

# The European Union as an actor in Arctic governance

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# The Actorness of the European Union in Arctic Governance

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*This article analyses the actorness of the European Union in Arctic governance. As a result of melting ice caps, this region is of increasing geopolitical and commercial importance. All Arctic coastal states have therefore recently developed policies. The European Union has done so as well, as it has a direct interest in many issue areas. Maritime policy in the Arctic region affects European transport companies, environmental issues relate to the EU's policy on climate change, and border delimitations is relevant as it gives access to new energy sources. In these different issue areas, the degree of EU actorness, however, varies. With the exception of the negotiations over the legal status of the Northwest Passage, the European Union mainly plays a role regarding non-regulatory and non-binding issues. It has thus far been kept out of talks of a regulatory and binding nature. This variation across issue areas shows the limited role of the European Union as an international actor in Arctic governance, despite the region's acknowledged increasing importance.*

## I Introduction

It has been notoriously difficult for the European Union to participate in international relations and global governance due to its lack of a state-like status. Scholars have therefore unsurprisingly spent considerable time trying to conceptualise the EU's international role.<sup>1</sup> They have provided useful yardsticks against which the 'actorness' and 'presence' of the European Union in the international arena can be measured empirically. This article looks, in this context, at the emerging role of the EU in Arctic governance – a region where all coastal states with an interest are currently developing policies, as the topic rises in salience, and where also the European Union has a major stake.<sup>2</sup> It fits in with other empirical studies of EU

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1 G. Sjöstedt, *The External Role of the European Community* (Stockholm: Swedish Institute of International Affairs, 1977); D. Allen & M. Smith, 'Western Europe's Presence in the Contemporary International Arena', *Review of International Studies* 16, no. 1 (1990): 19-37; C. Bretherton & J. Vogler, *The European Union as a Global Actor* (London: Routledge, 2006); J. Jupille & J. A. Caporaso, 'States, Agency and Rules: The European Union in Global Environment Politics', in *The European Union in the World Community*, ed. C. Rhodes (Boulder: Lynne Rienner, 1998), 213-229.

2 Russia's Arctic Strategy, 2009, available at <<http://www.scrf.gov.ru/documents/98.html>>; Canada's Arctic Strategy,

actorness and aims to contribute to this debate.<sup>3</sup>

As one of the last territorially unsettled regions in the world, the Arctic has increasingly received attention with states becoming aware of its geo-strategic importance. First, the Arctic is thought to be rich of undiscovered resources with more than ten percent of the world's known petroleum.<sup>4</sup> Because territorial possession will allow for resource exploitation and energy security, the five Arctic coastal states (Russia, Norway, United States of America, Canada, and Denmark) have entered in a flexing of muscles to ascertain their sovereignty. Almost all of them have stepped up their military activities in the region.<sup>5</sup> Second, climate change has been considered a particularly pressing concern for the Arctic. Calls for environmental protection have become louder and they have been a driving force for the creation of the Arctic Council in 1996. Third, Arctic melting provides new commercial opportunities in terms of important sea routes.<sup>6</sup> The legal status of the Northwest Passage, connecting the Atlantic with the Pacific, has heated up the international race for the North Pole area.

Since 2008, the European Commission and the Council of Ministers have put the Arctic on the European agenda.<sup>7</sup> The Commission, for example, noted that environmental changes “are altering the geo-strategic dynamics of the Arctic with potential consequences for international stability and European security interests calling for the development of an EU Arctic policy”.<sup>8</sup> The Arctic is thus of direct relevance for the EU's energy security as well as environmental and maritime policy. Yet, as this article will show, the participation of the European Union in Arctic governance varies considerable across issue areas. The EU is strongly involved in policy areas of a non-regulatory and non-binding nature, while it is excluded from issues of regulatory governance – with the dispute over the Northwest Passage being the notable exception.

This article shortly discusses the academic literature on actorness. It explains, in particular, the model put forward by Jupille and Caporaso.<sup>9</sup> Subsequently, it applies this model of actorness to all important issue areas in Arctic governance: maritime affairs, border delimitation (which includes future energy resources exploitation), and environmental protection. In the conclusion, it discusses the variation of EU actorness across these issue areas.

## II Actorness and the European Union

The concept of actorness lies at the core of numerous analyses of the EU's role in the international arena. It was developed as a result of the increasing awareness that the parameters of international relations theory – with often state-centric perspectives – were unsuitable for assessing the position of the EU *vis-à-vis* other actors. The advantage of the concept of actorness is that it goes beyond the absoluteness of establishing whether the EU

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2009, available at <<http://www.northernstrategy.ca/cns/cns-eng.asp#chp3>>; NATO's Arctic Strategy, 2009, available at <[http://www.nato.int/cps/en/natolive/news\\_49745.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/news_49745.htm?selectedLocale=en)>; USA's Arctic Strategy, 2009, available at <<http://georgewbush-whitehouse.archives.gov/news/releases/2009/01/20090112-3.html>>.

3 M. L. P. Groenleer & L. G. Van Schaik, 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol', *Journal of Common Market Studies* 45, no. 5 (2007): 969-998; R. Ginsberg, 'Conceptualising the European Union as an International Actor: Narrowing the Theoretical Capability-Expectations Gap', *Journal of Common Market Studies* 39, no. 3 (1999): 429-54; Jupille & Caporaso, n. 1 above.

