



**COUNTER-PIRACY AS A MODEL FOR AN ARCTIC
TASK FORCE: AN OPPORTUNITY FOR
INTERNATIONAL COOPERATION**

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The Arctic region sits at a jumping-off point. The international community may choose to leap toward global tension and a reinvigoration of Cold War-style conflict in the high north. Or, those with interests in the region may choose to elevate the current spirit of cooperation and build extant multilateral partnerships into lasting formal relationships that will safeguard and develop regional interests.

Organizations such as the Combined Maritime Forces (CMF) and its affiliated organizations already work together to promote security, stability, and prosperity across 3.2 million square miles of international waters. Naval forces, nation-states, international organizations, non-governmental organizations, and private industry voluntarily work together without political or military mandate.¹ The organizational structure is flexible, maximizes each contributing partner's assets, encourages communication among all interested stakeholders, and builds upon already established networks. Arctic stakeholders need only turn to CMF and its affiliated organizations to find a model for future Arctic cooperation.

The necessary international will,² multilateral partnerships, and international organizations currently exist to serve as the foundation for an Arctic organizational structure in the spirit of CMF operations. Current momentum is toward more cooperation among Arctic stakeholders. However, the global order is fragile and tides are subject to ambiguous change. The present serves as an opportune time to begin working toward CMF-style operations in the Arctic.

1 The Arctic's current state: "...amicable jousting and jostling..."

The Arctic region is not, at this time, a source of global instability.³ Instead, the Arctic is a zone of peace and cooperation.⁴ While Arctic⁵ and non-Arctic nations,⁶ private industry,

¹Combined Maritime Forces. 2015. "About CMF." December 11. <http://combinedmaritimeforces.com/about/>.

²Zhang Ming, Vice Foreign Minister, People's Republic of China. "Chinese Country Session: China in the Arctic: Practices and Procedures." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015). The Arctic Circle Assembly's country sessions reiterated a theme of international cooperation and utilizing extant international legal frameworks to address the rights, duties, and obligations of Arctic and non-Arctic countries. China in particular emphasized the rights and obligations of non-Arctic nations to Arctic exploration, resources, and shipping lanes. However, all country sessions kept to this message.

³Professor William Moomaw of the Fletcher School of Law and Diplomacy, "the lure of riches in the Arctic draws ever more companies and nations, but so far it's been relatively amicable jousting and jostling there." "China Pushes for Arctic Foothold – From a Thousand Miles Away," Christian Science Monitor Global News Blog, March 7, 2013.

⁴Michael Corgan, "A 'Great Game' in the Arctic? US, Russia and Rivalry Extension." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015); Valery Konyshov, "Russia: Thinking the Unthinkable: A U.S. Ballistic Missile Defense System in the Arctic?" (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015); Maria Lagutina, "Russia: International Crises' Impact on the Arctic Cooperation: the Case of Ukraine." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015).

⁵Eight countries have territory north of the Arctic Circle: Canada, Denmark (Greenland, a member country of the Kingdom of Denmark), Finland, Iceland, Norway, Russia, Sweden, and the United States (Alaska). These nations are also member states of the Arctic Council. Five of these Arctic countries are considered Arctic coastal states: Canada, Denmark (Greenland), Norway, Russia, and the United States (Alaska). Ronald O'Rourke. 2015, 1-2. Changes in the Arctic: Background and Issues for Congress. CRS Report No. R41153. Washington, DC: Congressional Research Service. <http://www.fas.org/sgp/crs/misc/R41153.pdf>.

⁶Arctic Council permanent observer status is held by France, Germany, the Netherlands, Poland, Spain, the United Kingdom, the People's Republic of China, India, Italy, Japan, the Republic of Korea, and Singapore. Moreover, the 2015 Arctic Circle Assembly in Reykjavik, Iceland, hosted 1500 attendees from 50 countries. Presenting nations (in addition to countries with territory north of the Arctic Circle) included Brazil, France, Germany, Japan, the People's Republic of China, and the Republic of Korea. The Arctic Circle Assembly. 2015. "2015 Assembly Program, Reykjavik, October 15-18." December 9.

indigenous peoples,⁷ and non-governmental organizations⁸ all have environmental, economic, political, and military interests in the area, the global focus is on investment in an opening ocean⁹ rather than squabbling over territory or resources.

