

July 2024

Arctic Policy Considerations for Scottish Independence

Mason McInnis Brewer
University of Maine School of Law

Follow this and additional works at: <https://digitalcommons.minelaw.maine.edu/oclj>



Part of the [Comparative and Foreign Law Commons](#), [European Law Commons](#), [International Law Commons](#), [Law and Politics Commons](#), [Military, War, and Peace Commons](#), [National Security Law Commons](#), and the [Transnational Law Commons](#)

Recommended Citation

Mason M. Brewer, *Arctic Policy Considerations for Scottish Independence*, 29 *Ocean & Coastal L.J.* 415 (2024).

Available at: <https://digitalcommons.minelaw.maine.edu/oclj/vol29/iss2/12>

This Comment is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in *Ocean and Coastal Law Journal* by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact mdecrow@maine.edu.

ARCTIC POLICY CONSIDERATIONS FOR SCOTTISH INDEPENDENCE

*Mason M. Brewer**

ABSTRACT

INTRODUCTION

I. U.K. ARCTIC POLICY PRIORITIES AND MECHANISMS

II. SCOTLAND ARCTIC POLICY PRIORITIES AND MECHANISMS

III. ARCTIC POLICY PRIORITIES – U.K. VS. SCOTLAND

IV. THE RIGHT OF SELF-DETERMINATION AND THE SCOTTISH
INDEPENDENCE MOVEMENT

V. HAS SCOTLAND BEEN DENIED MEANINGFUL ACCESS TO SELF-
DETERMINATION RE: ARCTIC POLICY?

VI. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY IN THE
ARCTIC

CONCLUSION

* J.D. 2024, University of Maine School of Law. The author would like to thank the OCLJ editorial staff for selecting this Comment for the second issue, and for their valuable contributions prior to publication. The author would also like to note his appreciation for the multiple academic articles by Duncan Depledge which became crucial sources in the research for this Comment given the limited amount of scholarship on the relationship between Scottish and U.K. Arctic policy.

ABSTRACT

The ongoing effects of climate change on the Arctic environment raises the geopolitical importance of the Arctic and nearby regions, such as the broader High North. With deteriorating relations between Russia and much of the international community, changes to international borders in these regions would undoubtedly be a concern for those with Arctic interests. Consequently, due to Scotland's location in the world, the legal analysis surrounding any Scottish claim to external self-determination under international law would include Arctic considerations. Following a review of the Arctic policy priorities of the U.K. and Scottish governments, and each government's involvement in developing those policies, this Comment provides a broad discussion of the Arctic's role in the analysis.

On one side of the analysis, this Comment concludes that differences in Arctic policy priorities between Scotland and the U.K. adds some weight, albeit insufficient on its own, to support Scottish claims. On the other side, this Comment concludes that differences in military and security policy represent the potential disruption of the status quo, causing key nations like the U.S. and other NATO countries to view Scottish independence as a possible threat to the maintenance of international security. Given Scotland's geostrategic importance to NATO in deterring and responding to Russian aggression, this alleged security threat could be sufficient to outweigh any factual considerations supporting a Scottish external self-determination claim under international law assuming the region will remain unstable. Therefore, in the event Scotland unilaterally secedes from the U.K., this Comment recommends that Scottish claims should diminish these security concerns and emphasize how the differences in Arctic policies between Scotland and the U.K. prevents Scotland from pursuing its political, economic, cultural and social development.