4 US Geological Survey, 2008, available at <<http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>>.

5 L. Jakobson, 'China Prepares For An Ice-Free Arctic', *SIPRI Peace and Security* 2 (2010): 1-16, at 7.

6 AMSA, *Arctic Council: Arctic Marine Assessment 2009 Report* (Tromsø: Arctic Council, 2009).

7 European Commission, 'The European Union and the Arctic Region', Commission of the European Communities, COM 763 (Brussels: 2008); Council of Ministers, 'Council Conclusions on Arctic issues', Council of the European Union, 16826/08 (Brussels, 2009).

8 Commission, n. 7 above, at 2.

9 Jupille & Caporaso, n. 1 above.

bears similarity to one of the great powers, enabling a more detailed look into the unique nature of the EU's foreign policy involvement. Thus, actorness has primarily been used as research tool for measuring the role of the EU, which is neither a sovereign state, nor merely an international organization.<sup>10</sup>

First coined by Gunnar Sjöstedt, the concept has been revised by a cadre of scholars in recent years.<sup>11</sup> Though no universally-recognized criteria for actorness have been developed, it is clear that the concept denotes the degree to which an entity constitutes a genuine actor in international relations. Two strands of literature can, in this respect, be identified. The first focuses on the theoretical underpinnings of the notion of actorness. Drawing upon social constructivist theory, it is stressed that actorness (partially) depends on how an entity is perceived by others. Interactions and exchanges of norms and practices between the national and the supranational level – in this case the European Union – feature centrally in the debate.<sup>12</sup> The second strand of literature has devised a range of specific criteria for measuring the degree of actorness. This article adopts a fourfold analysis based on the conceptualization of actorness developed by Jupille and Caporaso, which provides a good yardstick for empirical measurement.<sup>13</sup> They propose a model, in which actorness is derived from the interrelated criteria of recognition, authority, autonomy and cohesion.

The extent to which the European Union is an actor in Arctic governance depends, firstly, on its *de jure* and *de facto* recognition. The former implies official membership in international organizations – such as the Arctic bodies and United Nations framework organizations – while the latter denotes the degree to which the EU is (informally) accepted as an actor by third parties. Jupille and Caporaso argue that intensive interactions with third parties are an indicator for *de facto* recognition. If the European Union is not a formal member of an international organization, but third parties still enter into dialogue with the EU, it is a clear indicator of recognition. Secondly, when assessing the European Union as an international actor, its *authority to act internationally* needs to be analysed. Authority relates to the formal legal competences that the European Union possesses. Authority in the European Union can take the form of exclusive competences, as for example in the Common Commercial Policy (i.e. external trade policy), mixed competences between the European and the national level, and purely national competences.<sup>14</sup> In the actorness model, the authority to act thus ultimately lies with the member states, which have delegated power in particular issue areas to the European Union in order to act collectively.

A third requirement for actorness is that the European Union possesses a *certain degree of autonomy* from its constituent member states. After all, if the EU in a particular issue area does not consist of more than the sum of its parts, it is the parts themselves, which are worth analysing as international actors – not the collectivity. The relevant indicator concerns the existence of a distinctive institutional apparatus, with for example includes a role for the European Commission. The presence of EU institutions alone in an issue area is, however, not enough. They also need to have a certain independence from the member states when making decisions. Finally, Jupille and Caporaso argue that *cohesion in the formulation of policy* is a precondition for actorness. Cohesion works both horizontally between different actors within the European Union (e.g. Commission versus Council) as well as vertically between the European and the national level.<sup>15</sup> A lack of horizontal and/or vertical cohesion can undermine the European Union when acting on the international scene. If the spokesperson for Europe

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10 W. Wallace, 'Less than a Federation, More than a Regime: the Community as a Political System', in *Policy Making in the European Community*, eds. H. Wallace, W. Wallace & C. Webb (Chichester: John Wiley and Sons, 1983), 403-436.

11 Sjöstedt, n. 1 above; Bretherton & Vogler, n. 1 above; Jupille & Caporaso, n. 1 above.

12 Ginsberg, n. 3 above; Bretherton & Vogler, n. 1 above.

13 Jupille & Caporaso, n. 1 above.

14 Article 2-6, TFEU.

15 Cf. S. Nuttall, 'Coherence and Consistency', in *International Relations and the European Union*, eds. C. Hill & M. Smith (Oxford: Oxford University Press, 2005), 91-112.

does not have the complete backing of the member states and the other EU institutions, third parties might prefer to do business with the other European actors.

### III EU Actorness in Arctic Governance

An examination of the EU's engagement in Arctic governance serves as a practical example for assessing its capacity to establish as a genuine international actor. First, in light of the geo-strategic importance of the Arctic, strengthening the EU's position in the international arena has become a factual imperative. Second – and closely interrelated – the Union has recently undertaken considerable efforts to increase its engagement in the region, stressing its willingness to assume a key position.<sup>16</sup> The fact that eventually no permanent observer status in the Arctic Council was granted, however, has shown that this has proven to be an arduous task. Lastly, the Arctic is an illustrative example of an area in which actor constellations are not fixed yet. All Arctic states (and other stakeholders) are currently developing their strategies. Analysing the EU's struggle for being integrated into the Arctic governance structure therefore is revealing about the process of establishing as an actor and the EU's ability to interfere in issues emerging newly on the international agenda. This section is structured around the three areas of maritime affairs, border delimitation, and environmental matters, which cover the major disputes in Arctic governance.