The Northwest and Northeast Passages, Arctic high seas, and a presumably resource-rich seabed¹⁰ are still largely inaccessible due to sea ice and technological limitations on resource discovery and exploitation. While scientific expeditions and commercial enterprises do happen, they are limited to those that require multi-state cooperation or icebreakers.¹¹

However, coastlines and sea ice continue to shrink. Arctic sea ice has decreased by 25% since 1972. Melting permafrost causes the retreat of two to ten meters of coastline per year. The Northwest Passage will be ice-free by the middle of the twenty-first century, and by 2050, ships without ice classification will be able to cross the Arctic Ocean.¹² COSCO, China's largest shipping company, has already transited the Northeast Passage via Jiangyin Port to Sweden without an ice pilot or icebreaker.¹³ The voyage saved 270 tons of fuel and ten days of transit time.¹⁴

Despite the current peaceful and cooperative state of international relations in the Arctic, the region is not without tension. The Ukrainian and Syrian crises have facilitated the politicization of many spheres of Arctic cooperation. These crises are separate elements of a general global crisis that could coalesce into a "resumption of . . . great-power rivalry," that is, confrontation between Western countries and Russia.¹⁵ Such great power competition presents a variety of security risks in the military, economic, social, and environmental spheres.

These competitive spheres will play themselves out across a variety of multilateral Arctic partnerships and fora. Stakeholders with Arctic interests have a history of collaboration that has resulted in the creation of permanent organizations and legal regimes. Moreover, Arctic stakeholders utilize existing fora and legal frameworks to address Arctic-specific concerns.

The Arctic Council, an intergovernmental forum that promotes sustainable development and

<http://arcticcircle.org/sites/arcticcircle/files/2015ArcticCircleProgram01.pdf>.

⁷The Arctic Council has granted Permanent Participant status to the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North, and the Saami Council. Doubtless there are other indigenous groups with interests in the Arctic region. Arctic Council. 2015. "The Arctic Council: A background." December 11. <http://www.arctic-council.org/index.php/en/about-us>.

⁸The Arctic Council includes intergovernmental and nongovernmental observers, including the International Red Cross, the United Nations Development Program, the Nordic Council, and the Worldwide Fund for Nature.

⁹Dr. Heather Exner-Pirot, "Demystifying the Russian Bear in the Arctic." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 15, 2015).

¹⁰Timo Koivurova, Juha Kapyla, and Harri Mikkola. "Continental shelf claims in the Arctic: Will legal procedure survive the growing uncertainty?" June 8, 2015.

¹¹Resource exploration in the Arctic is fraught with expense and danger. See the following for a description of Shell Oil's travails. Sarah Kent, "Shell to Cease Oil Exploration in Alaskan Arctic After Disappointing Drilling Season," *The Wall Street Journal*, September 28, 2015, <http://www.wsj.com/articles/shell-to-cease-oil-exploration-offshore-alaska-1443419673>.

¹²Dr. Karin Lochte, "German Country Session: Research and Science Cooperation." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015).

¹³Note that such a transit under these conditions is in violation of the Polar Code. While the Polar Code's Arctic shipping transit safety requirements do not go into effect until 2017, it is interesting to contrast China's actions with statements that the Polar Code must be observed in all Arctic transits. See note 2, *supra*.

¹⁴Captain Cai Meijian, "Chinese Country Session: Exploration and Experience of the Arctic Shipping." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 16, 2015).

