

Legal Complexities of Hybrid Threats in the Arctic Region

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This article will focus on the legal framework that applies to the Arctic ocean and highlight the legal grey areas that hybrid campaigns could invest in to violate international maritime law and law relating to the use of force.

Keywords: *jus ad bellum*, law of the sea, hybrid threats, Arctic region.

Hibridinių grėsmių Arkties regione teisiniai iššūkiai

Straipsnyje daugiausia dėmesio skiriama teisei sistemai, sutartims ir kitiems teisės aktams, kurie taikomi Arkties vandenyno teritorijai bei pilkųjų zonų apibrėžimui, taip pat nustatyti, kur būtų galima taikyti hibridinę taktiką ir operacijas nepažeidžiant tarptautinės jūrų teisės ir teisės, reguliuojančios jėgos draudimą.

Pagrindiniai žodžiai: *jus ad bellum*, jūrų teisė, hibridinės grėsmės, Arkties regionas.

Introduction

Global warming and the states' appetite to extend their influence and access to more resources are evolving dramatically in the North Pole area. Correspondingly, recent economic and military activities in the region have shed light on the ambitions of Arctic States to gain superiority and reserve a front seat in the table of discussions and negotiations of who will control the Arctic. The overlapping claims of maritime borders, the mutual interest in the undiscovered resources that vary from untapped fishing stocks to rare minerals, by which 30% of the world's undiscovered natural gas and 13% of world's oil constitute a promising fortune for states, and the transport routes have fascinated non-Arctic states as well, China in particular, up to the point of these states revealing their interests in the region, especially that the Arctic ice sea has been shrinking due to the planet's average rising temperature; according to the Arctic Monitoring and Assessment Program (AMAP), it is expected that the Arctic ocean will be largely free of ice in the summer of 2030.¹

¹ AMAP, Snow. *Water, Ice and Permafrost. Summary for Policy-makers, Arctic Monitoring and Assessment Programme (AMAP)*. Oslo-Norway 2017, p. 3.

The Arctic Region is not in a legal vacuum, and as an enclosed sea it is mostly governed by UNCLOS, which governs all human activities related to the use and management of seas.² However, there is no single comprehensive treaty for all arctic affairs. The latter is considered a “sea constitution” rather than a final treatment of the Law of the Sea (LOS) that mainly deals with a myriad of legal issues that would arise from drafting specific regional agreements or treaties that could play an important role in managing and keeping a peaceful pace in the region.³ Moreover, other areas of law, such as the UN Charter and the Law of Armed Conflict, have much to do in encountering the impact of militarization and hybrid threats.

In the era of modern conflicts and the fusion of means employed in a single battlefield or area of interest by adversaries operating across legal boundaries and in under-regulated spaces in order to create a legal grey zone within which they can operate freely – also known as *hybrid threats* – we can be led to understand that the North Pole area is a cold region with hot activities that could escalate at any moment to a conflict or confrontation. Hybrid threats aim to blur the lines between war and peace by preserving the *status mixtus* situation, what is permissible and non-permissible. According to Frank Hoffman, “hybridity expresses the difficulty that instead of separate challenges with fundamentally different approaches (conventional, irregular or terrorist), we can expect to face competitors who will employ all forms of war and tactics, perhaps simultaneously.” Hoffman defined hybrid warfare as “any adversary that simultaneously and adaptively employs a fused mix of conventional weapons, irregular tactics, terrorism, and criminal activities in the battle space to obtain their political objectives.”⁴ Therefore, overlapping claims and the heavy militarization of the region create a proper environment for hybrid threats to be employed; threats matching scenarios like that of South China Sea but more complex due to the fusion of factors that challenge the applicable laws.

The aim of this article is to examine the legal framework applicable to the North Pole area by analyzing the applicability of the Jus ad Bellum and UNCLOS in response to militarization and fusion of various tactics employed, and how it would fruitfully duplicate scenarios similar to the annexation of Crimea in the hybrid warfare era. Further, this paper is concerned with shedding light on the legal complexities of hybrid threats regarding any relevant international legal frameworks and agreements, such as the Ilulissat Declaration⁵ and Svalbard Treaty.⁶ The article begins by explaining the legal regime of the Arctic, mainly the applicable laws. Afterward, it highlights the challenges of hostile confrontations by hybrid means and the legal complexities it generates. Finally, it concludes whether the relevant legal framework is capable of tackling the impact of overlapping claims and the hybrid threats in the region. This article excludes the International Human Rights Law (IHRL) but assures the importance of further discussions on the topic of the self-determination of indigenous people of the Arctic as a general understanding of human rights to these communities. Hence, the novelty of this article lies in the examination of how the legal regime of the Arctic may approach or handle hybrid threats and their influence on international peace and security. Essentially, this paper delves into the potential use or misuse of the law to serve the interests of states, or what is the so-called “Lawfare” as a means of hybrid threats.

² TAKSOE-JENSEN, P. *An International Governance Framework for Arctic: Challenges for International Public Law*. Berliner Wissenschafts-Verlag, Berlin 2010, p. 148.

³ MICHALKOVA, T. Global Perspective on Arctic Natural Resources, United Nations General Assembly paper, p. 12 <<http://www.zamun.sk/wp-content/uploads/GA-Study-Guide.pdf>>.

⁴ HOFFMAN, F.G. Hybrid vs. compound war. The Janus choice: Defining today’s multifaceted conflict. *Armed Forces Journal*, October 2009.

⁵ The Ilulissat Declaration was adopted by the five states bordering the Arctic Ocean in 2008. Its main aim is peaceful cooperation and dialogue regarding any development in the Arctic Ocean, and the settling of any overlapping territorial and any other claims within the framework of International Law and the Law of the Sea.

⁶ Treaty concerning the Archipelago of Spitsbergen, signed 9 February 1920, entered into force 14 August 1925, 2 LNTS 7.