#### *1. Maritime Affairs*

From the moment that an Arctic Council report confirmed that the scenario of ice-free summers is a question of when rather than if, international actors have been interested in questions concerning the nature of sea routes and maritime transport in the Arctic.<sup>17</sup> The former refers mainly to the legal dispute over the Northwest Passage, which connects the Atlantic with the Pacific and poses an alternative for the heavily used Panama strait. It shortens the route to China for European vessels by more than six thousand kilometres and was already open in 2007 and 2008. The legal conundrum lies in the nature of the strait. Based on the recognition of its sovereignty in the region, Canada claims it to be Canadian territorial water. It has set in motion the process of renaming the Northwest Passage into the Canadian Northwest and it also asserts its claims by patrolling the passage with its navy.<sup>18</sup> In contrast, the USA and the EU argue that the passage is an international strait. A similar problem exists with the Northern Sea Route along the Russian coast.<sup>19</sup>

The legal status of these passages has geo-strategic significance, especially for Russia and the United States, which have navy bases in the Arctic. It also has considerable commercial implications for the EU, which has the largest merchant fleet on the planet.<sup>20</sup> If the Northwest Passage is territorial water under the United Nations Convention on the Law of the Sea (UNCLOS), all submarines have to surface and all flights have to be permitted by the Canadian government.<sup>21</sup> In addition, the Canadian government could charge fees for passage, which would gravely jeopardize EU trade interest. Apart from the Northwest Passage, there is a second problem in maritime affairs, which concerns the regulation of maritime transport. Mostly, this encompasses environmental concerns about pollution emanating from vessels and

16 Interview with Commission Official, 2010.

17 AMSA, n. 6 above.

18 D. H. Claes, Ø. Øyvind & Ø. Harsem, *The New Geopolitics of the High North*. Conference Paper, 2010, available at <[http://www.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/4/1/5/0/7/pages415079/p415079-1.php](http://www.allacademic.com/meta/p_mla_apa_research_citation/4/1/5/0/7/pages415079/p415079-1.php)>, at 13; M. Byers & S. Lalonde, 'Who controls the Northwest Passage?', *Vanderbilt Journal of Transnational Law* 42, no. 4 (2009): 1133-1210, at 1153; 1175.

19 Due to its greater geopolitical and economic importance, the focus will be on the Northwest Passage.

20 P. Nopens 'The Impact of Global Warming on the Geopolitics of the Arctic. A Historical Opportunity for Russia?' *EGMONT Royal Institute for International Relations, Security Policy Brief* 8 (2010), at 8; Interview with Commission official, 2010.

21 UNCLOS, articles 19-21.

safety measures. As the Arctic is particularly sensitive for environmental damage (see also below), the regulation of the expected increasing shipping in the area is of pivotal importance.<sup>22</sup>

Membership of the European Union in relevant international organisations is an indicator of the EU's *de jure* recognition as part of maritime governance. The EU is party to UNCLOS and therefore recognised as member in its own right. Due to the global nature of maritime transport, UN bodies are the primary organ for regulating shipping. The EU, however, is not a member of the International Maritime Organization (IMO), which enacts global standards for vessels. Neither is it a member of the Arctic Council, which issues non-binding standards for vessels in the Arctic.<sup>23</sup> Consequently, the EU can submit observations and intervene in proceedings under UNCLOS on the disputed Northwest Passage, but it has no legal standing in the IMO or in the Arctic Council with a view to the drafting of a regulatory framework for Arctic shipping. When it comes to *de facto* recognition, the EU is one of the key actors in the dispute about the Northwest Passage. The European Union is the only partner explicitly mentioned by the United States in its fight against Canada.<sup>24</sup> As regards maritime transport, the EU is involved in many R&D projects of Arctic states and recognised for its technological and scientific expertise.<sup>25</sup> Apart from its expertise, the EU's position is not considered relevant to the Arctic states given the mentioned predominance of the IMO in regulating shipping. The EU is in favour of a more comprehensive and binding framework for Arctic shipping, while the Arctic states are content with cooperation and consultation through stressing the sufficiency of the existing frameworks of IMO and the Arctic Council.<sup>26</sup>

Regarding the Northwest Passage, the European Union has proven to wield authority by actively interfering in the dispute. General recognition of Canada's claim on the Northwest Passage by third parties over an extended period of time would indeed make the strait internal waters. However, interventions by the United States and the EU when Canada put forward those claims render the nature of the Northwest Passage still unresolved.<sup>27</sup> This shows that EU interventions count in disputes over the nature of the Northwest Passage. Beyond this, the European Union – just as any other actor's authority – is severely constrained by the supremacy of the UN legal framework. The legal regulation of shipping is mostly in the hands of the Arctic states.<sup>28</sup> As mentioned, the EU is in favour of a legally-binding framework of Arctic maritime transport and also has the means to enact this within Union waters by issuing legislation on transport policy. By the same token it also has the power to conclude agreements with third states in transport policy aiming for common shipping standards in the Arctic. However, the Arctic states do not wish for such a binding framework and rather prefer the existing mode of Arctic Council cooperation.<sup>29</sup> As the EU is neither a member of the IMO, nor of the Arctic Council, it has little leverage in influencing their output – though not always binding – which still creates the existing governing framework for maritime transport.