¹⁵Ms. Lagutina specifically referenced Alexei Demosfenovich Bogaturov, distinguished scholar of Russia, and Dmitri Trenin, director of the Carnegie Moscow Center, when discussing the complex nature of an emerging Arctic Cold War. Maria Lagutina, "Russia: International Crises' Impact on the Arctic Cooperation: the Case of Ukraine." (lecture, Arctic Circle Assembly, Reykjavik, Iceland, October 15, 2015).

environmental protection and has neither military nor security as part of its mandate, was founded in 1996 and is composed of Arctic states, groups representing Arctic indigenous peoples, and Arctic council observers.¹⁶ On July 16, 2015, the five nations that surround the Arctic Ocean signed a declaration that put into place a fishing moratorium in the high seas portion of the Arctic Ocean.¹⁷ The Arctic Coast Guard Forum was established on October 28, 2015, to leverage collective resources to foster safe, secure, and environmentally responsible maritime activity in the Arctic. Membership includes all eight Arctic nations.¹⁸

The International Maritime Organization (IMO) adopted the International Code for Ships Operating in Polar Waters (Polar Code) and expects it to go into force January 1, 2017. Because the Polar Code contains both safety and environment related provisions, it will be mandatory under both the International Convention for the Safety of Life at Sea and the International Convention for the Prevention of Pollution from Ships.¹⁹

Arctic nations have recognized the United Nations Convention on the Law of Sea (UNCLOS) as the appropriate legal framework to address overlapping claims to the continental shelf in the Arctic region and appear committed to the orderly settlement of any conflicting claims. Denmark, Norway, and Russia have submitted continental shelf claims in compliance with UNCLOS procedures and a claim is expected from Canada.²⁰

While it is likely that competing continental shelf claims in the Arctic will be settled in an orderly fashion, Russia's actions have called its commitment to international cooperation into question. In Russia's case, past behavior may not indicate future compliance. The nation has made considerable investments in the Arctic on par with the Soviet space program of the 1960s and 1970s and has used the region in nation-building and identity politics. Russia's consistent commitment to UNCLOS is uncertain when Russian resource exploitation is threatened. But, most importantly, the annexation of Crimea and ongoing conflict in Ukraine highlight Russia's seeming ability to dismiss previously endorsed foundational international norms and commitments.²¹

Fortunately, the horizon for Arctic development is distant. The UNCLOS continental shelf

¹⁶The Ottawa Declaration. "Declaration on the Establishment of the Arctic Council Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council," September 19, 1996, https://oaarchive.arctic-council.org/bitstream/handle/11374/85/00_ottawa_decl_1996_signed%20%284%29.pdf?sequence=1&isAllowed=y. The category "Arctic Observers" includes twelve non-Arctic states, nine intergovernmental and inter-parliamentary organizations, and eleven non-governmental organizations. Arctic Council. 2015. "Observers." December 11. <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>.

¹⁷These five nations include: Canada, Denmark (Greenland), Norway, Russia, and the United States. U.S. Department of State. "Arctic Nations Sign Declaration to Prevent Unregulated Fishing in the Central Arctic Ocean." July 16, 2015. <http://www.state.gov/r/pa/prs/ps/2015/07/244969.htm>.

¹⁸The membership nations include: Canada, Denmark, Finland, Iceland, Norway, Sweden, the Russia and the United States. LTJG Katie Braynard, "Establishment of the Arctic Coast Guard Forum," Coast Guard Compass (blog), October 30, 2015, <http://coastguard.dodlive.mil/2015/10/establishment-of-the-arctic-coast-guard-forum/>.

¹⁹International Maritime Organization. "Shipping in polar waters. Adoption of an international code of safety for ships operating in polar waters (Polar Code)." <http://www.imo.org/en/MediaCentre/HotTopics/polar/Pages/default.aspx>.

²⁰United Nations Division for Ocean Affairs and the Law of the Sea. "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982." August 3, 2015. http://www.un.org/Depts/los/clcs_new/commission_submissions.htm. Timo Koivurova, Juha Kapyla, and Harri Mikkola. "Continental shelf claims in the Arctic: Will legal procedure survive the growing uncertainty?" June 8, 2015. http://www.fia.fi/en/publication/516/continental_shelf_claims_in_the_arctic/.