Legalistic articles and academic papers on the Arctic region are plentiful, especially by authors from Arctic states with a direct interest in the region,⁷ particularly in the aftermath of climate change and the adoption of the UN Framework Convention on Climate change (UNFCCC). This can be seen in the work of Robert McLaughlin, who discussed the legal status of maritime militia vessels, specifically in the South China Sea. On the other hand, Lawfare in the maritime domain has been discussed by Dov Bachmann and Munoz Mosquera, who highlighted the main scenarios and threats of such an event unfolding in the Arctic. Moreover, an important work by Von Heinegg distinguished incidents at sea from hostilities and had great influence on the distinction between law enforcement and belligerents' rights at sea. However, further debates and discussions have influenced more scholars to dig deeper in the profound consequences of geopolitics and the mutual interests of states in the region, as the condition of inhospitality previously made the legal disputes meaningless in some areas. Most states understand that exploiting the Arctic is not feasible with the current energy prices; however, urgent ambitions are to dominate the Arctic trade, with a clear reluctance from the Arctic states to keep non-Arctic states' privilege in the region beyond reach, especially when it comes to the announced Chinese interest by which its foreign minister Wang Yi described China as a "near Arctic state" and referred to China's long history of Arctic interests stretching as far back as China's signing of the Spitsbergen (Svalbard) Treaty in 1925.⁸ Therefore, this paper analyzes different scenarios of what the region might have to be prepared for and the hybrid threats that can violate the established peace regime, and provide relevant examination and suggestions to the contemporary legal challenges in the Arctic.

The article will be analyzing the legal complexities of hybrid threats to the Arctic region by focusing on a standard legal analysis, studying the most relevant primary sources, such as treaties, customary international law and general principles of law, judicial decisions, and legal doctrines, particularly the United Nation Convention on the Law of Sea (hereinafter the UNCLOS) with regards to navigation rights and the delimitation of Continental shelves (Article 76 of UNCLOS). On the other hand, the militarization of the Arctic region and its impact on international peace and security indicates that UNCLOS is not sufficient; therefore, the role of the UN Charter and other areas of law will be essential for tackling some of the challenges due to the lack of any regional treaty that could function as a *lex specialis* to the North Pole area. Besides, The ICJ is rich in cases but not purely Arctic-oriented, yet some are essential, such as the agreed minutes on the delimitation of the Continental Shelf between the Faroe Islands and Norway in the southern part of Banana Hole of the Northeast Atlantic in 2006. Moreover, the inductive method will be used in order to identify the rules of law by observing their effectiveness in contemporary conflicts, in particular the *Jus ad Bellum* in the Arctic.

1. Legal Regime: Applicable laws and Overlapping Claims

In 1959, during the Cold War, twelve countries signed the Antarctic Treaty recognizing the region as an interest for all mankind, by which it will be forever used for peaceful purposes.⁹ The South Pole circle does not include any state – therefore, an agreement regarding demilitarization and a nuclear-free zone

⁷ See: TIMCHENKO. *Quo Vadis, Arcticum? The International Law Regime of the Arctic and Trends in its development*. State University Press, Kharkiv 1996; KOVALEV; ZIMNENKO. *International Law and National Interest of Russia, Vostok-Zapad*. Moscow, 2007 (in Russian); FRANCKX, E. *Maritime Claims in the Arctic (Canadian and Russian Perspective)*. Martinus Nijhoff Publishers, 1993; and many other relevant academic works.

⁸ SORENSEN, C.; KLIMENKO, E. Emerging Chinese-Russian Cooperation in the Arctic, Possibilities and Constraints, Stockholm International Peace Research institute (SIPRI). *Policy Paper No. 46*, June 2017, p. 5.

⁹ The Antarctic Treaty of 1959, 402 U.N.T.S. 71, entered into force June 23, 196, preamble, 1 December 1959.

was not hard to accomplish.¹⁰ Alternatively, the North Pole region is predominantly at sea – a marine environment that has a different legal framework and is strongly influenced by the rights of sovereign states in the region. These differences in geography, geology, climate, and strategic value between the two poles have their influence on the internationalization of Antarctica, whereas the Arctic is governed by the rule of coastal states' jurisdiction.¹¹ Generally, there is no single comprehensive treaty for all Arctic affairs; however, the region is not in a legal vacuum. Primarily, the marine environment of the Arctic is subject to the UNCLOS regime, which governs all human activities related to the use and management of the seas.¹² The UN Charter, as well as other treaties, govern the Arctic affairs.

1.1. United Nation Convention on the Law of Sea (UNCLOS III)

The Arctic is considered an enclosed ocean with three gates: the Bering strait, the Davis Strait, and the Greenland-Iceland-United Kingdom Gap.¹³ Legally speaking, the Arctic is mostly governed by UNCLOS 1982, the world's bedrock framework for ocean governance, which is accepted by all states as a reflection to customary International law. UNCLOS defines the various forms of sovereignty, including territorial waters, the contiguous zone, the exclusive economic zone, and the continental shelf.¹⁴ The latter regulates the maritime zones and boundaries entitling each coastal state to rights in adjacent maritime space, up to 200 nautical miles (nm) for the exclusive economic zone (EEZ)¹⁵ and continental shelf (CS), which could be extended further according to geological contiguity provided by scientific proof. Moreover, cooperation in the Arctic is essential and reflected in the UNCLOS, by which dialogue and negotiations between states to reach a fair agreement are essential. Most of the maritime disputes in the Arctic are solved bilaterally or by reference to the UNCLOS, with an exception of the Svalbard Archipelago, which is governed by the international regime of the Spitsbergen Treaty 1920.¹⁶ The results of this strategy by Arctic states is that the process of delimitating the maritime zones is still ongoing but at a peaceful pace. Marine scientific research, too, shall be conducted for peaceful purposes and using appropriate scientific methods in conformity with the UNCLOS regulations.¹⁷ In fact, UNCLOS, Part XI (Common Heritage of Mankind "The Area") on the seabed beyond the limits of national jurisdiction (Article 136 UNCLOS) and the 1994 agreement on the implementation of this part have a key role in the extensive legal framework applicable to the Arctic Ocean.¹⁸ The

¹⁰ The Antarctic Treaty Ibid. arts. 1 and 5.

¹¹ FRANCKX, E. *Maritime Claims in the Arctic* [...], p. 6

¹² TAKSOE-JENSEN, P. *An International Governance* [...], p. 148

¹³ FERON, H. A New Ocean: The Legal Challenges of the Arctic Thaw. *Ecology Law Quarterly* 83, vol. 45, 2018, p. 90.

¹⁴ According to Article 76 of the UNCLOS, coastal states can, under certain geological conditions, extend their judicial continental shelf and gain more marine sovereign rights beyond the 200 nm limit of the EEZ, but shall not exceed 350 nm. United Nations Convention on the Law of the Sea 1982, part VI, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

¹⁵ The exclusive economic zone (EEZ) is an area beyond and adjacent to the territorial sea, up to 200 nautical miles from the shore. A coastal state has sovereign rights for exploring, exploiting, conserving, and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds. See, UNCLOS, arts 55–57.

