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State Sovereignty and the Arctic

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State sovereignty is a key principle for global environmental governance. Sovereignty is the capacity to exercise absolute authority, meaning that a state has the exclusive jurisdiction over its territory in legal, administrative, and judicial matters. This territory is demarcated by an externally defined boundary, whereby state sovereignty has two dimensions – internal and external. Internal sovereignty applies to all spaces within the country's defined boundary: land and waters – including surface waters of rivers, lakes, subsurface waters and underground watersheds – all fall under a state's absolute national jurisdiction. Sovereignty also extends to sea or ocean areas, demarcated in accordance with the law of the sea. For example, a coastal state's sovereignty extends twelve nautical miles seawards from its coast line; this area is known as the state's territorial waters. States also enjoy sovereignty over the atmosphere above their defined territory. Although the upper limit of this region has not been determined with any precision, the generally accepted norm suggests that space activities do fall under the jurisdiction of territorial states. External sovereignty refers to a state being free from interference in its internal affairs by other states. However, states negotiate among themselves and share norms of behavior for cross-border environmental governance. Consistent with the principles of external sovereignty, states bear a responsibility not to cause any damage to the environment of other states or in areas beyond their national jurisdictions.

The evolution of international environmental law in the early twentieth century derived from an awareness of a duty to not to cause any harm to other states while exercising sovereignty, honoring what is known as the "no harm" doctrine. The *Trail Smelter Arbitration* from the 1920s declared that "no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein." A similar principle can be seen in the *Corfu Channel case* of 1946, where the International Court of Justice concluded that it is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States." Classical international law embraces "due diligence" as one of its fundamental principles, and international

environmental law is rooted in the norm. Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992 reflect endorsement of the norm in the development of international environmental law:

Principle 21 of the Stockholm Declaration, 1972	**Principle 2 of the Rio Declaration, 1992**
"States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."	*"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own* ***environmental and developmental policies****, and* ***the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."***

In sum, states' sovereignty entails a condition whereby their authority to regulate and protect their environment is contingent on a duty to prevent activities that may cause harm to the environment beyond their borders. It recognizes that states should not invoke their sovereignty to allow activities that would cause significant environmental damage to other states or the global environment. They limit their sovereign authority, for example, by concluding treaties on concerns that may have transboundary dimensions. Examples of such issues are climate change, biodiversity management and conservation, shared water resources, as well as pollution of seas, rivers, lakes and air, impacts cannot be contained within the national territorial jurisdiction. These agreements establish common standards, mechanisms for cooperation, and dispute resolution procedures, allowing states to work together to protect the environment while respecting their sovereignty.

The Arctic is a transnational region consisting of land, water, and resources shared by eight sovereign states. At its center lies the Arctic Ocean, on which five states have coastlines and enjoy sovereignty and sovereign rights over certain parts of marine areas as determined by the law of the sea. The countries

assert their sovereignty over the Arctic and collaborate among themselves through various legal and political means. The law applicable to the Arctic focuses on the protection and sustainable management of the region's fragile ecosystem, which faces unique environmental challenges. The Arctic has gained increasing attention due to climate change, a development which has led to the melting of sea ice and, as a result, the potential opening of new shipping routes and access to untapped natural resources. This has raised interest in the region from non-Arctic states as well. While non-Arctic states do not possess the same level of sovereignty in the Arctic as the coastal states, they do have certain rights, including the freedom of navigation and overflight under international law. Hence, on the ground, the United Nations Convention on the Law of the Sea (UNCLOS) and the customary law of the sea provide a framework for Arctic governance. Cooperation on issues such as governance of the marine environment, conservation of marine living resources, extraction of marine resources, and shipping and navigation is the primary focus.

The Arctic coastal states may assert their legal rights to adopt and apply exceptional and stricter rules in their exclusive economic zones in order to restrict freedom of navigation, as permitted under Article 234 of UNCLOS. The impetus for doing so is that the marine areas are ice-covered for most of the year, and severe climatic conditions in the marine areas call for rules and regulations for the prevention, reduction and control of marine pollution. The coastal states also participate in developing norms of behavior through international and regional arrangements, such as the International Maritime Organization (IMO). One example that merits citing is the Polar Code, which entered into force in the beginning of 2017 and regulates shipping in inhospitable waters, such as in the Arctic. The delimitation of overlapping continental shelves in the Arctic is an area in which the Arctic states have been cooperating since the beginning of the 2000s.

The Arctic states' environmental governance is supplemented by institutional frameworks such as the Arctic Council, of which all Arctic states are members. The Council focuses on environmental protection, sustainable development, and scientific research in the region. Regulatory and institutional cooperation encompasses many areas of concern, such as conservation of biodiversity, sustainable development, the prevention of and response to oil spills,

environmental impact assessments in transboundary contexts, eco-system-based Arctic governance, and integration of the region's Indigenous peoples in environmental governance. Overall, the complex intersection of Arctic sovereignty and applicable environmental law requires ongoing international cooperation, dialogue, and dynamic legal frameworks to create an environmental governance that respects the rights and interests of Arctic and non-Arctic states as well as the region's Indigenous communities.

For more on this, read…

Gerhardt H and Others, 'Contested Sovereignty in a Changing Arctic' (2010) 100 Annals of the Association of American Geographers 992 http://www.jstor.org/stable/40863618