signatories are already doing. Pluralism is also able to give a more multi-faceted analysis as to why Canada signed and ratified the agreement, as the agreement allows Canada to pursue its domestic and international agenda in terms of high seas governance, fisheries management, and the Arctic while at the same time advancing international cooperation through the establishment and creation of international positive law, and to better account for the indigenous participation.

Chapter 5: The Great Iceless Race?

“This agreement demonstrates Canadian leadership with its partners for responsible stewardship of the central Arctic Ocean and is part of Canada’s broad efforts to contribute to international oceans governance and to combat illegal, unreported, and unregulated fishing (IUU).”²³⁰
Fisheries and Oceans Canada

In attempting to explain and understand the International Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean from the Canadian perspective, this thesis sought to investigate which of several established International Relations theories best account for the creation of the Agreement. This thesis analyzed primary sources and applied Rational and Reflective theories to determine which one best accounted for the creation of the first preemptive fishing moratorium. Four theories were selected for analysis, Realism and Liberalism from the Rational School and Constructivism and the English School’s theory of Pluralism for the Reflective School. Canada was the main focus which meant the central question seeks the best theory which describes the Agreement from the Canadian perspective. Each theory was examined using two criteria: what contribution the theory made to understanding international cooperation and the global commons, and the advantages and disadvantages of each theory vis-a-vis the Agreement. This chapter summarizes the findings of this thesis and concludes with some recommendations to the Canadian government on next steps for the Agreement as well as future research directions.

²³⁰ Fisheries and Oceans Canada, “Canada Ratifies Landmark International Agreement to Prevent Unregulated Fishing.”

Summary of Thesis

This thesis examined two theories from the Rational School (Realism and Liberalism) and two from the Reflective School (Constructivism and Pluralism). While both rational theories have their respective flaws, it was determined that Realism was the better theory of the two to be used to explain the existence of the Agreement. Realism is skeptical of international cooperation due to the belief that power is relational and so mutual gains are not deemed possible under this theory. The Agreement is a particular case where Realism would allow some level of cooperation because it does not deal with issues related to national security and no state right now can fish in the high Arctic. Essentially, the Agreement captures the status quo which is to say no commercial fishing.

Canada is already acting in line with the conditions of the Agreement, and can defect at any time. The Canadian state would also view the Agreement as a way to protect domestic interests due to the possible presence of straddling stocks between Canada's EEZ and the high seas of the central Arctic Ocean. The biggest flaw of Realism is that it ignores or greatly undervalues other actors, such as individuals, NGOs or institutions, which means it cannot account for the indigenous influence in both the Canadian delegation and the political negotiations for the Agreement. While Liberalism views cooperation as likely and believes in the concept of mutual gains, it was also unable to account for the role of the ICC. Liberalism allows states to have multiple interests, which means that a state may sign the Agreement because it is in line with their environmental policies even if it runs counter to their economic interests. Liberalism was deemed the weaker theory mainly due to the fact that under Liberalism states

should behave differently based on their political makeup. Thus China and Canada, two very different kinds of states, should not both be parties to the Agreement. While Liberals would predict the involvement of democracies in the Agreement, they have a tougher time with why China and Russia would join.

The two theories chosen to represent the Reflective School are Constructivism and the English School's theory of Pluralism. While Constructivism was able to provide impressive insight into the role of the Inuit Circumpolar Council, Pluralism was able to account for a more well-rounded account of the Canadian perspective towards the Agreement. Constructivism is a theory that is based on the idea that nothing exists in isolation; meaning is given to action and inaction based on context. In other words, how an actor is viewed by others in the international arena creates the meaning for their actions. States are therefore products of their environment and the identities they have are dynamic, so states will undertake actions that aligns with their current identity. Unfortunately, the fact that Constructivism can only provide insight in hindsight means the theory can help us understand the past but will not be able to anticipate the future given that identities of the signatories are expected to change over time.