¹⁶ WOLFRUM, R. *The Polar Regions: Legal Aspects*, Programme for Strategic and International Security Studies. *PSIS special Studies*, Geneva 1989, p. 11.

¹⁷ UNCLOS; rt. 240: on the issue of marine scientific research and international law. See Wegelein, *Marine Scientific Research: The Operation and Status of Research Vessels and Other Platforms in International Law*, Nijhoff Leiden, 2005.

¹⁸ Agreement Relating to the Implementation of Part XI of the UNCLOS of 10 December 1982, 1836 UNTS 41.

importance of UNCLOS is its reflection to customary international law in many areas, especially that it has been over centuries through continuous legal acts by the Arctic States even before its adoption in 1982. Therefore, any underestimation of the customary law regarding the applicable legal regime in the Arctic would be a flaw.¹⁹

While the coastal states of the Arctic are mainly with opposite and adjacent borders, the main obstacle has been with the establishment of the outer limit of the continental shelves beyond 200 nm and the free passage of ships in the area, especially in the Northwest Passage. For example, Canada claims that the waters of its Arctic archipelago are historic internal waters; therefore, it foresees no right of innocent passage for foreign vessels, which would grant it more jurisdiction in line with Article 21 of UNCLOS rather than as a strait for international navigation.²⁰ However, the USA claims that the channels in the archipelago qualify as straits used for international navigation under Part III of UNCLOS, which gives the right for innocent passage for foreign ships.²¹ The maritime disputes are completely regulated and the Arctic states agreed that there is no need to develop a new comprehensive international legal regime to govern the Arctic, since UNCLOS provides a legal framework for any overlapping claims. But challenges arise in the implementation and application of existing legal frameworks, as states work on extending their jurisdictions,²² and this can lead to unregulated overfishing, oil spills, and military clashes, which might lead to global catastrophes.²³ For example, Denmark, Russia, and Canada claimed sovereign rights over an area that includes the North Pole and the contentious Lomonosov Ridge, an area of untapped fishing stocks in which South Korea and China have expressed their interest, too.²⁴ So far, all of the Arctic states have followed the rules and procedures for establishing seabed jurisdiction set out in the UNCLOS 1982 by submitting their claims to the Commission on the Limits of the Continental Shelf (CLCS),²⁵ while the USA will need to ratify the convention before it can make a submission.²⁶ Currently, many bilateral agreements within 200 nm have been made on the maritime boundaries (Lincoln Sea, Barents Sea/Strait, and the Chukchi Sea). However, ongoing ones are mainly in Hans island, the Beaufort Sea after the 1825 treaty between Russia and Great Britain, while the USA argues that no maritime boundary has yet been defined declining by that Canada's rights.²⁷ As a result of the states' interests and claims, only a small area of high sea will be left. Finally, the UNCLOS, regarding

¹⁹ Important legal factors that reflect the role of customary international law: Legislative and treaty practice of Tsarist Russia, USSR and Russian Federation in the Arctic, Canada and acquiescence with such practices on behalf of majority of states between the 15th and 20th century. See, VYLEGZHANIN, A. *Developing International Law Teachings for Preventing Inter-state Disaccords in the Arctic Ocean*. Berliner Wissenschafts-Verlag, Berlin 2009, p. 213.

²⁰ MULDER, J. R. What Legal Framework Governs the North Pole? *Master Thesis Tilburg University*, 15 May 2013, p. 8.

²¹ Maritime jurisdiction and Boundaries in the Arctic Region, Centre for Borders Research (IBRU) and Durham University, last updated 4 August 2015, para. 10. <<https://www.dur.ac.uk/resources/ibru/resources/Arcticmap04-08-15.pdf>>.

²² WITSCHERL, G. *Chairman's Conclusions, New Chances and New Responsibilities in the Arctic Region*. Berliner Wissenschafts-Verlag, Berlin 2010, p. 255–257.

²³ FLISIUK, F. As the Arctic Melts, Nations Race to own what's left behind, *The Revelator*, January 4, 2018, <<https://therevelator.org/arctic-melts-nations-race/>>.

²⁴ *Ibid.*

²⁵ UNCLOS, Article 76, para. 8 “[...] Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.”

²⁶ See more about the Arctic maps and claims of Arctic states: Arctic Maps, Durham University, <https://www.dur.ac.uk/ibru/resources/arctic/>

²⁷ Maritime jurisdiction and Boundaries in the Arctic Region [...], para. 6.

the high sea regime, states that “[a]ll states have the right for their nationals to engage in fishing on the high seas [...]”,²⁸ thus entitling the fisheries rights as common resources to all states in high seas.

1.2. Regional Agreements

The Ilulissat Declaration of 2008 assured that overlapping claims shall be settled on the basis of public international law.²⁹ The declaration has been adopted by five Arctic coastal states (Canada, Denmark “Greenland,” Norway, Russian Federation and USA “Alaska”), though the declaration does not specifically mention the UNCLOS; however, it is one of the components of that legal framework.³⁰ In their declaration, the A5 emphasize their supremacy in this area and that they are against a specific agreement for the Arctic, sending a clear message to the ambitious potential non-Arctic players in the region.³¹ The latter has aimed to maintain the Arctic as a low-tension region, by which disputes are resolved peacefully within the framework of International Law. The Svalbard Treaty (ST),³² equally important, plays a significant role in the contemporary situation due to the archipelago’s strategic and economic importance. The ST acknowledges Norwegian sovereignty over the Svalbard Archipelago as asserted in Art. 1, which states the following: “High contracting parties undertake to recognize, subject to the stipulations of the present treaty the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen.”³³ Likewise, Article 3 of the treaty considers that any member state can have its citizens in Svalbard and exploit the land for economic or commercial purposes.³⁴ In addition, Article 9 of the treaty refrains states from having military assets on the island, and that includes Norway.³⁵ It is important to note that state sovereignty is not limited to land but extends over parts of the sea; it has been confirmed by the ICJ that land is the legal source of power which a state may exercise over territorial extensions seaward,³⁶ and the same goes to the coastal states’ rights to submarine areas adjacent to it.³⁷ Therefore, the ST is essential in regulating the member states’ behavior in the region. Furthermore, the Arctic Council plays an important role at the regional level by providing guidelines for cooperation and development that led to the signatures of the three main agreements.

In this matter, the legal regime of the Arctic gained a new momentum after Mikhail Gorbachev called for close cooperation among the Arctic States, the so-called Murmansk Initiative,³⁸ which led indirectly to what is known now as the Arctic Council.³⁹ The initiative had an important impact on

²⁸ UNCLOS, Part VII, Section II, Article 116.