INTRODUCTION

The Arctic plays a unique role in the world. Although far away from most of the global population, changes in the Arctic ultimately have an impact on everyone.¹ The environmental issues brought about by climate change alone alter how people live their lives, and how governments at all levels handle the climate crisis. Environmental changes to the Arctic have also increased the attention on the region as a potential source for economic enrichment and international tension.² This demonstrates a shift from the period of “Arctic Exceptionalism,” a phrase proclaimed by Soviet Mikhail Gorbachev in 1987, that followed the end of the Cold War.³

This prior period of low international tension in the Arctic brought about international cooperation over management of the region. Despite being governed through a “web” of international governance,⁴ the Arctic’s main forum became the Arctic Council, founded in 1996.⁵ The Arctic Council consists of the eight Arctic littoral countries and select non-littoral countries in the role of “Observers.”⁶ The Arctic Council was formed to discuss matters related to scientific research, the environment, shipping,⁷ economy, social causes, and international issues.⁸ However, military and security matters were intentionally excluded as a matter for the Arctic Council.⁹ These issues have been left to other organizations, like the North Atlantic Treaty Organization (NATO) for example.¹⁰

More recently, in what could be referred to as a “new Cold War,” the drift away from cooperation could greatly increase the need for the prioritization of military and security policy over the low-tension topics of scientific research, sustainable development, and environmental

1. See Duncan Depledge & Klaus Dodds, ‘No “Strategy” Please, We’re British’: *The UK and the Arctic Policy Framework*, 159 RUSI J. 24, 26 (2014).

2. See NICOLAS JOUAN ET AL., UK STRATEGY FOR THE HIGH NORTH: POLICY LEVERS TO INFLUENCE DEVELOPMENTS OUT TO 2050 1 (2022).

3. See *id.* at 46.

4. See *id.* at 47.

5. See *id.* at 49.

6. See SCOTTISH GOV’T, ARCTIC CONNECTIONS: SCOTLAND’S ARCTIC POLICY FRAMEWORK 5 (2019); Małgorzata Śmieszek & Paula Kankaanpää, *Observer States’ Commitments to the Arctic Council: The Arctic Policy Documents of the United Kingdom and Germany as Case Study*, 6 Y.B. POLAR L. 375, 380 (2015) (Ottawa-Declaration-defined categories of actors entitled to apply for Observer status).

7. See JOUAN ET AL., *supra* note 2, at 53 (discussing the important role of the International Maritime Organization in the governance of shipping).

8. *Id.* at vi.

9. *Id.* at 49.

10. See *id.* at vi.

conservation. With conflicts arising around the world since 2022—the ongoing Ukraine War being a prime example—the political and security environment in the Arctic is changing rapidly as well. Russia is utilizing its substantial military infrastructure in the Arctic to project its global power.¹¹ Additionally, the reduction of ice has opened commercial and industrial opportunities, and competition in these resources has only served to further these tensions, inviting in countries such as China.¹² As this tension grows, the total area directly impacted grows as well. The “High North” region¹³ (Figure 1), mainly the North Atlantic region south of the Arctic Circle, is one of these areas.



Figure 1: Map of the Arctic and Broader High North.¹⁴

This connection of the High North to the Arctic raises the level of concern for governments like the United Kingdom (U.K.) and its

11. See *id.* at 1 (referring to Russia’s Arctic “bastion” defense strategy).

12. See *id.* at 19-20, 22.

13. See JOUAN ET AL., *supra* note 2, at 1.

14. *Id.* at iii.

constituent nations. The various instabilities of the Arctic demand unified policy toward the region. Poor relations between the Scottish Government and the U.K. could undermine this goal. With the Scottish National Party (SNP) continuing calls to become independent and secede from the U.K.,¹⁵ the question of how Scottish independence could impact Arctic governance and security becomes more important to the international community. Changes to the U.K.'s capabilities to contribute to the region, without Scottish maintenance of the status quo, would be a great concern for many countries. Equally significant is the consideration that any limitation on Scotland's development and implementation of its own Arctic policies, because of the constitutional structure of the U.K.,¹⁶ has on Scottish self-determination claims under international law.