The value that the theory of Pluralism places on the element of positive law, however, makes it a useful theory to understand the Agreement. The fact that the Agreement is a revolutionary piece of positive law that will most likely be considered precedent-setting in the future is important to understanding what the Agreement is about and what its future impact will become. Pluralism also allows for states to cooperate in an attempt to gain order in the anarchical international system, while at the same time requiring that states maintain their individual

interests and identities. In other words, under the Pluralistic theory states do not need to share common values or systems but can cooperate on practical rules that benefit all parties involved which is the case for the Agreement. The ability of Pluralism to incorporate diversity into a state-centric theory provides the best framework of the two to understand the Agreement. Pluralism is not a perfect theory, and does not agree that cooperation will work in all circumstances but it can deal with multiple actors with multiple interests in geopolitically interesting times.

In terms of comparing Realism and Pluralism, Pluralism is the stronger theory because Pluralism can speak to the indigenous influence while Realism is largely unable to contribute to that element. Realism is focused on power and interstate relationships. It does not account for the intrastate relationships, such as why the Canadian state included Inuit representatives as part of the national delegation for the political negotiations for the agreement. Pluralism on the other hand, allows for a pluralistic approach to international politics. As described in the previous chapter, Pluralism can explain the inclusion of the Inuit representative as part of the Canadian delegation via diversity within the context of Canadian sovereignty. The reason why Pluralism was chosen as the better theory to understand why Canada acts in the way that it did is because it can account for both the inter- and intrastate elements of this international agreement. The theory of Pluralism suggests that while national interests of the government and of indigenous peoples were paramount, the Canadian government was keen for a concert of action.

Recommendations

The next most crucial question having tackled why it was created is does this agreement have a future? The *Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean* “is the first international agreement of this magnitude to be reached before any commercial fishing has taken place in a high seas area”²³¹. The most pressing issue to tackle first is whether or not the Agreement will come into force. Article 11.1 of the Agreement says “This Agreement shall enter into force 30 days after the date of receipt by the depositary of all instruments of ratification, acceptance, or approval of, or accession to, this Agreement by those States and the European Union listed in Article 9, paragraph 1.”²³² In other words, until all the signatories ratify the Agreement, the Agreement cannot go into force.

As of 1 March 2020, not all of the signatories have ratified the Agreement. To date, only Canada, the United States, Russia, the European Union, Japan, and the Republic of Korea have ratified the document leaving four states left²³³. Therefore, making any predictions about the future of an agreement that has yet to enter into force is premature. This does not mean, however, that there are not lessons that can be learned from the creation of the Agreement and the fact that several powerful signatories have ratified the agreement already, including the U.S. and Russia. Even if this agreement never enters into force, it should not be considered a failure as, before the

²³¹ Fisheries and Oceans Canada, “Canada Ratifies Landmark International Agreement to Prevent Unregulated Fishing.”

²³² “Agreement to Prevent Unregulated High Seas Fisheries.”

²³³ Ministry of Foreign Affairs Republic of Korea, “ROK Completes Domestic Ratification Procedure for Agreement to Prevent Unregulated High Seas Fisheries in Central Arctic Ocean.”

Agreement, there had never been an international agreement dealing with fisheries in the high seas of a preemptive nature. The fact that this agreement was crafted in the first place and signed by all the signatories is significant because signatures are evidence of the parties agreeing to the principle and even endorsing it in some cases. The peremptory nature of an international agreement that is precautionary in nature is unique and will hopefully set an exciting precedent for future resources that the world wishes to protect.

The next logical step would be for Canada to promote the Agreement to reach out to traditional allies and ask if they would be willing to sign on. As no state currently is conducting commercial fishing in the central Arctic Ocean it would be a low-cost agreement for other states to join but a larger number of signatories might place pressure on the four outstanding states to ratify the agreement and be part of the original state members. Canada could begin with the other state observers on the Arctic Council (such as Switzerland and India) as they have already demonstrated an interest in Arctic scientific research. Due to the low-cost of the agreement it makes the most sense for Canada to directly reach out to other states in an attempt to increase the number of signatories.

Expanding the Scope

Canada has already stated that it would like to see more states agreeing to be bound by the terms of the Agreement²³⁴. If Canada was to be the one to push publicly for more states to be

²³⁴ Levon Sevunts, “Canada Ratifies International Moratorium on Commercial Fishing.”

bound under the Agreement, it would positively impact Canada's image especially in terms of state-indigenous relationships and Canada's standing as a good global citizen.