²¹Koivurova, Kapyla, and Mikkola, "Continental shelf claims in the Arctic," http://www.fia.fi/en/publication/516/continental_shelf_claims_in_the_arctic/.

claim process will likely take years to resolve. Environmental conditions in the Arctic will not be openly hospitable to exploration and navigation for approximately thirty years. The global community should take advantage of this time window to utilize the sometimes glacial pace of international legal processes. There is time to prevent any potential militarization of the Arctic, capitalize upon the spirit of international cooperation currently permeating global Arctic discussions, recognize that individual nation-states alone do not have the capacity to adequately patrol, explore, and research the Arctic region, and create something new.

2 Counter-Piracy as an Arctic Model

CMF operations span the Red Sea, Gulf of Aden, Gulf of Oman, and the Arabian Sea. Combined Task Force (CTF) 151 is one of three task forces under the broader CMF framework.²² CTF 151 is a multi-national entity responsible for the counter-piracy mission in the Gulf of Aden and the Somali Basin.²³ CTF 151's manner of operations and organizational structure could be adapted to serve the specific needs of the Arctic region and that region's stakeholders.

While extant Arctic negotiation and cooperation mechanisms organically arose in response to specific needs, CTF 151 was established in 2009 under a United Nations Security Council Resolution mandate. Security Council resolutions were then promulgated to further enhance and support CTF 151.²⁴ CTF 151 is mission-focused rather than geographically-focused and as such, is not bound to a specific location. However, the bulk of missions take place in the Gulf of Aden, Somali Basin, and Indian Ocean. The Gulf of Aden is approximately 930 miles long and 300 miles wide, similar to the length and width of Italy. The operational focus is on deterrence and disruption of piracy, intelligence collection and building pattern-of-life analyses of pirates, and coordination, tactical de-confliction, and synchronization of

²²The two other CTFs include CTF 150's mission in the Red Sea, Gulf of Aden, Gulf of Oman, and the Arabian Sea covering maritime security operations (MSO) and Struggle Against Violent Extremism (SAVE) and CTF 152's mission in the Arabian Gulf covering MSO and SAVE. CTFs 150, 151, and 152 are composed of the same contributing nations and partners. I served as the afloat legal advisor to CTF 151 aboard (Republic of Korea) Ship *Kang Gam Chan* (DDH 979) from April to July 2010. Considering my professional experience is limited to CTF 151's operations, I have restrained my recommendations specifically to CTF 151.

²³Thirty nations take part and contribute to CTF 151's mission: Australia, Bahrain, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Jordan, the Republic of Korea, Kuwait, Malaysia, the Netherlands, New Zealand, Norway, Pakistan, the Philippines, Portugal, Saudi Arabia, Seychelles, Singapore, Spain, Thailand, Turkey, the United Arab Emirates, the United Kingdom, the United States, and Yemen. Combined Maritime Forces. 2015. "About CMF." December 11. <http://combinedmaritimeforces.com/about/>.

²⁴United Nations Security Council (SC) Resolution 1816, "Somalia," June 2, 2008; SC, Resolution 1838, "Somalia," October 7, 2008; SC, Resolution 1846, "Somalia," December 2, 2008; SC, Resolution 1851, "Somalia," December 16, 2008; SC, Resolution 1897, "Somalia," November 30, 2009. In UNSCR 1838, the Security Council, acting under Chapter VII of the UN Charter, called upon States interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia by deploying naval vessels and military aircraft in accordance with international law as reflected in UNCLOS. The Security Council mandate in UNSCR 1838 reinforces the obligation under international law, as reflected in Article 100 of UNCLOS, for all States to cooperate to the fullest possible extent in the repression of piracy on the high seas. Furthermore, in UNSCR 1838 the Security Council called upon States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to use on the high seas and airspace off the coast of Somalia the necessary means, in conformity with international law as reflected in UNCLOS, for the repression of acts of piracy. UNSCR 1838 is supplemented by the Security Council mandate in UNSCR 1846, which stated that the fight against piracy included the seizure and disposition of boats, vessels, arms, and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use. UNSCR 1851 encourages coordination between nations and private industry to create shipping safeguards against piracy and a legal finish for captured suspected pirates. UNSCR 1897 allowed entry into Somalia's territorial waters and enacted other enforcement powers.

multi-national counter-piracy operations.