The EU has a distinctive institutional apparatus at its disposal by which it can carry out research (primarily the European Environmental Agency) and the Commission is the actor through which the EU participates as an *ad hoc* observer in the Arctic Council and is involved in UNCLOS. The reticence of the Arctic states towards the EU's efforts considerably restrains the capacity of the European Union to act autonomously. The constraint on the Commission to pursue its aim of a legally-binding framework was also blocked by the Council of Ministers,

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22 IPCC, *Climate Change 2007: Synthesis Report* (Valencia: IPCC XXVII, 2007).

23 E. J. Molenaar & R. Corell, 2009, *Arctic Shipping*. Available at <<http://arctic-transform.org/download/ShipBP.pdf>>, at 5.

24 US Congress, *Changes in the Arctic: Background and Issues for Congress* (Washington D.C.: Congressional Research Service, 2010), at 11.

25 A. Airoidi, *The European Union and the Arctic: Policies and Actions* (Copenhagen: Nordic Council of Ministers, 2008), at 26.

26 Council, n. 7 above, at 4; Airoidi, n. 25 above, at 65; 76.

27 Byers & Lalonde, n. 18 above, at 1153; 1175.

28 UNCLOS, article 234.

29 Airoidi, n. 25 above, at 65; Jakobson, n. 5 above, at 10.

which confirmed the Arctic Council as prime body for issuing Arctic policies.<sup>30</sup> The EU is also dependent on non-member states, such as Norway or Russia for enacting its standards in the Arctic, since the EU's own waters occupy only little space in the Arctic. The EU, consequently, has not much leverage in putting into practice its policies independently without support of others and can be said to score low on this dimension, constrained by its borders, the resistance of other relevant actors, and with the Commission held on a short leash by the member states.

As regards cohesion, the Northwest Passage-dispute is an example of remarkable unity among the member states of the European Union. The EU speaks as unitary actor and is perceived as such by others, for example the United States, the media and academia. Important in this respect is that the EU is mentioned in the relevant documents, with no parallel reference to the member states.<sup>31</sup> It is quite different in the case of the legal regime on maritime transport. The Arctic coastal states prefer staying among each other and discussing in the Arctic forums or the IMO. Thus, Denmark does not share the Commission's engagement. This prevents EU-wide support for the Commission's plans.

In conclusion, the European Union has assumed a strong position in the dispute on the legal nature of the Northwest Passage. It is recognised as an actor, has authority equal to that of states and represents a coherent entity. The EU thus can be regarded as a fully-fledged actor in this dispute on new sea routes. On the other hand, the EU did not manage to get a foot in the door when it comes to the creation of a regulatory framework for Arctic shipping. The Arctic states are keen on barring any interference and managed to keep EU involvement to a minimum of R&D. Moreover, the EU's absence from the most important bodies on maritime governance exacerbates another weakness.

## *2. Border Delimitation*

Arctic border delimitation, barely on the political agenda for decades, has rapidly become a contentious issue after states became aware of the extent of climate change and its consequences. The fact that the energy-rich Arctic remains the last territorially unsettled region in the world has recently heated up a competitive geopolitical quest for territorial possession that culminated in the planting of the flag of the Russian Federation on the sea floor under the North Pole in August 2007. With Arctic ice further melting down, coastal states realise that it will increasingly be possible to extract hydrocarbon reserves and offshore oil outside of their territories. As energy dependence is of crucial importance, the run for Arctic territorial possession is primarily explained by the right to resource and energy extraction that derives from ownership of the respective maritime seabed. The policy domain of energy is thus subsequently subsumed under the analysis of territorial distribution. Border delimitation is generally understood as the process of determining the land or maritime boundaries of a state, "including that of any continental shelf or exclusive economic zone, by means of geographical coordinates of latitude and longitude".<sup>32</sup>

UNCLOS provides the most comprehensive framework dealing with territorial disputes. States submit territorial claims to the Commission on the Limits of the Continental Shelf, which is then asked to give recommendations to the coastal states.<sup>33</sup> Although the UNCLOS does not foresee a specific treaty regime for the Arctic, the five coastal states bordering the Arctic agreed that it "provides a solid foundation for responsible management by the five coastal States and other users of this Ocean" and that they "see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean".<sup>34</sup> According to

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<sup>30</sup> Council, n. 7 above, at 4.

<sup>31</sup> Congress, n. 24 above, at 11.

<sup>32</sup> A. Aust, *Handbook of International Law* (Cambridge: Cambridge University Press, 2005), at 34.

<sup>33</sup> UNCLOS, Annex II, Art. 3.

<sup>34</sup> 'Ilulissat Declaration' (Ilulissat/Greenland, 27-29 May 2008).

Available at <[http://www.oceanlaw.org/downloads/arctic/Ilulissat\\_Declaration.pdf](http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf)>

UNCLOS Article 76, the continental shelf of coastal states comprises “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory”. Generally speaking, coastal states are granted a so-called ‘exclusive economic zone’ comprising two-hundred nautical miles. Everything beyond is considered international waters. Still, coastal states can submit claims even beyond these two-hundred nautical miles to the Commission on the Limits of the Continental Shelf. As these claims can be overlapping, the issue of international waters’ border delimitation can become a contentious issue.