Canada's relationship with the Inuit has been badly damaged by the residential school system as well as the forced Inuit relocations of the 1950s. Canada's inclusion of the Inuit as part of the Canadian delegation demonstrates the evolving relationship with the Inuit and a way for the state to move past its colonial legacy. Canada's decision to ratify the Agreement is consistent with the reputation the government wishes to project as a responsible, sustainable steward of resources, supporter of Arctic scientific research, indigenous priorities, and international cooperation. The Canadian government has already indicated that these are the goals the signatories have for the Agreement. This is demonstrated via the language that has been used in official government of Canada press releases already issued by the state in regards to the Agreement. In the press release entitled *Canada signs international agreement to prevent unregulated fishing in the high seas of the central Arctic Ocean*, it reads: "This is a proud moment for our country. Canada, once again, has demonstrated that it can work with its international partners on sustainable ocean stewardship and to ensure the protection of the Arctic's fragile ecosystems."²³⁵ In another press release Canada states that: "The Arctic and its future is a priority for the Government of Canada. This agreement demonstrates Canadian leadership with its partners for responsible stewardship of the central Arctic Ocean and is part of Canada's broad efforts to contribute to international oceans governance"²³⁶. These statements illustrate that the identity building aspect of the Agreement is something that the Canadian

²³⁵ Fisheries and Oceans Canada, "Canada Signs International Agreement to Prevent Unregulated Fishing."

²³⁶ Fisheries and Oceans Canada, "Canada Ratifies Landmark International Agreement."

government is particularly attune to as evidence of its interests. Canada has had difficulty connecting with Russia and China, for example, on a number of issue areas. Pointing to this Agreement is a reminder of common interests and examples of cooperation and may take on more importance and provide more political capital to Canada in a changing geopolitical world that is likely to see Canada have to deal with Russia and China more often.²³⁷

As this thesis has argued, the theory of Pluralism explains why the Agreement was created from the Canadian perspective and may provide clues to entice others to join because Pluralism suggests that if states can agree to cooperate on common issues while at the same time maintaining individual state identity and interests, then agreements, like this one, have a chance of surviving²³⁸. Overfishing is a problem that states around the globe are facing²³⁹. A UN report found that, “[i]n 2015, 33% of marine fish stocks were being harvested at unsustainable levels; 60% were maximally sustainably fished, with just 7% harvested at levels lower than what can be sustainably fished”²⁴⁰. It is therefore in the interest of the global community that the potentially rich central Arctic Ocean fisheries are managed in a sustainable manner so that the resources can be harvested for generations. In addition to the desire to create a long-lasting sustainable Arctic fishery, this Agreement is still important to those states which have yet to publicly declare that they want to start fishing in the Arctic. The agreement can set precedence in terms of how emerging high seas fisheries should be handled, but states can also benefit from the high quality

²³⁷Robert Kagan, *The Jungle Grows Back: America and Our Imperiled World* (New York: Vintage Books, a Division of Penguin Random House LLC, 2019), 105-138.

²³⁸ Christian Reus-Smit, “Constructivism and the English School,” 70.

²³⁹ Fisheries and Oceans Canada, “Global Consequences of Overfishing.”

²⁴⁰ “UN Report: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating' - United Nations Sustainable Development,” United Nations, May 6, 2019, <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

scientific and traditional knowledge research that will be generated through the Agreement.

While there is always the threat that one or more of the signatories will violate the terms of the Agreement (or any agreement), the total lack of fishing in the Central Arctic Ocean to date means that the likelihood of states cheating is very low; states have little to lose by signing onto the agreement.

Abiding By The Agreement

Once the agreement is ratified the question becomes should Canada abide by the terms set forth in the document? While collective action problems are always a concern when dealing with international agreements, it would be in the best interest of Canada to act in accordance with the Agreement to prevent both domestic and international backlash by cheating. In terms of the domestic audience, the Canadian state needs to be aware of the history of fish stocks collapsing, the lack of capacity of the Canadian state to engage in a possible large-scale commercial Arctic fishery, as well as the level of indigenous input that went into creating this agreement and the subsequent outrage that would occur if Canada was to reject the terms of the agreement. In terms of international considerations Canada needs to be wary of its international reputation and the status of future agreements. Canada, for example, has received much criticism for not meeting any of its Paris Climate Agreement targets.