This Comment explores these considerations, which are but one example of the broad impact that changes to the Arctic have throughout the world. In Part I and Part II, this Comment will provide a brief survey of the main Arctic policy priorities and mechanisms in both the U.K. as a whole, and within Scotland specifically. In Part III, this Comment will compare both governments' policies to highlight the similarities and differences to inform on the level of infringement to Scottish peoples' pursuit of their preferred Arctic policies. Part IV will explain the essential aspects related to Scottish independence, and the right to self-determination under international law. This includes both the requirements for a valid claim and the limitations imposed on that right. Taking the information from Parts I through IV, Parts V and VI will apply the facts surrounding the relationship between Scotland and the U.K. to the factors involved in the legal analysis to determine the Arctic's role in any future Scottish self-determination claim, ultimately concluding that the increasing military and security considerations in the Arctic could have a chilling effect on key international countries' recognition of an independent Scotland.

15. See, e.g., Andrew Macaskill, *Scotland's Leader Says Dream of Independence Alive Despite His Party's Troubles*, REUTERS (Oct. 17, 2023, 7:25 AM) <https://www.reuters.com/world/uk/scotlands-leader-says-dream-independence-alive-despite-his-partys-troubles-2023-10-17> [<https://perma.cc/RF9R-2RW2>]; Humza Yousaf in *Independence Call to Right Brexit 'Catastrophe'*, BBC (Dec. 2, 2023, 1:32 PM) <https://www.bbc.com/news/uk-scotland-scotland-politics-66695252> [<https://perma.cc/VTB9-KD75>].

16. See Erik Kruse, *Is There Scope for Scotland to Develop its Own Arctic Policy and What Would It Look Like?*, ARCTIC Y.B., 2016, at 3.

I. U.K. ARCTIC POLICY PRIORITIES AND MECHANISMS

The changes to the Arctic due to climate change have direct impacts on the U.K. and its interests through the “interlinkages” that exist between the Arctic Ocean and the broader High North.¹⁷ For example, the warming oceans will affect the ecosystems within the British sphere, including fisheries and a reduction in the waterbird populations.¹⁸ The reduction of Arctic sea ice will also offer alternative routes to military and commercial ships,¹⁹ necessitating the development of sufficient legal frameworks on safety and management to accommodate the increased traffic in the Arctic and North Atlantic. Restricting the scope of Arctic policymaking to climate change mitigation would ignore the changing reality that the U.K. faces, and because of this, the U.K. has steadily increased its focus on developing a comprehensive Arctic policy over the last ten years.²⁰

Structurally, the U.K. develops Arctic policy within a somewhat decentralized policy-making apparatus.²¹ Policies are developed across several different departments in the U.K. Government, as well as the devolved subnational governments, like Scotland.²² In particular, the Polar Regions Department (PRD) has taken the lead role within the U.K. government in developing policy in partnership with the other departments, but the PRD still lacks a single director to control Arctic policy.²³ Despite this disorganized approach, the government has managed to work together to publish a few different policy frameworks that helped to guide governmental action, as well as international efforts. The first Arctic policy framework was released in 2013 in a report titled *Adapting to Change*.²⁴ Five years later, after the 2013 policy framework had been considered inadequate by many,²⁵ the U.K. Government published a second policy framework, *Beyond the Ice*.²⁶ Most recently, the U.K. Government published its Integrated Review of Arctic policy in 2021.²⁷

17. See JOUAN ET AL., *supra* note 2, at 3.

18. *Id.* at 28.

19. See Duncan Depledge et al., *The UK and The Arctic: Forward Defence*, ARCTIC Y.B., 2019, at 2.

20. See Duncan Depledge et al., *The UK's Defence Arctic Strategy: Negotiating the Slippery Geopolitics of the UK and the Arctic*, 164 RUSI J. 28, 38 (2019).

21. See Andrey A. Todorov & Dmitriy N. Lyzhin, *The UK's Interests in the Arctic*, 36 ARCTIC & N. 69, 71 (2019).

22. See JOUAN ET AL., *supra* note 2, at 32.

23. *Id.* at 33.

24. Depledge & Dodds, *supra* note 1, at 25.

25. See Erik Kruse, *supra* note 16.

26. Todorov & Lyzhin, *supra* note 21, at 69.

27. See JOUAN ET AL., *supra* note 2, at 26.

The Ministry of Defence (MOD) published its own Arctic Defence Strategy in 2019 as well.²⁸ These publications by the U.K. Government show its increased prioritization of the Arctic in policy discussions.