Since the EU as such is neither a state nor an Arctic littoral one, recognition by the other Arctic players is not self-evident. The Commission is a party to UNCLOS and hence a *de jure* recognized actor.<sup>35</sup> The participation of the European Community at the United Nations Conference on the Law of the Sea (1973-1982), however, was most controversial and met considerable opposition, especially by the Soviet Union, precisely because it meant the participation of an association of states that was no unitary direct coastal state. The Soviet Union was thus very reluctant in *de facto* recognizing the European Community as an actor. Today, the United States and Russia are equally cautious in recognizing the EU as a legitimate Arctic actor in border disputes.<sup>36</sup> Furthermore, the 2008 Ilulissat Declaration was an affirmation among the five Arctic coastal states that they did not want to give away their respective national grip over Arctic border settlements to any new international regime – barring the European Union as a potential *de facto* actor in Arctic border delimitation.

Likewise, the EU cannot be said to have any authority in Arctic border delimitation. To speak of the EU’s authority “is to think of authority delegated to EU institutions by nation states”.<sup>37</sup> As the member states that are coastal Arctic states submit claims to the Commission on the Limits of the Continental Shelf on a national basis, the European Union does not have own authority. Upon ratification of UNCLOS, states are given ten years to submit their claims for an extended maritime border.<sup>38</sup> Denmark, for example, submitted claims for the area north of the Faroe Islands and for areas north, northeast and south of Greenland. Given that Denmark ratified UNCLOS in 2004, it still has time until 2014 to submit further claims. This, in turn, has consequences for the EU’s autonomy in border delimitation. The European Union does not have an autonomous say in exclusive economic zones which are deemed areas of national jurisdiction under international sea law.<sup>39</sup> While the Commission Communication carefully proposed to “closely follow the processes of maritime delimitation and of the establishment of the outer limits of the continental shelves to assess their impact on EU interests”,<sup>40</sup> the Council Conclusion, emphasised the “gradual formulation of a policy on Arctic issues to address EU interests and responsibilities, *while recognising Member States’ legitimate interests and rights in the Arctic*”.<sup>41</sup> The Council is thus cautious not to duplicate the mandate of the Arctic Council and explicitly “recognises the Arctic Council as the primary competent body for circumpolar regional cooperation”.<sup>42</sup> In quite clear words, the Council thus puts limitations on Commission plans to interfere in Arctic border delimitation.

The EU hence remained outside the proceedings of the Commission on the Limits of the Continental Shelf in the border disputes. In the meantime, Norway has submitted claims to

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35 T. Treves, ‘The European Community and the Law of the Sea Convention: New Developments’, in *The European Union as an Actor in International Relations*, ed. E. Cannizzaro (The Hague: Kluwer Law International), 279-296, at 280.

36 M. Byers, ‘Interview: Expert decodes Arctic conflict’, *UPI* (2 April 2010). Available at <[http://www.upi.com/Science\\_News/Resource-Wars/2010/04/02/Interview-Expert-decodes-Arctic-conflict/UPI-36031270235949/](http://www.upi.com/Science_News/Resource-Wars/2010/04/02/Interview-Expert-decodes-Arctic-conflict/UPI-36031270235949/)>; I. Traynor, ‘Europe joins international contest for Arctic resources’, *The Guardian* (21 November 2008). Available at <<http://www.guardian.co.uk/world/2008/nov/21/arctic-energy-eu>>.

37 Jupille & Caporaso, n. 1 above, at 216.

38 UNCLOS, Annex 2, Article 4.

39 Interview with Commission official, 2010.

40 Commission, n. 7 above, at 11.

41 Council, n. 7 above, at 1, emphasis added.

42 Ibid., 4.



extend its exclusive economic zone in the Loop Hole, the Western Nansen Basin and the Banana Hole.<sup>43</sup> Further unresolved disputes are between Russia and Norway in the Barents Sea and the North Pole, and between Canada and Denmark over Hans Island and different interpretations of the Svalbard Treaty about the two-hundred nautical miles around this archipelago.<sup>44</sup> In none of these border disputes the European Union was involved. It does not have an autonomous say in Arctic border delimitation, nor does it have the necessary authority.

With regard to cohesion, it has been stated above how the relevant member states channel border delimitation through national claims to the Commission on the Limits of the Continental Shelf. This marginalisation of the European Union undermines the emergence of a unified position. A last word should also be said about institutional and horizontal cohesion in this context: “the main problems relating to Arctic governance”, the Commission Communication acknowledges, “include the fragmentation of the legal framework, the lack of effective instruments [and] the absence of an overall policy-setting process”.<sup>45</sup> This concisely summarizes the Union’s shortcomings in Arctic governance. Where absence of a legal framework relates to the lack of a specific treaty regime governing the Arctic, lack of effective instruments and absence of policy-setting process bespeak a still missing comprehensive and coherent EU Arctic policy. Without it, the EU will not be able to interfere in Arctic border delimitation.