²⁹ Ilulissat Declaration, Arctic Ocean Conference, Greenland, 27–28 May 2008, note 4, para. 3.

³⁰ VYLEGZHANIN, A. *Developing International Law* [...], p. 210.

³¹ WITSCHER, G.; WIKELMANN, I. *Current Endeavors with Respect to the Arctic Ocean: New Challenges for International Law and Politics*, Berliner Wissenschafts-Verlag, Witschel, Winkelmann, Tiroch, Wolfrum Ed., Berlin 2010, p. 269–270.

³² Svalbard is an archipelago in the Arctic Ocean, constituting the northernmost part of Norway.

³³ Treaty concerning the Archipelago of Spitsbergen [...], Article 1.

³⁴ The Svalbard treaty, Paris 09-02-1920, article 3: “[...] The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories [...]”

³⁵ Svalbard treaty [...], Art. 9: “Subject to the rights and duties resulting from the admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.”

³⁶ North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, page 3, paragraph 96.

³⁷ Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, page 18, paragraph 73.

³⁸ Mikhail Gorbachev’s speech at Murmansk, 1 October 1987, Europa Archive, vol.42, 1987, D 663-666, partly reprinted in German.

³⁹ The Ottawa Declaration of 1996 established the Arctic Council as a high-level intergovernmental forum to improve means of promoting cooperation and interaction among the Arctic States, with the involvement of the Arctic

the governance of the Arctic, as it included recommendations for a free nuclear zone and the reduction of naval activities in Northern Europe and the Arctic waters. Moreover, it advocated for the joint exploitation of non-renewable natural resources in the region.⁴⁰ The latter has significant importance, as it includes but is not limited to three main areas: defense, mineral resources, and pollution. It might be seen that those areas are essential for Arctic states only, but in fact it is vital to southern countries too, especially for the purposes of innocent passage and maritime routes. China, for instance, officially released in January 2018 a white paper (WP) delineating its Arctic policy, emphasizing its legitimate rights in the region that are in line with international law.⁴¹ The Arctic coastal states, or the so-called A5 in the Arctic Council, have voiced concerns about the evolution of the legal framework based on UNCLOS. As a result, the Fairbanks Declaration and an agreement on enhancing International Arctic Scientific Cooperation were adopted,⁴² by which the latter is considered the council's third legal binding agreement.⁴³

1.3. United Nation Charter and LOAC

Territorial claims and any militarization of the region cannot be exclusively dependent on the UNCLOS, especially since the latter has little to say about military activities or disputes. So, other areas of law are applicable, in particular the UN Charter, the law of armed conflicts, and its Additional Protocols to the Geneva Conventions (GC). As a matter of fact, Article 2 of the charter requires from all member states to settle their international disputes by peaceful means,⁴⁴ and that they shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.⁴⁵ In addition, Chapter VI in the UN Charter regarding the Pacific Settlement of Disputes, emphasizes the importance of seeking all sorts of solutions and peaceful means to any dispute. However, the UN Charter, through Chapter VI, promotes the role of the Security Council in investigating any dispute or any situation which might lead to international friction or give rise to a dispute.⁴⁶ This has great impact on governance and dispute resolution in Arctic, as two of its main states (the USA and Russian Federation) are permanent members of the UNSC. Nevertheless, even though the UN Charter contains major principles that govern relations between states, it is not sufficient for covering all aspects due to its *lex generalis* nature; this requires states to conduct more specific treaties and declarations of the *lex specialis* nature (the Svalbard Treaty, Ilulissat Declaration, etc.).

Indigenous peoples. Member states of the council are: Canada, Denmark (including the Faroe Islands and Greenland), Finland, Iceland, Norway, the Russian Federation, the United States of America, and Sweden. Official website: <<https://www.sdwg.org/about-us/arctic-council-a/>>.

⁴⁰ CAFLISCH, L.; TANNER, F. The Polar Regions and their Strategic Significance. *PSIS Special Studies, Graduate Institute of International Studies*, number 2/1989, Geneva 1989, p. 10.

⁴¹ HOSSAIR, K. *China's White Paper on the Arctic: Legal Status Under International Law*. American Society of International Law, May 2018. <<https://www.asil.org/insights/volume/22/issue/7/chinas-white-paper-arctic-legal-status-under-international-law>>.

⁴² "The purpose of the Agreement is 'to enhance cooperation in Scientific Activities in order to increase effectiveness and efficiency in the development of scientific knowledge about the Arctic,'" see Agreement on Enhancing International Arctic Scientific Cooperation, signed at the Fairbanks Ministerial meeting, Arctic Council, 11 May, 2017.

⁴³ Arctic Law and policy, Year in Review 2017, University of Washington, School of Law, Arctic Law and Policy Institute 2018, p. 5.

⁴⁴ UN Charter, Article 2/3.

⁴⁵ *Ibid.*, Article 2/4.

⁴⁶ UN Charter [...], article 34–37.

Moreover, incidents at the sea that involve provocative actions must be distinguished from IAC, though it may lead to it. According to the common Article 2 of the GC: “An armed conflict must be based solely on the prevailing facts demonstrating the de facto existence of hostilities between belligerents, even without a declaration of war.”⁴⁷ Even if armed confrontation does involve military personnel but non-military state agencies such as paramilitary or maritime militias, it will still be considered an armed conflict for the purpose of this article.⁴⁸ Yet, actions that are below the threshold of an armed attack are vital for the success of hybrid threats. These involve unorthodox methods of warfare, such as cyber-attacks and the use of civilian state agents, and are more complex and challenging due to the difficulty of attribution. Furthermore, there is a close relationship between the protection of the environment in the Arctic and armed conflicts, which could be seen in the region through the militarization and impact of any conflict on the environment. Article 35/3 in the Additional Protocol I to the GC prohibits the employment of methods or means of warfare that are intended or may cause widespread and severe damage to the natural environment.⁴⁹ But Add. Protocols and, in a more general sense, the LOAC are only applicable once an armed conflict occurs. However, modern armed conflicts are more of the hybrid nature, and the threat of using force due to the fusion of different means could shift to a conflict dramatically. Therefore, although it is understood that regional agreements and declarations require the states to settle disputes peacefully through dialogue, due to the international military and non-military scenarios, following the recent incidents in Ukraine and the Baltic Sea between NATO and Russia, as well the growing tension and hybridity of campaigns in South China Sea, a regional armed control treaty in the Arctic is more needed now than ever due to the impact of any minor incident in the region on international peace, security, and environment. Such a treaty has much to enforce, and it could be advantageous to fill the gap in the UNCLOS regarding military activities.