Contribution & Future Research

The contribution that this thesis makes to the outstanding literature is an analysis of why Canada would join and advocate for the International Agreement to Prevent Unregulated Fisheries in the Central Arctic Ocean. The revolutionary proactive nature of the Agreement makes the analysis necessary and time sensitive. In addition, as international tensions are being raised around the world it is important to understand why the Canadian state would agree to sign on to an agreement that contains adversarial international partners in other issue areas. The Arctic is a geopolitical arena that, due to global climate change, is opening up to an increased amount of commercial activities. It is therefore important to identify what theoretical framework Canada can be understood through in the region in order to have the necessary information to properly predict the future actions that the state could undertake in the region.

While this thesis focused on understanding Canada's decision to become a signatory of the Agreement, there are many other research opportunities that can and should be explored. Due to the constraints of a Master's thesis, this research only looked at Canada in regards to the Agreement and it would be interesting to look at the other signatories. This thesis found that the English School's Pluralism was the best framework to understand Canada's view of the agreement but a very interesting point to consider is if this theoretical framework could also work for the other signatories? It would be a fascinating research project to determine if Pluralism is a good theoretical framework for understanding the Agreement from the perspective of other signatories or if separate theories would be required for each signatory. This is an interesting question because it would allow the researcher to understand how different states

view a particular agreement. This thesis also provides further understanding as to the limitations of IR theories. The anarchic world order and which actors are involved seem to be the consistent points of argument across the four IR theories. What if the world was no longer anarchic or theories started to take seriously the role of big businesses and nations, like the Inuit, in terms of their ontological considerations?

Another way that this research could be expanded would be to examine other international actions by the Canadian government to see if Pluralism is a theory that can only explain the Agreement, or if it can explain many different areas of Canadian foreign policy. This focus on Canada's actions could allow the researcher to gain important insight into how Canada acts on the global stage as a self-proclaimed "Middle Power". If the state can be understood by one theoretical framework for the Arctic and one for the rest of their global affairs, it would make an insightful contribution to the Arctic literature that are starting to say the era of Arctic exceptionalism is coming to an end. Regardless, understanding how and why a state acts in the international arena is important step to understanding international politics. International tensions are rising and it is important to understand how Canada fits into the evolving narrative, and how Canada remains relevant and engaged in the global community can be understood by examining how Canada makes foreign policy decisions.

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Appendix #1 Agreement to prevent unregulated high seas fisheries in the central Arctic Ocean

The Parties to this Agreement,

RECOGNIZING that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-round basis, which has made fishing in those waters impossible, but that ice coverage in that area has diminished in recent years;

ACKNOWLEDGING that, while the central Arctic Ocean ecosystems have been relatively unexposed to human activities, those ecosystems are changing due to climate change and other phenomena, and that the effects of these changes are not well understood;

RECOGNIZING the crucial role of healthy and sustainable marine ecosystems and fisheries for food and nutrition;

RECOGNIZING the special responsibilities and special interests of the central Arctic Ocean coastal States in relation to the conservation and sustainable management of fish stocks in the central Arctic Ocean;

NOTING IN THIS REGARD the initiative of the central Arctic Ocean coastal States as reflected in the *Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean* signed on 16 July 2015;

RECALLING the principles and provisions of treaties and other international instruments relating to marine fisheries that already apply to the high seas portion of the central Arctic Ocean, including those contained in:

the *United Nations Convention on the Law of the Sea* of 10 December 1982 ("the Convention");

the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* of 4 August 1995 ("the 1995 Agreement"); and

the 1995 Code of Conduct for Responsible Fisheries and other relevant instruments adopted by the Food and Agriculture Organization of the United Nations;

UNDERLINING the importance of ensuring cooperation and coordination between the Parties and the North-East Atlantic Fisheries Commission, which has competence to adopt conservation and management measures in part of the high seas portion of the central Arctic Ocean, and other relevant mechanisms for fisheries management that are established and operated in accordance with international law, as well as with relevant international bodies and programs;