In all these policy announcements, there have been consistent core considerations for the U.K. related to the Arctic: environmental, economic, military, security, and international cooperation.²⁹ The U.K. has taken a “leading role” in world affairs regarding a collective response to the dire consequences of climate change.³⁰ The U.K. was the first major actor in the international community to declare a climate emergency, and this concern has been an important reason for U.K. policy priorities on environmental protection in the Arctic.³¹ The concern has not been completely altruistic, as ecosystems surrounding the U.K. that are vital to its economic interests, such as fisheries, will be greatly impacted by the changing environment.³² Conversely, the changing environment has allowed greater access to resources in the Arctic and broader High North that can bring direct and indirect economic benefits to the U.K., such as extraction of hydrocarbon and bioresources.³³ The balance between environmental conservation and economic development is an important factor in policy development.

One of the avenues in which the U.K. can further develop these policy considerations is through international cooperation, both bilaterally and multilaterally within the international forums related to the Arctic. The key forum is the Arctic Council,³⁴ where the U.K. participates as a “non-Arctic” observer state.³⁵ The U.K. was among the first countries officially granted observer status.³⁶ The U.K. serves an important role in the Arctic Council given its geographic location and expertise in scientific research and maritime governance.³⁷ The U.K. even participates in some of the Arctic Council’s Working Groups.³⁸ However, because the U.K. is not one of the eight *members* of the Arctic Council and is merely granted the privilege to participate as an observer state, the U.K. Government works

28. See Depledge et al., *supra* note 19, at 1.

29. See Todorov & Lyzhin, *supra* note 21.

30. See JOUAN ET AL., *supra* note 2, at 28.

31. *Id.*

32. *See id.* at 16.

33. *See id.* at 10; *see also* Smieszek & Kankaanpää, *supra* note 6, at 377 (noting other “emerging commercial opportunities”).

34. *See* JOUAN ET AL., *supra* note 2, at 48; Smieszek & Kankaanpää, *supra* note 6, at 377.

35. JOUAN ET AL., *supra* note 2, at 28.

36. Todorov & Lyzhin, *supra* note 21, at 75.

37. *See* JOUAN ET AL., *supra* note 2, at 27, 38.

38. *See id.* at 59.

to ensure that its own policy development in the Arctic respects the Arctic nations and their sovereign rights in the region.³⁹ The policy frameworks published by the U.K. tend to reflect the priorities and perspectives of the Arctic Council, rather than pushing a U.K.-centric Arctic strategy that could provoke a rise in tensions.⁴⁰ Through this approach, the U.K. aims to project itself as a “model observer” to the Arctic Council and the “nearest neighbour” to the region.⁴¹

Apart from the policy considerations related to environmental protection and economic development in the Arctic is the growing focus on security of the Arctic and broader High North, a region in which the U.K.’s military plays an important role.⁴² As recent as 2010, the U.K. Government had been downsizing military installations and policy surrounding the Arctic region.⁴³ With the geopolitics of the region becoming increasingly polarized between Western countries, Russia, and China, the U.K. has reversed this policy trend by strengthening its military capabilities in the Arctic.⁴⁴ This resumption of military build-up and public expenditure appears to have broad support within the U.K. Parliament.⁴⁵

One important security relationship involving the U.K. is NATO. The U.K. has been referred to as the “northern flank” of NATO’s security sphere and serves as one of the major protectors of security in the region.⁴⁶ The U.K. also has special relationships with the United States and Norway, both bilaterally⁴⁷ and multilaterally, forming what some have called the “northern triangle.”⁴⁸ Military exercises between these countries have been conducted on a regular basis to prepare for any future conflicts that could arise in the Arctic.⁴⁹ The U.K. has also increased its focus on the security of the Greenland-Iceland-U.K. (GIUK) gap, which is critical to the maintenance of communication lines between the U.K. and Europe, as

39. See Smieszek & Kankaanpää, *supra* note 6, at 391; Depledge & Dodds, *supra* note 1, at 27.

40. See Depledge & Dodds, *supra* note 1, at 27.

41. *Id.*

42. See Depledge et al., *supra* note 19, at 1.

43. Duncan Depledge & Andreas Østhagen, *Scotland: A Touchstone for Security in the High North?*, 166 RUSI J. 46, 51 (2021).