1.4. Overview of the Rights of Indigenous People of the Arctic

Finally, the rights of the indigenous people inhabiting the region for 5000 years, such as the Eskimos (divided into two main groups, the Inuit and Yupik), and located between the bordering countries of the Arctic, Northern Alaska, Greenland, Canada, and Russia in particular, must be regarded, as human rights law is applicable in these communities, too. Following the growing interest by Arctic States to claim sovereignty over more territories and areas, this has had an impact on the indigenous people that requires social understanding for the human rights of those people. Arctic people’s rights are in line with Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the General Assembly on September 13, 2007 and which states the following: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”⁵⁰ Moreover, Article 8/2b of UNDRIP confirms, for example, that “[s]tates shall provide effective mechanisms for prevention of, and redress for [...] any action which has the aim or effect of dispossessing them of their

⁴⁷ ICRC, Commentary on Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, 2nd ed., 2017 (online version) (ICRC Commentary on GC II), Art. 2, “Application of the Convention,” para. 233.

⁴⁸ *Ibid.*, para. 263.

⁴⁹ Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, 12 December 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391, Article 35(3).

⁵⁰ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Resolution adopted by the General Assembly 13-Sep.-2007, 61/295 UNDRIP, Article 18.

lands, territories or resources.”⁵¹ Indigenous peoples are affected by natural resource development; this can be seen in the Arctic as well, as a large proportion of the natural and energy resources are located in areas occupied by them,⁵² and with more pollution and activities in the region, the status of these communities is endangered. In this matter, UNDRIP recognizes the right of indigenous peoples to the lands or territories that they have traditionally owned or used.⁵³ For instance, the Inter-American Court of Human Rights in the *Mayagna Awas Tingni Community v. Nicaragua* held the right to property under the American Convention on Human Rights to include the communal property of those peoples and obliged Nicaragua to delimitate and demarcate according to indigenous law and values.⁵⁴ Therefore, any agreements and negotiations in the future should take into consideration the rights of those communities in line with human rights and international laws.

An overview of laws applicable to the Arctic region is crucial for the analysis of hybrid threats that aim to manipulate the legal regime in order to create a vague legal environment that serves offensive interests with less costs. Therefore, theoretically, laws are capable of setting the rules of peaceful international relations; however, in practice, the involvement of maritime hybrid means, such as the cyber-attacks and maritime militias, are the main challenges that need to be examined.

2. Hybrid Threats in the Arctic

The militarization of the region and hybrid activities relying on new technologies (cyber attacks) and non-state armed groups (maritime militias) by some states, though do not cross the threshold of an armed attack or conflict, have sent a clear message to all nations about the future interest, plans, and expected scenarios. For example, Russia has a strong military presence in Arctic, translated through the Vostok 2018 exercise in Siberia, which included the staging of a massive amphibious landing by Russian marines in the eastern Russian Arctic – an exercise some experts said that closely simulated an attack on northern Norway.⁵⁵ Similar examples are the advanced remote military base in the Aleksandra Land and the westernmost island of Franz Josef Land, located in the Arctic Ocean.⁵⁶ On the other hand, in October 2018, NATO held the “Trident Juncture War Games,” the biggest exercises since the Cold War to counter Russia’s growing presence around the Arctic, followed by several conferences and meetings stressing the evolving hybrid tension from both sides. Such tensions are not new, as the region has witnessed several incidents that led to Cod Wars in the past.⁵⁷ So far there is no universally

⁵¹ UNDRIP [...], Article 8/2b. <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

⁵² The Double Life of International Law: Indigenous Peoples and Extractive Industries, *Harvard Law Review – Indian Law*, 129 *Harv.L.Rev.* 1755, April 16, 2019, <<https://harvardlawreview.org/2016/04/the-double-life-of-international-law-indigenous-peoples-and-extractive-industries/>>.

⁵³ UNDRIP [...], articles 25–26.

⁵⁴ Tara Ward, *The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation Rights Within International Law*, *Northwest Journal of International Human Rights*, 2011, Vol. 10, Issue 2, p. 61–62.

⁵⁵ SEVUNTS, L. *NATO’s Arctic Dilemma: Two Visions of the Arctic Collide as NATO and Russia flex muscles*, *Eye on the Arctic*, 2018. <<http://www.rcinet.ca/eye-on-the-arctic-special-reports/norway-nato-trident-juncture-exercise-arctic-kirkenes-russia-military-defence-tensions/>>.

⁵⁶ KAI ZHEN TOH, *S. Putin Visits Arctic Glaciers*, 18 April 2017, <<http://glacierhub.org/tag/unclos/>>.

⁵⁷ In 1958, Iceland declared right to 12 nm territorial waters that were not recognized by Britain and continued fishing within the new limit; violence occurred afterward and the British Royal Navy was deployed to protect the trawlers. In the same way, Russian trawlers were apprehended for their violation of Norwegian fishing regulations in 2001, by which Russia threatened to involve its fleet as a response. See *Continental Shelf, The Last Maritime Zone*, a booklet written by seven authors, UNEP/GRID-Arendal, 2009, p. 14. For more examples on such incidents, see MULDER, J. R. [...], p. 10.

agreed definition of hybrid warfare, and the debate about its novelty is an ongoing matter. However, according to the European Parliament Research Service (EPRS), “[a] hybrid threat is a phenomenon resulting from convergence and interconnection of different elements, which together form a more complex and multidimensional threat.”⁵⁸ However, the definition of this term is not as important as the impact of its employment to areas with various legal regimes, such as the Arctic region. In practice, it is a successful campaign that plays on the threshold of an armed conflict by creating a legal grey zone, by which states can exploit the gaps or broad norms in laws in order to justify their actions in addition to using means that could preserve their actions from being attributed to them. The most complex scenario is Lawfare, a term that was introduced by US Air Force lawyer Charles Dunlap Jr. in 2001, stating that “Lawfare is the use of law as a weapon of war is the newest feature of [the] 21st century.”⁵⁹