BELIEVING that commercial fishing is unlikely to become viable in the high seas portion of the central Arctic Ocean in the near future and that it is therefore premature under current

circumstances to establish any additional regional or subregional fisheries management organizations or arrangements for the high seas portion of the central Arctic Ocean;

DESIRING, consistent with the precautionary approach, to prevent the start of unregulated fishing in the high seas portion of the central Arctic Ocean while keeping under regular review the need for additional conservation and management measures;

RECALLING the 2007 United Nations Declaration on the Rights of Indigenous Peoples;

RECOGNIZING the interests of Arctic residents, including Arctic indigenous peoples, in the long-term conservation and sustainable use of living marine resources and in healthy marine ecosystems in the Arctic Ocean and underlining the importance of involving them and their communities; and

DESIRING to promote the use of both scientific knowledge and indigenous and local knowledge of the living marine resources of the Arctic Ocean and the ecosystems in which they occur as a basis for fisheries conservation and management in the high seas portion of the central Arctic Ocean,

HAVE AGREED as follows:

Article 1

Use of Terms

For the purposes of this Agreement:

- a "Agreement Area" means the single high seas portion of the central Arctic Ocean that is surrounded by waters within which Canada, the Kingdom of Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America exercise fisheries jurisdiction;
- b "fish" means species of fish, molluscs and crustaceans except those belonging to sedentary species as defined in Article 77 of the Convention;
- c "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity that can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- d "commercial fishing" means fishing for commercial purposes;
- e "exploratory fishing" means fishing for the purpose of assessing the sustainability and feasibility of future commercial fisheries by contributing to scientific data relating to such fisheries;
- f "vessel" means any vessel used for, equipped to be used for, or intended to be used for fishing.

Article 2

Objective of this Agreement

The objective of this Agreement is to prevent unregulated fishing in the high seas portion of the central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks.

Article 3

Interim Conservation and Management Measures Concerning Fishing

- 1 Each Party shall authorize vessels entitled to fly its flag to conduct commercial fishing in the Agreement Area only pursuant to:
 - a conservation and management measures for the sustainable management of fish stocks adopted by one or more regional or subregional fisheries management organizations or arrangements, that have been or may be established and are operated in accordance with international law to manage such fishing in accordance with recognized international standards; or
 - b interim conservation and management measures that may be established by the Parties pursuant to Article 5, paragraph 1(c)(ii).
- 2 The Parties are encouraged to conduct scientific research under the framework of the Joint Program of Scientific Research and Monitoring established pursuant to Article 4 and under their respective national scientific programs.
- 3 A Party may authorize vessels entitled to fly its flag to carry out exploratory fishing in the Agreement Area only pursuant to conservation and management measures established by the Parties on the basis of Article 5, paragraph 1 (d).
- 4 The Parties shall ensure that their scientific research activities involving the catching of fish in the Agreement Area do not undermine the prevention of unregulated commercial and exploratory fishing and the protection of healthy marine ecosystems. The Parties are encouraged to inform each other about their plans for authorizing such scientific research activities.
- 5 The Parties shall ensure compliance with the interim measures established by this Article, and with any additional or different interim measures they may establish pursuant to Article 5, paragraph 1(c).
- 6 Consistent with Article 7 of the 1995 Agreement, coastal States Parties and other Parties shall cooperate to ensure the compatibility of conservation and management measures for fish stocks that occur in areas both within and beyond national jurisdiction in the central Arctic Ocean in order to ensure conservation and management of those stocks in their entirety.
- 7 Other than as provided in paragraph 4 above, nothing in this Agreement shall be interpreted to restrict the entitlements of Parties in relation to marine scientific research as reflected in the Convention.

Article 4

Joint Program of Scientific Research and Monitoring

- 1 The Parties shall facilitate cooperation in scientific activities with the goal of increasing knowledge of the living marine resources of the central Arctic Ocean and the ecosystems in which they occur.
- 2 The Parties agree to establish, within two years of the entry into force of this Agreement, a Joint Program of Scientific Research and Monitoring with the aim of improving their understanding of the ecosystems of the Agreement Area and, in particular, of determining whether fish stocks might exist in the Agreement Area now or in the future that could be harvested on a sustainable basis and the possible impacts of such fisheries on the ecosystems of the Agreement Area.