44. *Id.* at 53.

45. See Depledge et al., *supra* note 20, at 29 (five parliamentary inquiries pressuring the Ministry of Defence to publish its Defense Arctic Strategy).

46. Todorov & Lyzhin, *supra* note 21, at 70.

47. See JOUAN ET AL., *supra* note 2, at 29.

48. Depledge et al., *supra* note 20, at 36; Todorov & Lyzhin, *supra* note 21, at 73.

49. See, e.g., JOUAN ET AL., *supra* note 2, at 38 (describing Exercise Cold Response); Depledge et al., *supra* note 19, at 5 (describing Exercise Trident Juncture).

well as the U.K. and North America.⁵⁰ Recent alleged acts by the Russians to disrupt these lines of communication, in addition to the claimed recording of acoustic signatures of U.K. nuclear submarines in Scottish waters, have heightened the need for security prioritization.⁵¹ As a result, the U.K. coordinates security efforts with other countries through a variety of organizations in addition to those noted above.⁵²

Moving forward, the prioritization of military and security policy in the Arctic will only become more important to the U.K., potentially outranking other considerations depending on the future of international events, especially the deepening divide between Russia and the Western world. As noted above however, the need to protect against rising tensions in the region is a reason for the U.K. to carefully develop these military and security policies, while continuing to offer support to the Arctic communities through its role as a “science superpower”⁵³ and its economic and legal experience in maritime matters.⁵⁴ Promoting these areas of British expertise to the international community will help to grow the U.K.’s role in the Arctic without provoking any backlash or increasing tensions. Part of the success in achieving this goal will depend on the unified approach of departments within the government. The U.K. Government must also strive to unify policy priorities with devolved governments like Scotland, to assure a consistent and productive policy approach. Any differences between Scotland and the U.K. related to the Arctic only make efforts more difficult.

II. SCOTLAND ARCTIC POLICY PRIORITIES AND MECHANISMS

“Scotland is reshaping the map. Rather than geographically peripheral at the north-west corner of Europe. Scotland is strategically positioned and has the capability to serve as a link between the Arctic region and the wider world.”⁵⁵ This was the view shared by the Scottish Government in its 2019 Arctic Policy framework, the first official policy framework for

50. See Depledge et al., *supra* note 19, at 3; Depledge et al., *supra* note 20, at 32.

51. See Depledge et al., *supra* note 19, at 3.

52. See JOUAN ET AL., *supra* note 2, at 4, 38 (examples include Arctic Security Forces Roundtable, the “Northern Group,” and the Joint Expeditionary Force).

53. *Id.* at 40.

54. See, e.g., Todorov & Lyzhin, *supra* note 21 (noting the U.K. as a “world leader” in marine insurance).

55. Alexandra Middleton, *Constructing Arctic Identity: Analysis of Scotland’s Arctic Policy*, HIGH N. NEWS (Sept. 27, 2019), <https://www.highnorthnews.com/en/what-remains-not-so-evident-what-scotland-wants-arctic-return> [https://perma.cc/Y9P9-WBSY] (quoting the Scottish Government).

Scotland.⁵⁶ With climate change and other issues directing more attention to the Arctic, Scotland's geopolitical importance will increase as well. The Scottish Government aims to take advantage of that to strengthen its relevance in the international community, by engaging with countries on its own initiative and making its presence felt at related gatherings of countries on Arctic issues.