Currently, some Arctic and non-Arctic states have been involved in ongoing conflicts around the world, mainly in unconventional campaigns that are based on a fusion of conventional and irregular means, military and non-military, in order to create a legal grey zone that keeps the targeted state uncertain of the situation it is facing, whether it is an armed conflict or internal unrest. Such tension in the region cannot be ignored after the withdrawal of the USA and Russia from the Weapons Control Treaty in January of 2019. However, in the aftermath of the annexation of Crimea and the recent incidents in the Azov Sea between Russia and Ukraine, the legal complexities of such scenarios have been brought back to light. Russia, for example, was accused of violating the freedom of maritime traffic, in particular as relates to Article 38 and 44 of UNCLOS, which ban the obstruction of peaceful transit across the Kerch Strait.⁶⁰ On the other hand, Russia accused Ukraine of illegally entering its territorial waters, therefore violating Article 19 and 21 UNCLOS, claiming the contest of innocence to the Ukrainian passage.⁶¹ Such activities are clear examples of *lawfare* campaigns as a non-lethal means of hybrid threats, which also show how both parties are using legal justification for their actions and diverse possible interpretations of the UNCLOS to legitimize their activities, creating additional challenges to international law and the Law of the Sea. Similar acts of military aggression can be employed in the Arctic, especially that the shortest routes between the land masses of superpowers lay across the region. Lawfare in the Arctic has been a key factor for Russia, conducted by enacting laws and regulations that are more stringent than generally accepted international rules and standards, mainly using straight baselines for the delimitation its maritime borders in North Sea, relying on Art. 7 of UNCLOS. At the same time, using Art. 234 of UNCLOS (ice covered areas) to regulate the passage along NSR as a national asset, Russia could blur the line between territorial seas and the EEZ and thus affect the freedom of navigation and the de facto use of the Northern Sea route (NSR) – and by then, any counter actions from the Arctic States would be interference and a violation of international law.⁶² Russia additionally appealed to the UN for the expansion of its maritime borders in the Arctic, including the North Pole as part of its EEZ, ignoring the claims of other Arctic States parallel

⁵⁸ At a Glance. Understanding Hybrid Threats, European Parliament Research Service (EPRS), June 2015.

⁵⁹ CHARLES, J.; DUNLAP, Jr., Colonel. *USAF, Law and Military Interventions: Preserving Humanitarian Values In 21st Conflicts*. Paper prepared for The Humanitarian Challenges in Military Intervention Conference, Carr. Ctr. for Human Rights Policy Harvard University, Washington D.C., Nov. 29, 2001.

⁶⁰ BENTZEN, N. Russia-Ukraine Conflict flares up in the Azov Sea, European Parliamentary Research Service (EPRS), November, 2018, p. 1 <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630307/EPRS_ATA\(2018\)630307_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630307/EPRS_ATA(2018)630307_EN.pdf)>.

⁶¹ *Ibid.*, p. 2.

⁶² Dov BACHMANN, S.; MUNOZ, A. *Russian Lawfare Capabilities as a threat to the Arctic*. House of Commons Defence Committee 12th Report of Session 2017–2019, para. 3.

to provocative actions held in 2007 by the planting of the flag in the seabed under the claimed area.⁶³ As a matter of fact, Russia, Denmark, and Canada have submitted overlapping claims that are still waiting for approval. While Norway and Iceland are the only two countries that have submitted claims approved by the United Nation, it is when countries' claims overlap that problems arise,⁶⁴ and the more the ice melts, the more the states are pushing toward more military presence in the region to defend what they consider sovereign rights. This is done through activities that bear clear attributes of a grey zone, described by Brands in the following way: “[a g]rey zone aims to reap gains, whether territorial or otherwise, that are normally associated with victory in war. Yet gray zone approaches are meant to achieve those gains without escalating to overt warfare, without crossing established red-lines, and thus without exposing the practitioner to the penalties and risks that such escalation might bring.”⁶⁵

On the other hand, maritime militias⁶⁶ are one of the critical challenges to the international order, mainly for their use in armed conflicts. China, for instance, has relied on the so-called Haishang Mingbing, or the “Little Blue Men,” similar to the Russian Little Green Men in the Ukrainian conflict, or the Frogmen in international waters, to create a fusion of action by employing individuals who play the role of fishermen (civilians) and military groups once needed, mainly by operating as military personnel in the South China Sea depending on the scenario they are confronted with and by attacking other ships transiting or operating in the area⁶⁷ as mentioned above. Russia used similar tactics through the deployment of special operations forces, such as the Spetsnaz units (the Little Green Men), which seized governmental buildings and critical infrastructure and were supported by a large scale disinformation campaign ordered by the Russian government that spread doubt and deniability of any Russian interference in the ongoing conflict. The maritime domain will not differ from the land domain in military and strategic policy, but the distinction between incidents at sea and situations that may trigger an IAC is not an easy one. The ability to detect, attribute, and respond to these threats is among the greatest challenges presented to security forces and targeted states in order to attribute those actions to the targeting state.⁶⁸ Hybrid threats can also take place in the Arctic region due to territorial vulnerabilities, by which the borders and overlapping claims in the continental shelves of the coastal states can be contested by hybrid actors acting as proxies of states in order to contest the governance of their sovereign territory – such situation has been seen in the South China Sea.⁶⁹ It is important to note that civilian-manned coastguards are being more involved in constabulary operations in the seas and could gain the status of warships if manned by naval personnel.⁷⁰ State-owned coast guards' cutters

⁶³ *Ibid.*, para. 4.

⁶⁴ New Ocean Opening up Around The North Pole is sparking a Global Scramble, July 2018, <<https://www.news.com.au/technology/innovation/military/new-ocean-opening-up-around-the-north-pole-is-sparking-a-global-scramble/news-story/fd687de7986380988ffeb5e76861888>>.

⁶⁵ BRANDS, H. Paradoxes of the Gray Zone, Foreign Policy Research Institute, 5 February 2016 accessed on 9 June 2017, <<http://www.fpri.org/article/2016/02/paradoxesgray-zone>>.

⁶⁶ China's maritime militia is a component of China's armed forces and employed in gray zone operations or low-intensity maritime rights protection struggles, according to Andrew Erickson, professor at the U.S. Naval War College's China Maritime Studies Institute. YEO, M. Testing the waters: China's maritime militia challenges foreign forces at sea. *Defence News*, 31 May 2019.

⁶⁷ MIRACOLA, S. Commentary: Chinese Hybrid Warfare, Italian Institute for International Political Studies, Rome December 2018, <<https://www.ispionline.it/en/publicazione/chinese-hybrid-warfare-21853>>.

⁶⁸ KREMIDAS-COURTNEY, C. Countering hybrid Threats in the Maritime Environment. *The Maritime Executive*, 11-06-2018, <<https://www.maritime-executive.com/editorials/countering-hybrid-threats-in-the-maritime-environment>>.