- 3 The Parties shall guide the development, coordination and implementation of the Joint Program of Scientific Research and Monitoring.
- 4 The Parties shall ensure that the Joint Program of Scientific Research and Monitoring takes into account the work of relevant scientific and technical organizations, bodies and programs, as well as indigenous and local knowledge.
- 5 As part of the Joint Program of Scientific Research and Monitoring, the Parties shall adopt, within two years of the entry into force of this Agreement, a data sharing protocol and shall share relevant data, directly or through relevant scientific and technical organizations, bodies and programs, in accordance with that protocol.
- 6 The Parties shall hold joint scientific meetings, in person or otherwise, at least every two years and at least two months in advance of the meetings of the Parties that take place pursuant to Article 5 to present the results of their research, to review the best available scientific information, and to provide timely scientific advice to meetings of the Parties. The Parties shall adopt, within two years of the entry into force of this Agreement, terms of reference and other procedures for the functioning of the joint scientific meetings.

Article 5

Review and Further Implementation

- 1 The Parties shall meet every two years or more frequently if they so decide. During their meetings, the Parties shall, *inter alia*:
 - a review implementation of this Agreement and, when appropriate, consider any issues relating to the duration of this Agreement in accordance with Article 13, paragraph 2;
 - b review all available scientific information developed through the Joint Program of Scientific Research and Monitoring, from the national scientific programs, and from any other relevant sources, including indigenous and local knowledge;
 - c on the basis of the scientific information derived from the Joint Program of Scientific Research and Monitoring, from the national scientific programs, and from other relevant sources, and taking into account relevant fisheries management and ecosystem considerations including the precautionary approach and potential adverse impacts of fishing on the ecosystems, consider, *inter alia*, whether the distribution, migration and abundance of fish in the Agreement Area would support a sustainable commercial fishery and, on that basis, determine:
 - i whether to commence negotiations to establish one or more additional regional or subregional fisheries management organizations or arrangements for managing fishing in the Agreement Area, and
 - ii whether, once negotiations have commenced pursuant to subparagraph (i) above and once the Parties have agreed on mechanisms to ensure the sustainability of fish stocks, to establish additional or different interim conservation and management measures in respect of those stocks in the Agreement Area;
 - d establish, within three years of the entry into force of this Agreement, conservation and management measures for exploratory fishing in the Agreement Area. The Parties may amend such measures from time to time. These measures shall provide, *inter alia*, that:
 - i exploratory fishing shall not undermine the objective of this Agreement,

- ii exploratory fishing shall be limited in duration, scope and scale to minimize impacts on fish stocks and ecosystems and shall be subject to standard requirements set forth in the data sharing protocol adopted in accordance with Article 4, paragraph 5,
 - iii a Party may authorize exploratory fishing only on the basis of sound scientific research and when it is consistent with the Joint Program of Scientific Research and Monitoring and its own national scientific program(s),
 - iv a Party may authorize exploratory fishing only after it has notified the other Parties of its plans for such fishing and it has provided other Parties an opportunity to comment on those plans, and
 - v a Party must adequately monitor any exploratory fishing that it has authorized and report the results of such fishing to the other Parties.
- 2 To promote implementation of this Agreement, including with respect to the Joint Program of Scientific Research and Monitoring and other activities undertaken pursuant to Article 4, the Parties may form committees or similar bodies in which representatives of Arctic communities, including Arctic indigenous peoples, may participate.

Article 6

Decision-Making

- 1 Decisions of the Parties on questions of procedure shall be taken by a majority of the Parties casting affirmative or negative votes.
- 2 Decisions of the Parties on questions of substance shall be taken by consensus. For the purpose of this Agreement, "consensus" means the absence of any formal objection made at the time the decision was taken.
- 3 A question shall be deemed to be of substance if any Party considers it to be of substance.

Article 7

Dispute Settlement

The provisions relating to the settlement of disputes set forth in Part VIII of the 1995 Agreement apply, *mutatis mutandis*, to any dispute between Parties relating to the interpretation or application of this Agreement, whether or not they are also Parties to the 1995 Agreement.