These findings demonstrate the difficult position that the European Union has in Arctic cooperation. The attempts of the Arctic coastal states to keep the EU out of all discussions account for the low degree of recognition and autonomy. The absence of territorial possessions in the Arctic additionally limits the EU’s authority in territorial disputes. The drawing up of borders goes to the core of national sovereignty – a strict *domaine réservé* – which considerably undermines EU actorness. The delimitation of national maritime claims is no exception. The EU’s low score on all four dimensions of actorness is of little surprise given the topic. Yet, considering the importance of the Arctic for the Union’s hobby horse of environmental protection and especially the topicality of future energy security, one might expect a more proactive stance of the EU in questions of delimiting the shelf and even supporting the member states in their claims. Assisting them in exploring their shelves via R&D projects could provide a valuable avenue for this, as only scientifically based arguments count before the Commission on the Limits of the Continental Shelf.<sup>46</sup>

### 3. Environmental Issues

The EU’s commitment to preserving the Arctic environment touches upon a variety of sectoral policies, such as climate change, research, the sustainable exploitation of resources and animal welfare. Environmental concerns lie at the core of the original creation of the Arctic institutions and have been a driving force behind the EU’s commitment ever since.<sup>47</sup> From the outset, two strands of the EU’s environmental policy can be differentiated: First, the EU has introduced a series of policy initiatives in the area of environmental research. Second, several regulatory policies applicable only within the EU but with significant extra-territorial impact in the Arctic have been developed, such as regulations on pollution, the use of chemicals and animal welfare. This delineation provides a basis for more differentiated conclusions about the European Union’s actorness.

Regarding the EU’s *de jure* recognition in environmental affairs, several observations can

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43 Nopens, n. 20 above, at 6.

44 An agreement between Russia and Norway was signed on 27 April 2010. Some technical issues need to be finalised before the final treaty is to be put before the two countries national assemblies; Commission, n. 7 above, at 9.

45 Commission, n. 7 above, at 10.

46 The United States, for instance, although only an observer to the Commission on the Limits of the Continental Shelf, takes a proactive stance and frequently intervenes in the proceedings; Congress, n. 31 above, at 7.

47 Airoldi, n. 25 above, at 53.

be made. First, the Arctic Council, of which the EU is not a member, is one of the core organizations for environmental matters. Needless to say, the Arctic Council does not have any legally binding powers and it has been extremely reluctant to issue regulatory legislation in environmental matters.<sup>48</sup> Instead, it has focused on a research-based approach to environmental protection. In research matters, however, the EU has established a tight network of cooperation with third parties, notably the Arctic Council and the United States.<sup>49</sup> The European Environment Agency, for instance, regularly cooperates with the Arctic Council, indicating a certain degree of *de facto* recognition. Second, the European Union was a founding party of the Barents-Euro-Arctic Council and was initiator of the Northern Dimension.<sup>50</sup> It has therefore *de jure* recognition in these forums. Whereas the initial ambitions of the Barents-Euro Arctic Council in protecting the Arctic environment have diminished over time due to a lack of voluntary financial contributions, the most recent policy action plan of the Northern Dimension lists environmental protection as a priority area.<sup>51</sup>

In contrast to these non-regulatory issues, *de facto* recognition in regulatory policies remains inherently difficult. Two cases in point are the EU's Regulation on the prohibition of leghold traps (1991) and the Regulation on the ban of seal products (2009), through which the Union indirectly tried to impose regulatory legislation for the Arctic environment via internal policies.<sup>52</sup> In both cases, the EU responded to the European Parliament's animal welfare concerns and issued regulatory policies on leghold traps and the import of seal products into the European Union, thereby substantially interfering with the everyday lives and traditions of the indigenous Arctic population. Particularly the ban of seal products has overshadowed EU-Arctic relations ever since articles from the main newspapers in the Arctic have posed the legitimacy of the EU's regulatory initiative into question. While Denmark publicly distanced itself from the Seals Regulation due to economic interests and claims by its indigenous people, Norway and Canada openly questioned the Union's willingness to "promote co-operation and co-ordination" in the Arctic, stressing that the Regulation is a "violation of the EU's trade obligations."<sup>53</sup> The Economist responded similarly, calling Members of the European Parliament "breathhtakingly hypocritical".<sup>54</sup>

With the Single European Act, the European Community was conferred explicit authority to enter into environmental agreements with third countries.<sup>55</sup> Regarding the issuance of legislation, however, the EU does not enjoy exclusive authority, as environmental policy is a shared competence. In practice, a series of important legislation indirectly enhancing the protection of the Arctic environment has been initiated at EU level, such as in the area of

48 O.S. Stokke, 'International Institutions and Arctic Governance', in *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building*, eds. O.S. Stokke & G. Honneland (Oxon/New York: Routledge, 2007), 164-186; interview with Commission official, 2010.

49 European Environment Agency, 'Arctic Environment: European Perspectives. Why should we care?' *Environmental Issue Report* 38 (2004).

50 The Northern Dimension was created in 1999 with the participation of Norway, Iceland, EU Member States and the Russian Federation. Its main objective is to provide a common framework for the promotion of dialogue and concrete cooperation in the European Arctic and sub-Arctic areas.

51 O.S. Stokke, G. Honneland & P.J. Schlei, 'Pollution and Conservation', in *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building*, eds. O.S. Stokke & G. Honneland (Oxon/New York: Routledge, 2007), 78-112; The Northern Dimension Policy, 2006, *A Finnish Perspective*. Available at <[http://www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2004\\_38](http://www.eea.europa.eu/publications/environmental_issue_report_2004_38)>.

52 Council, 'Council Regulation (EEC) No. 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community', OJ L 308 (Brussels, 1991); European Parliament and Council, 'Regulation No. 1007/2009 of 16 September 2009 on trade in seal products', OJ L 286 (Brussels/Strasbourg, 2009).