⁶⁹ *Ibid.*

⁷⁰ HAINES, S. War at Sea: Nineteenth-century laws for twenty first century wars? *International Review of the Red Cross*, 98(2), 2017, p. 442.

are strictly not considered warships,⁷¹ but they are able to operate lawfully in similar ways to warships if conducting counter-piracy operations in high seas.⁷² In practice, states are deploying quasi-official militia forces operating in coastal waters,⁷³ the challenge of such a practice to international law lies in the ambiguity of such actors and the justification by the targeted state for its use of force in the international sense,⁷⁴ especially when it comes to the prohibition of use of force under Article 2/4 of the UN Charter and Article 51 justifying self-defense to an armed attack that allows necessary and proportionate force.⁷⁵ Moreover, the attribution of non-state actors to a state is applicable when such actors are acting under the supervision or control of a state.⁷⁶ In this matter, the state responsibility for violations of international law according to United Nations General Assembly Resolution 3314(XXIX) states the following: “[a] war of aggression is a crime against international peace giving rise to international responsibility.”⁷⁷ Attribution is a key element, by which it is asserted in Article 3 of the Hague Convention (IV): “A belligerent party shall be responsible for all the acts committed by persons forming part of its armed forces.”⁷⁸ Likewise, under the state responsibility for internationally wrongful acts (Resolution 56/83 of 12 Dec. 2001), any activities of armed units of one state violating international law on the territory of another state give rise to international responsibility of the former state.⁷⁹ That is one of the reasons states tend to use hybrid actors (non-state armed groups) to cover their actions and for not being held responsible within the existing porous borders that can easily infiltrate Arctic States’ sovereignty.⁸⁰ The implications of such scenarios affect the explicit assessment criteria under the Articles on State responsibility, in particular Art. 5 on the conduct of persons or entities exercising elements of governmental authority and Art. 8 on conducts directed or controlled by a state.⁸¹ Alternatively, the law of armed conflict deals with conventional naval operations or war. Nevertheless, it was not yet developed to cover new challenges of hybrid threats or low-intensity conflict.⁸² For instance, the San Remo Manual, which was prepared by international lawyers and naval experts at the end of the 20th century, plays an important role in summarizing the existing law governing the conduct of hostilities at sea, especially regarding the means and methods of warfare at sea,⁸³ but with little focus on sea-control/sea-denial operations or on weapons law (Power Projection).⁸⁴ Moreover, the latter is

⁷¹ UNCLOS [...], article 29.

⁷² *Ibid.* article 107.

⁷³ HAINES, S. [...], p. 442

⁷⁴ *Ibid.* p. 443.

⁷⁵ *Ibid.* p. 442.

⁷⁶ Draft articles on Responsibility of States for Internationally Wrongful Acts, Year Book of International Law Commission, Volume II, Part II, United Nations Geneva 2001, Ch. II. paras. 2-3.

⁷⁷ United Nations General Assembly Resolution 3314, A/RES/3314 (XXIX), Report of the International Law Commission, 14 December 1974, Article 5.

⁷⁸ Convention respecting the Laws and Customs of War on Land (Hague Convention IV), Hague, 18 October 1907, Journal of Laws of 1927, no. 21, item 161.

⁷⁹ General Assembly resolution 56/83, Responsibility of States for Internationally Wrongful Acts, Year Book of the International Law Commission 2001, Vol II, 12 December 2001.

⁸⁰ BURKHART, K.; SKEADAS, Th.; WICHMANN, Ch. Arctic 2030: Planning for an Uncertain Future, Associate Working Paper Series, No. 57, Harvard Kennedy School, May 2016, p. 6.

⁸¹ McLAUGHLIN, R. The Legal Status and Characterisation of Maritime Militia Vessels. *Blog of the European Journal of International Law*, 18 June 2019.

⁸² HAINES, S. [...], p. 444.

⁸³ San Remo Manual on International Law Applicable to Armed Conflicts at Sea, International Review of the Red Cross No. 309, 31-12-1995, Part IV, section 1-2.

⁸⁴ HAINES, S. [...], p. 445.

not regarded as a universal statement of law,⁸⁵ which keeps such activities unregulated. Nevertheless, if such vessels are auxiliary, then they will be legitimate targets according to Rule 65 in the San Remo Manual and, more precisely, according to Article 3 of the 1907 Hague convention, which states that vessels used for trade or fishing are exempt from capture unless they take any part in the hostilities.⁸⁶

Also, as 90% of the global world trade continues to operate in the sea, and with more accessible Arctic routes that cut the distance in half, more seafarers will use these route, and with overlapping claims and interest in the region, the marine sector will be an ideal target to *cyber operations*, which are one of the means of hybrid threats due to technological development and increased digitalization combined with the lack of proper regulation and legal protection and scope of risk.⁸⁷ Cyber-attacks are challenging, and no rulings dealing directly with cyber warfare are in effect. However, existing laws are extended to the cyber domain; especially any support and sponsoring of a state to a group's activities that amount indirectly to the use of force are considered a violation to Article 2(4) and the principle of non-intervention.⁸⁸ Same principles regulating weapons for use at sea are subject to Article 36 of Add. Protocol I to the Geneva conventions.⁸⁹

Furthermore, the Svalbard Archipelago, which is under Norwegian sovereignty, has a demilitarized status in accordance with the Svalbard Treaty 1920. However, the economic and strategic importance of this archipelago, as well as the Russian citizens based in the Barentsburg town who, in the North-most inhabited part of the planet, are twice larger than the Norwegians, all have essential impact on the situation.⁹⁰ This could become a bone of contention after the Russian unprofitable investments in coal mining that could be seen as a plan to extend their influence over the island. In addition, it can be seen that Russia is using *soft power* by heavily investing in Barentsburg for touristic projects, focusing on the historical roots of the Russian people regarding the Arctic parallel, in parallel with hard power translated through the militarization and development of military bases in the region. This dual policy meets the criteria of hybrid threats – interplayed actions balancing between the threat of using military and non-military means at the same time staying in line with applicable laws.

To summarize, the applicable complex law stemming from Arctic States' domestic laws, regional and international law, offers the opportunity to bend laws for illegitimate purposes or non-lethal warfighting (Lawfare) using the hybrid tactics and means mentioned above.⁹¹ An example of this is the Russian federal law on the Exclusive economic zone and Adjacent zone of 1998 that expressly refers to the Northern Sea Route (NSR) as part of Russian internal waters,⁹² challenging the laws applicable to the Arctic, in particular Article 234 UNCLOS that regulates passage along the NSR and may *de facto* deter the use of

⁸⁵ Ibid.