Here, the dissimilarity between CTF 151 and the Arctic region ends. CTF 151 is unified in mission across a specific geographic area. An Arctic CMF would similarly be joined in a common mission (environmental, economic, political, and military) bound to a specific area of the world. In addition, just as the Arctic region's various opportunities and challenges are addressed by the North Atlantic Treaty Organization (NATO), the European Union (EU), the Arctic Council, the Arctic Coast Guard Forum, the IMO, and other regional or subject specific organizations, CTF 151 and the counter-piracy mission are also supported by NATO, the EU, Shared Awareness and De-confliction (SHADE), the United Kingdom Marine Trade Operations (UKMTO), the Maritime Liaison Office (MARLO), Maritime Security Centre Horn of Africa (MSC-HOA), the NATO Shipping Center, and the IMO. Moreover, independent navies not affiliated with CTF 151 coordinate closely when transiting CTF 151's area of operations. These groups form the practical and logistical underpinnings of the counter-piracy mission. CTF 151 sits surrounded by these various institutions and focuses on information sharing and de-confliction across the disparate groups.

Voluntary cooperation and coordination is the key to CTF 151's communication sharing system. Unclassified chat communication systems available through an Internet connection tie together the entirety of merchant vessels, independent naval forces, and task force vessels in transit through pirate infested waters in the Gulf of Aden, Somali Basin, and parts of the Indian Ocean.

At any given time in the Gulf of Aden, naval units from a variety of nations are executing national taskings to escort merchant vessels traveling through the Internationally Recognized Transit Corridor (IRTC).²⁵ CTF 151 requests that all naval forces transiting the IRTC keep CTF 151 apprised of their plan of intended movement to ensure as many IRTC sections as possible have adequate coverage against pirate attacks. CTF 151 cannot control units from other task forces, NATO, the EU, or independent navies. Instead, CTF 151 can only ensure information is shared among all units, task forces, independent navies, and merchant vessels in transit within the IRTC and recommend a course of action. SHADE meetings, co-chaired by CMF and the EU, are instrumental to this effort. These meetings are well attended and include representatives from NATO, Russia, the People's Republic of China, Egypt, India, private industry, and law enforcement. UKMTO, MSC-HOA, MARLO and the NATO Shipping Centre serve as a communications hub and interface for all those involved in counter-piracy and provide links between naval forces and merchant shipping.²⁶

3 Conclusion

An Arctic CTF would draw together all Arctic issues under one coordinated and consolidated international body. By elevating these Arctic issues from the regional and individual nation state level, the global community can avoid the politicization of Arctic issues. Creating a CTF does not militarize the Arctic. Instead, creation of an Arctic CTF overtly recognizes

²⁵The IRTC, promulgated by the EU and the UKMTO in February 2009, serves as an internationally recognized space through which merchant vessels and accompanying naval forces may safely travel the Gulf of Aden to reduce collision risk and major fishing areas and rely on strength in numbers to dissuade pirate attacks. While the IRTC is not a dedicated traffic separation scheme, it is representative of international stakeholders determining together a best practice for marine operations and implementing it. As the IRTC coordinator, CTF 151 coordinates warship zone coverage within the IRTC. IRTC zones are organized using standard grid geo-reference and tactical procedures shared between NATO, EU, and CMF forces.

²⁶NATO Shipping Centre. 2015. "Nato's Point of Contact with the Maritime Community." December 11. <http://www.shipping.nato.int/Pages/OOSNavyUnits.aspx>.

the interconnected nature of the Arctic's environmental, economic, military, and political needs. The Arctic CTF would provide necessary communication channels, coordination, and consolidation of international effort free of political mandate or military intent. Just as counter-piracy actions are not combat operations, the Arctic missions would focus on international cooperation and information sharing.

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