53 L. Phillips, 'Arctic Council rejects EU's observer status', *EUobserver* (30 April 2009). Available at <<http://euobserver.com/885/28043>>; L. Nguyen & M. Fitzpatrick 'Canada will fight EU seal ban', *CanWestNewsService* (27 July 2009). Available at <<http://www.canada.com/Canada+will+fight+seal/1831179/story.html>>.

54 The Economist 'An absurd response to seal hunting', *The Economist* (14 May 2009). Available at <[http://www.economist.com/opinion/displaystory.cfm?story\\_id=13649231](http://www.economist.com/opinion/displaystory.cfm?story_id=13649231)>.

55 Jupille & Caporaso, n. 1 above, at 217.

chemicals.<sup>56</sup> As argued by Airoidi, “where internal EU action in the environmental field could have a direct impact on the Arctic...it has already fulfilled much of its potential”.<sup>57</sup> By contrast, the European Union does not have official authority to issue legislation with direct application in the Arctic. The EU has nonetheless effectively exerted indirect extra-territorial authority through various means including the strategic use of its intra-territorial authority to issue environmental laws with considerable implications for the Arctic, as exemplified by the Seals Regulation and environmental research. Some of the Northern regions of Sweden, Finland but also Norway and Russia have furthermore received funding from several cohesion programmes. Given the general lack of financial support by Arctic regional bodies, these funds have been considered an integral feature of Arctic governance.<sup>58</sup>

The conclusion that the EU has limited extra-territorial authority also necessitates further investigation of the question who actually enjoys authority in Arctic environmental matters given that considerable part of its territory has no declared ownership. The general legal frameworks applicable are multilateral environmental agreements such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Stockholm Convention to which the EU is a party.<sup>59</sup> Hence, although the European Union’s authority is formally limited, it can be said to perform on par with any other member in the relevant multilateral environmental agreements.

Especially in environmental research, the EU has set up a comprehensive institutional apparatus, scoring high on the criterion of distinctiveness. The main bodies responsible are the European Environment Agency and various projects focusing on the Arctic, such as the *Arctic Footprint*, *Damocles* and *Arctic Transform*.<sup>60</sup> The EU has managed to interact largely independently from its member states with third countries and the Arctic Council. At the same time, however, the EU’s autonomy is considerably limited by strong dependence on member states’ resources. *Damocles* as the main EU research project, for example, is lead primarily by three national institutes.<sup>61</sup> Moreover, as noted by Airoidi, “it is quite regrettable that, particularly at the stage of preparation of EU legislation, a lack of resources – human as well as financial – appears to have hindered or prevented Commission contacts with the Arctic regional bodies working on the same themes”.<sup>62</sup>

The EU thus scores comparably high on the criterion of distinctiveness, but its independence is severely restricted by insufficient own resources. Similarly, the extent to which the EU can be considered an independent actor within the Arctic institutions varies. In addition to Denmark, Finland and Sweden, the Commission is recognized as an autonomous actor in the Barents Council and the preamble of the 2006 Political Declaration of the Northern Dimension lists the European Union as principal party.<sup>63</sup> Whereas the Barents-European-Arctic Council is characterized by double representation of the Commission and individual member states diminishing the EU’s autonomy *vis-à-vis* its member states in

56 The REACH Regulation is the most illustrative example.

57 Airoidi, n. 25 above, at 69.

58 Ibid.

59 E. Carina, H. Keskitalo, H. Koivurova & N. Bankes, ‘Climate Governance in the Arctic: Introduction and Theoretical Framework’, in *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building*, eds. O.S. Stokke & G. Honneland (Oxon/New York: Routledge, 2007), 7-9. .

60 The *EU Arctic Footprint* is funded by the Commission and provides the main framework for assessing the EU’s (environmental) policy impact in the Arctic, *Damocles* is an integrated European project focusing on the effects of climate change in the Arctic, *Arctic Transform* is a joint programme by the US and several EU Member States aimed at strengthening transatlantic policy cooperation.

61 E. Carina, H. Keskitalo & N. Bankes, ‘Climate Governance in the Arctic: Introduction and Theoretical Framework’, in *Climate Governance in the Arctic*, eds. E. Carina, H. Keskitalo, T. Koivurova & N. Bankes (Dordrecht: Springer 2009), 1-27; *Damocles*, 2010, *Main institutions and partners*. Available at <<http://www.damocles-eu.org/>>. The main project leader of *Damocles* is the UPMC France assisted by SMHI Sweden and the Norwegian Meteorological Institute. Though not an EU Member State, the latter forms an integral part of the coordination of the project.

62 Airoidi, n. 25 above, at 69.

63 ‘Political Declaration on the Northern Dimension Policy’ (Helsinki/Finland, 24 November 2006). Available at <[http://ec.europa.eu/external\\_relations/north\\_dim/docs/pol\\_dec\\_1106\\_en.pdf](http://ec.europa.eu/external_relations/north_dim/docs/pol_dec_1106_en.pdf)>, at 18.

practice, the picture lies differently with the Northern Dimension. As policy initiative agreed upon by member states on the European level, the EU institutions naturally assume key positions in the elaboration of action plans and frameworks. Most importantly, in 2001 the Commission took a leading role in the negotiations on the establishment of the Northern Dimension Environmental Partnership, also covering the Arctic.<sup>64</sup>