In 2017, Scotland's First Minister, Nicola Sturgeon, delivered a speech on Scotland's ability to contribute to global Arctic policy at the Arctic Assembly in Reykjavik, Iceland.⁵⁷ The Scottish delegation attended this assembly in significant numbers, accounting for 15% of all attendees.⁵⁸ Later in the same year, Scotland hosted an "offshoot" of the Arctic Circle Forum in Edinburgh.⁵⁹ When the U.K. Government published its second Arctic policy framework in 2018, the Scottish Government felt that the policy did not sufficiently address all the issues that were facing Scotland and the world at large.⁶⁰ In response, the Scottish Government published *Arctic Connections: Scotland's Arctic Policy Framework* in 2019.⁶¹

The policy framework repeatedly emphasized Scotland's connection to the Arctic, especially in the historical and cultural similarities between Scottish and Arctic communities.⁶² This was not a new tactic, as the Scottish National Party had portrayed the nation's identity as connected to their Northern neighbors to distinguish from the British identity during the independence campaign leading up to the 2014 independence referendum.⁶³ In the 2019 policy framework, Scottish "Arctic-ness" was used as a vehicle to present the importance of problems facing the nation that could find solutions through cooperation with its Arctic neighbors.⁶⁴ Problems related to education, research, innovation, tourism, trade, maritime infrastructure, healthcare, sustainable economic development, climate change and the environment, renewable energy, and technology were all addressed in the policy framework.⁶⁵ The importance of each of

56. *See id.*

57. Depledge et al., *supra* note 20, at 30; Depledge et al., *supra* note 19, at 6.

58. Middleton, *supra* note 55.

59. Depledge et al., *supra* note 20, at 30.

60. *See* Depledge & Østhagen, *supra* note 43, at 55.

61. *See id.*

62. *See* SCOTTISH GOV'T, *supra* note 6; Depledge et al., *supra* note 19, at 6.

63. Depledge et al., *supra* note 19, at 6.

64. *See id.*; SCOTTISH GOV'T, *supra* note 6, at 17.

65. *See* SCOTTISH GOV'T, *supra* note 6, at 1; *see also* Paul Adams, *Scottish Education: Between the UK and the Nordic*, 43 NORDIC STUD. EDUC. 43, 54 (2023) (noting that the Scottish policy framework "examines possible gains through Arctic research and development").

these issues was underscored by the direct impact that they have on both Scotland and Arctic communities.⁶⁶ The rural geography and population dispersion throughout the highlands and islands provide Scotland a basis to make this connection to its neighboring Nordic countries.⁶⁷ In fact, there are some areas of Scotland that are “closer to the Arctic Circle than they are to London.”⁶⁸

The Scottish Government followed up by presenting the Arctic community with strategies for Scotland to help to address these problems.⁶⁹ One area where Scotland expressed readiness to contribute is climate change action.⁷⁰ Scotland has been one of the leading nations to set strict policies aimed at reducing its total greenhouse gas emissions,⁷¹ and was also the first government in the world to establish a climate justice fund for vulnerable places abroad impacted by climate change.⁷² Additionally, Scotland has planned for the development and implementation of carbon storage technologies, as the oil fields in the North Sea, within Scottish waters, could be a site for carbon injection.⁷³ The prestigious universities located in Scotland lend academic expertise to these international efforts.⁷⁴

Scotland’s location in the world also provides an opportunity to serve as a commercial “gateway” to the Arctic.⁷⁵ With more open waters, likely increasing sea traffic and competition for resources in the Arctic and broader High North, Scotland aims to develop its maritime infrastructure to serve as a major port to meet commercial needs.⁷⁶ One of the largest harbors in the world is Scotland’s Scapa Flow, suitable for large-ship navigation and a unique opportunity for Scotland considering the small number of other port options nearby.⁷⁷ More vacation cruise ships entering Scottish waters could also be a potential boon for the Scottish economy, especially in the rural areas where Adventure Tourism is already attracting

66. See SCOTTISH GOV’T, *supra* note 6, at 5, 34; JOUAN ET AL., *supra* note 2, at 13.

67. See SCOTTISH GOV’T, *supra* note 6, at 23 (Scotland is more than ninety percent rural and has ninety-six inhabited islands).