Article 8

Non-Parties

- 1 The Parties shall encourage non-parties to this Agreement to take measures that are consistent with the provisions of this Agreement.
- 2 The Parties shall take measures consistent with international law to deter the activities of vessels entitled to fly the flags of non-parties that undermine the effective implementation of this Agreement.

Article 9

Signature

- 1 This Agreement shall be open for signature at Ilulissat on 3 October 2018 by Canada, the People's Republic of China, the Kingdom of Denmark in respect of the Faroe Islands and Greenland, Iceland, Japan, the Republic of Korea, the Kingdom of Norway, the

Russian Federation, the United States of America and the European Union and shall remain open for signature for 12 months following that date.

- 2 For signatories to this Agreement, this Agreement shall remain open for ratification, acceptance or approval at any time.

Article 10

Accession

- 1 For the States listed in Article 9, paragraph 1 that have not signed this Agreement, and for the European Union if it has not signed this Agreement, this Agreement shall remain open for accession at any time.
- 2 After the entry into force of this Agreement, the Parties may invite other States with a real interest to accede to this Agreement.

Article 11

Entry into Force

- 1 This Agreement shall enter into force 30 days after the date of receipt by the depositary of all instruments of ratification, acceptance, or approval of, or accession to, this Agreement by those States and the European Union listed in Article 9, paragraph 1.
- 2 After entry into force of this Agreement, it shall enter into force for each State invited to accede pursuant to Article 10, paragraph 2 that has deposited an instrument of accession 30 days after the date of deposit of that instrument.

Article 12

Withdrawal

A Party may withdraw from this Agreement at any time by sending written notification of its withdrawal to the depositary through diplomatic channels, specifying the effective date of its withdrawal, which shall be at least six months after the date of notification. Withdrawal from this Agreement shall not affect its application among the remaining Parties or the duty of the withdrawing Party to fulfill any obligation in this Agreement to which it otherwise would be subject under international law independently of this Agreement.

Article 13

Duration of this Agreement

- 1 This Agreement shall remain in force for an initial period of 16 years following its entry into force.
- 2 Following the expiration of the initial period specified in paragraph 1 above, this Agreement shall remain in force for successive five-year extension period(s) unless any Party:
 - a presents a formal objection to an extension of this Agreement at the last meeting of the Parties that takes place prior to expiration of the initial period or any subsequent extension period; or
 - b sends a formal objection to an extension to the depositary in writing no later than six months prior to the expiration of the respective period.
- 3 The Parties shall provide for an effective transition between this Agreement and any potential new agreement establishing an additional regional or subregional fisheries management organization or arrangement for managing fishing in the Agreement Area so

as to safeguard healthy marine ecosystems and ensure the conservation and sustainable use of fish stocks in the Agreement Area.

Article 14

Relation to Other Agreements

- 1 The Parties recognize that they are and will continue to be bound by their obligations under relevant provisions of international law, including those reflected in the Convention and the 1995 Agreement, and recognize the importance of continuing to cooperate in fulfilling those obligations even in the event that this Agreement expires or is terminated in the absence of any agreement establishing an additional regional or subregional fisheries management organization or arrangement for managing fishing in the Agreement Area.
- 2 Nothing in this Agreement shall prejudice the positions of any Party with respect to its rights and obligations under international agreements and its positions with respect to any question relating to the law of the sea, including with respect to any position relating to the exercise of rights and jurisdiction in the Arctic Ocean.
- 3 Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of any Party under relevant provisions of international law as reflected in the Convention or the 1995 Agreement, including the right to propose the commencement of negotiations on the establishment of one or more additional regional or subregional fisheries management organizations or arrangements for the Agreement Area.
- 4 This Agreement shall not alter the rights and obligations of any Party that arise from other agreements compatible with this Agreement and that do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement. This Agreement shall neither undermine nor conflict with the role and mandate of any existing international mechanism relating to fisheries management.

Article 15

Depositary

- 1 The Government of Canada shall be the depositary for this Agreement.
- 2 Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.
- 3 The depositary shall inform all signatories and all Parties of the deposit of all instruments of ratification, acceptance, approval or accession and perform such other functions as are provided for in the 1969 *Vienna Convention on the Law of Treaties*.