⁸⁶ McLAUGHLIN, R., [...].

⁸⁷ CLARK, K.; CAMELI, B. Shipping Law 2018/ The Changing Face of Maritime Law and Risk-Cyber, E-Commerce, Automation of Vessels. *International Comparative Legal Guides*, 16 July 2018, <<https://iclg.com/practice-areas/shipping-laws-and-regulations/3-the-changing-face-of-maritime-law-and-risk-cyber-e-commerce-automation-of-vessels>>.

⁸⁸ AL-ARIDI, A. The Virtual Trojan Horse in Modern Conflicts. *Law*, 107, doi: 10.15388/Teise.2018.107.11824, p. 70.

⁸⁹ Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (API), Art. 36. (Review of weapons).

⁹⁰ GOLDBLAT, J., <...>, p. 56.

⁹¹ Dov BACHMANN, S.; MUNOZ, A. Northward Ho: How Russian Lawfare is Conquering the Arctic. *The Fletcher Forum of Worlds Affairs*, March 9, 2018.

⁹² Legal Aspects of Arctic Shipping, Summary report, European Commission, Directorate General for Maritime Affairs and Fisheries, London 2010, p. 16.

the NSR in the context of this article.⁹³ Given the above, a more thorough review of the existing laws with regards to new forms of warfare and employment of means that enhance the deniability of actions and ambiguity, and a coordinated regional approach to Arctic governance under the framework of the Law of the Sea Convention to build confidence and prevent militarization,⁹⁴ are crucial.

Concluding Remarks

This article concludes that the Arctic region is witnessing a fierce competition between Arctic and non-Arctic states to expand their influence in the aftermath of climate change and to access the navigational routes emerging due to ice melting. However, the region is not in a legal vacuum; its applicable legal regime is not limited to the law of the sea (UNCLOS), which plays an essential role by governing all human activities related to use and management of seas, in particular the delimitation of maritime borders. However, UNCLOS has little impact on the military activities and disputes that might arise from it, but other areas of law play an important role too. The UN Charter, in particular Article 2/4 and Article 51, has much to say about the threats in sea and use of force, but these are not capable of covering all aspects due to its *lex generalis* nature, which required more specified regional agreements and treaties, such as the Svalbard and Illulisat Declaration, to be adopted. And with the growth of hybrid campaigns worldwide that use blended means to destabilize the order and create ambiguity of what is permissible and not permissible in a conflict, especially when it comes to hybrid actors and new technology (such as cyber-attacks), a complex legal regime could be violated. A quick response or state responsibility is not an easy task, which makes a region of broadly regulated or unregulated areas likely to be affected by such forms of campaigns.

While it might be seen that armed conflicts or threats in the sea and in the Arctic particularly might require updated laws, conventional law is able to regulate such campaigns. But it might be difficult to handle the consequences of non-traditional forms of maritime conflicts and threats. Therefore, a more thorough review of how the law applies to such forms of threats that were not stressed even in the San Remo Manual is essential. In addition, providing the regulatory basis for an effective and timely response to hybrid threats at the individual and collective level as part of strengthening legal resilience is essential, but that does not mean drafting new laws. On the other hand, any activities or regional agreements in the era of such threats shall take into consideration the rights of indigenous people that are protected by the UNDRIP as well as their role in the Arctic Council. In this sense, debates and a comprehensive approach regulating the Arctic under the applicable laws are important between Arctic and non-Arctic states in order to prevent any misuse of the law. And finally, to avoid further militarization in the region, which can escalate at any moment into an armed conflict, a regional arms control agreement must be taken into account in line with Chapter VIII (regional arrangements) of the UN Charter. This article has opened a debate about the adequacy of international laws applicable to the Arctic and the challenges this area might face in the era of hybrid threats and low-intensity conflicts within a region of overlapping territorial claims. Further legal analysis and scholarly studies must discuss these concepts and the means to cover flaws that might be utilized by adversaries to destabilize order and boost tensions.

⁹³ *Ibid.*

⁹⁴ GORKA, A. Militarization of Arctic: Issue of Incredible Importance Not Given Due Attention to. *Strategic Culture Foundation*, Online Journal, 24-10-2018, <<https://www.strategic-culture.org/news/2018/10/24/militarization-arctic-issue-incredible-importance-not-given-due-attention-to.html>>.

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Legal Complexities of Hybrid Threats in the Arctic Region

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S u m m a r y

This article's focus is on the contemporary challenges and race between major states (Arctic and non-Arctic) to extend rights and gain more access to the North Pole area, following the dramatic impacts of climate change, the melting of the Arctic, and advances in technology. As a result, new opportunities are opened for states to have more influence and economic chances to an area with the most undiscovered resources in the world. Hybrid tactics and soft power have been clearly observed, by which an examination of the overlapping claims and conflicting interests of states in accordance with international law is a must. Therefore, the article focuses on the legal framework that applies to the Arctic ocean and highlights the legal grey areas that hybrid campaigns could invest in to violate international law of the sea and law relating to the use of force.

Hibridinių grėsmių Arkties regione teisiniai iššūkiai

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S a n t r a u k a

Straipsnyje koncentruojami į šiuolaikinius iššūkius ir „varžybas“ tarp pagrindinių Arkties ir nepriklausančių šiam regionui valstybių, jų ir teisių plėtimą bei geresnio priėjimo Šiaurės ašigalio teritorijoje siekius, kur valstybių santykiams daro įtaką ir stiprus klimato kaitos poveikis, Arkties ledynų tirpimas bei nuolatinė technologijų pažanga. Dėl minėtų priežasčių valstybėms atsiveria naujų galimybių plėsti įtaką ir siekti ekonominių tikslų šiame regione, turinčiame daug ir iki galo neištirtų išteklių.

Valstybių „minkštosios galios“ ir hibridinių taktikų naudojimas, norint daryti įtaką, aiškiai pastebimas šiame regione, todėl būtina atkreipti dėmesį į vis didėjančius valstybių nesutarimus, kurie turi būti sprendžiami ir nagrinėjami pagal tarptautinę teisę.

Atsižvelgiant į tai, straipsnyje daugiausia dėmesio skiriama teisei sistemai, sutartims ir kitiems teisės aktams, kurie taikomi Arkties vandenyno teritorijai bei pilkųjų zonų apibrėžimui, taip pat nustatyti, kur būtų galima taikyti hibridinę taktiką ir operacijas nepažeidžiant tarptautinės jūrų teisės ir teisės, reguliuojančios jėgos draudimą.