Environmental policy is highly complex, involving cohesion, climate change, energy, research and the integrated maritime policy. Although Directorate-General for Environment of the European Commission is recognized as the main institutional body responsible, competences are also split between Directorates-General External Relations, Maritime Affairs, Regional Policy and Transport and Energy.<sup>65</sup> A high degree of cohesion even within the Commission therefore seems a challenging task from the outset. As primary source of expertise, the European Energy Agency has been a valuable link between the different actors on EU level. Yet, a central point of coordination is lacking. In a recent report, the Heinrich Böll Foundation argued in favour of the creation of a horizontal Arctic Unit within DG Environment in order to “coordinate and develop the EU’s interest and Arctic policy between the [different] DGs” and “increase its leverage vis-à-vis the Arctic”.<sup>66</sup> Likewise, Denmark’s public alienation from the Regulation on seal products revealed considerable split in vertical cohesion over Arctic environmental policies and the difficulty of reconciling animal-welfare considerations with claims put forward by the Arctic states.

To summarize, it is important to adopt a twofold perspective when analysing the EU’s actorness in Arctic environmental policy. Whereas the Union scores comparably high on all four criteria in matters of environmental research, its efforts to exert indirect extra-territorial authority via regulatory policies have not only met criticism by third parties, but they have also split the EU internally. Opposition by the Arctic states has been particularly strong on questions of regulatory governance and recognition, autonomy and vertical cohesion have been markedly low.

## IV Conclusion

Against the background of the geopolitical race for the Arctic region and the EU’s growing interest in playing a more active role in Arctic governance, this article has analysed the degree of actorness of the European Union. It has looked at the EU’s involvement in all Arctic-relevant issue areas – maritime transport, border delimitation and environmental affairs. When measuring actorness across issue areas, it becomes clear that there is considerable variation. Disputes over border delimitation, in particular, remain at the core of national sovereignty. Third parties, but also member states, have kept the European Union at arm’s length in all discussions. They have preferred to deal with the Commission on the Limits of the Continental Shelf bilaterally. The efforts of the European Union to establish a comprehensive regulatory framework for Arctic shipping and protecting the environment have also resulted in little. On the other hand, in the domain of R&D – especially pertaining to the environment – the EU with its well-developed agencies and funds is one of the main players. It actively engages with other Arctic states and bodies via a plethora of research agreements, indicating a considerable degree of recognition, authority and autonomy. Finally, the EU’s actorness in the dispute over the Northwest Passage is equally high. It is a fully-fledged international actor in this issue area on par with the United States in its legal fight against Canada.

Such variance across issue areas necessitates an explanation. On contested, highly political, issues – such as border delimitation, binding rules and regulatory governance – the European Union is absent from the negotiations. Border delimitation touches upon

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64 ‘The Northern Dimension Policy Framework Document’ (Helsinki/Finland, 24 November 2006). Available at <[http://ec.europa.eu/external\\_relations/north\\_dim/docs/frame\\_pol\\_1106\\_en.pdf](http://ec.europa.eu/external_relations/north_dim/docs/frame_pol_1106_en.pdf)>.

65 Airolidi, n. 25 above.

66 R. Kefferpütz & D. Bochkarev, *Expanding the EU’s Institutional Capacities in the Arctic Region. Policy Briefing and Key Recommendations* (Brussels: Heinrich Böll Foundation, 2008), at 10.

sovereignty issues, but also on future payoffs resulting from the possible energy resources under the Arctic. Establishing rules in the field of maritime transport and the environment will inevitably change the *status quo*, while it is actually the *status quo* that is preferred by the Arctic coastal states. It is thus unsurprising that the Arctic coastal states have tried to keep the European Union out by means of non-recognition, undermining its authority by rejecting, for example, its membership of the Arctic Council, and decreasing its autonomy and cohesion, including through actions of the EU member states. On the other hand, as regards questions of a more practical and uncontested nature – such as environmental research – the European Union brings useful resources to the table, including expertise and funding. The one big exception to this dichotomy is the role of the EU in the legal dispute over the Northwest Passage. In this instance, it uses its economic weight in world affairs to safeguard its commercial interests. It also helps that the European Union is recognised by the United States and that it is fully supported by all the member states. This gives it a particularly strong degree of actorness.

Needless to say, the Arctic region is only one case, in which the European Union tries to act on the international stage. It is nonetheless an important region, because of the rapidly changing geopolitical situation. One decade ago, few states paid attention to the Arctic. Yet in the last few years many international actors are developing policies to deal with these new challenges. The European Union is developing such policies as well, but as this article has shown, it cannot be counted as a fully-fledged international actor. What is, however, particularly interesting is the variation across policy areas. As was to be expected, the EU is capable of defending its economic interests, but the extra-territorial impact of its internal rules and regulations remains limited. In addition, while the European Union is supposed to be a champion of climate change, it can only play a limited role with regard to the environment. Part of this has to do with its ambiguous international status and recognition, but it is also a matter of internal cohesion and autonomy. Finally, one needs to avoid simplistic and generalising conclusions, as every actor and stakeholder in the region is about to develop its policies. The European Union obviously cannot be said to have a fully-fledged Arctic policy yet in a relatively early stage of priority and interest formation. What we perceive is a process of ‘actorness in the making’. Before embarking on the course of academic stylisation which ultimately may lead to a distortion of reality, one should follow with curiosity the emergence of Arctic policies on the side of all actors concerned.