DONE at Ilulissat on this 3rd day of October 2018,
in a single original, in the Chinese, English, French and Russian languages, each text being equally authentic.

Appendix #2 **DECLARATION CONCERNING THE PREVENTION OF UNREGULATED HIGH SEAS FISHING IN THE CENTRAL ARCTIC OCEAN**

Meeting in Oslo on 16 July 2015, Canada, the Kingdom of Denmark, the Kingdom of Norway, the Russian Federation and the United States of America continued discussions toward the implementation of interim measures to prevent unregulated fishing in the high seas portion of the central Arctic Ocean. They adopted the following Declaration:

We recognize that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-round basis, which has made fishing in those waters impossible to conduct. We acknowledge that, due to climate change resulting in changes in ice distribution and related environmental phenomena, the marine ecosystems of the Arctic Ocean are evolving and that the effects of these changes are poorly understood. We note that the Arctic Ocean ecosystems until now have been relatively unexposed to human activities.

We recognize the crucial role of healthy marine ecosystems and sustainable fisheries for food and nutrition. We are aware that fish stocks in the Arctic Ocean may occur both within areas under the fisheries jurisdiction of the coastal States and in the high seas portion of the central Arctic Ocean, including straddling fish stocks. We note further that the ice cover in the Arctic Ocean has been diminishing in recent years, including over some of the high seas portion of the central Arctic Ocean.

We recognize that, based on available scientific information, commercial fishing in the high seas portion of the central Arctic Ocean is unlikely to occur in the near future and, therefore, that there is no need at present to establish any additional regional fisheries management organization for this area. Nevertheless, recalling the obligations of States under international law to cooperate with each other in the conservation and management of living marine resources in high seas areas, including the obligation to apply the precautionary approach, we share the view that it is desirable to implement appropriate interim measures to deter unregulated fishing in the future in the high seas portion of the central Arctic Ocean.

We recognize that subsistence harvesting of living marine resources is ongoing in some Arctic Ocean coastal States, and that traditional and local knowledge exists among the users of these resources. We desire to promote scientific research, and to integrate scientific knowledge with traditional and local knowledge, with the aim of improving the understanding of the living marine resources of the Arctic Ocean and the ecosystems in which they occur. We also recognize the interests of Arctic residents, particularly the Arctic indigenous peoples, in the proper management of living marine resources in the Arctic Ocean.

We therefore intend to implement, in the single high seas portion of the central Arctic Ocean that is entirely surrounded by waters under the fisheries jurisdiction of Canada, the Kingdom of Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America, the following interim measures:

- We will authorize our vessels to conduct commercial fishing in this high seas area only pursuant to one or more regional or subregional fisheries management organizations or

arrangements that are or may be established to manage such fishing in accordance with recognized international standards.

- We will establish a joint program of scientific research with the aim of improving understanding of the ecosystems of this area and promote cooperation with relevant scientific bodies, including but not limited to the International Council for the Exploration of the Sea (ICES) and the North Pacific Marine Science Organization (PICES).
- We will promote compliance with these interim measures and with relevant international law, including by coordinating our monitoring, control and surveillance activities in this area.
- We will ensure that any non-commercial fishing in this area does not undermine the purpose of the interim measures, is based on scientific advice and is monitored, and that data obtained through any such fishing is shared.

We recall that an extensive international legal framework applies to the Arctic Ocean. These interim measures will neither undermine nor conflict with the role and mandate of any existing international mechanism relating to fisheries, including the North East Atlantic Fisheries Commission. Nor will these interim measures prejudice the rights, jurisdiction and duties of States under relevant provisions of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, or the 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, or alter the rights and obligations of States that arise from relevant international agreements.

In implementing these interim measures, we will continue to engage with Arctic residents, particularly the Arctic indigenous peoples, as appropriate.

We intend to continue to work together to encourage other States to take measures in respect of vessels entitled to fly their flags that are consistent with these interim measures.

We acknowledge the interest of other States in preventing unregulated high seas fisheries in the central Arctic Ocean and look forward to working with them in a broader process to develop measures consistent with this Declaration that would include commitments by all interested States.