68. *Id.* at 5.

69. *Id.* at 42-43.

70. See *id.* at 43 (The Scottish Government includes climate change as key area of action under its policy framework).

71. See *id.* at 29.

72. *Id.*

73. See SCOTTISH GOV’T, *supra* note 6, at 32.

74. See *id.*

75. See *id.* at 5; see also Kruse, *supra* note 16, at 6.

76. See SCOTTISH GOV’T, *supra* note 6, at 38; see also Kruse, *supra* note 16, at 6 (discussing Scotland’s possible role supporting increased Arctic shipping activity).

77. SCOTTISH GOV’T, *supra* note 6, at 38.

visitors from all over the world.⁷⁸ These opportunities for Scotland are countered by substantial interest in management of its vital fisheries and energy resources, which will be an area of focus as more non-Arctic countries look to extract these resources for economic benefit.⁷⁹ The policy framework avoids any provocation of Norway though, as it does not mention the “growing presence of Norwegian commercial and energy interests in Scotland itself.”⁸⁰

Not addressed in Scotland’s recent Arctic policy framework is military and security policy. The document does not mention Russia at all in that context, nor does it pay any noticeable attention to the building geopolitical tensions in the Arctic or the High North.⁸¹ It excludes any discussion on the relevant international forums for cooperation with other countries, such as the Arctic Council.⁸² This is undoubtedly attributable to the fact that these are not devolved constitutional responsibilities,⁸³ as well as a respect for the sovereignty of other Arctic countries. However, outside of the policy framework, the Scottish government and its representatives have indicated a need for maintenance of security in Scottish waters.⁸⁴ Scotland’s location virtually necessitates a military presence for strategic purposes, both for its own subnational and U.K. interests as well as the interests of international organizations like NATO.⁸⁵ At the same time, the Scottish Government has opposed the storage of British nuclear armaments within Scottish territory.⁸⁶

The successful implementation of Scotland’s most recent Arctic policy framework remains to be seen. It is not expressly clear how important the international community views Scotland’s offers to the Arctic to be.⁸⁷ What is clear is that Scotland sees the Arctic and High North as a major policy priority given the broad impact that it has on its peoples, interests, and future. For now, the words of Fiona Hyslop, Scotland’s Cabinet Secretary for Culture, Tourism and External Affairs, provide a good sense of what Scotland’s current Arctic Policy Framework represents. In the Ministerial Foreword, Hyslop stated that “[i]t is an

78. *Id.* at 20.

79. See Middleton, *supra* note 55.

80. Depledge et al., *supra* note 19, at 6.

81. See Depledge et al., *supra* note 20, at 39; SCOTTISH GOV’T, *supra* note 6.

82. Middleton, *supra* note 55.

83. See SCOTTISH GOV’T, *supra* note 6, at 3.

84. See, e.g., Depledge et al., *supra* note 20, at 30 (quoting Scottish MP’s criticism of the lack of attention to security in Scottish seas).

85. See Kruse, *supra* note 16, at 3-4.

86. Depledge & Østhagen, *supra* note 43, at 59.

87. Middleton, *supra* note 55.

important milestone in the journey towards consolidating Scotland's position as a European gateway to the Arctic and establishing it as the international partner of choice for both our Arctic neighbours and other like-minded countries that are interested in working with us on addressing common challenges.”⁸⁸

III. ARCTIC POLICY PRIORITIES – U.K. VS. SCOTLAND

Comparing the policy priorities, there are many similarities and differences to note. Both the U.K. and Scottish governments have stated their policies through a policy *framework* rather than a policy *strategy*. This may appear semantic to most. However, it represents the hesitancy of each government in putting forward their own policy interests in order to avoid provocation of the Arctic countries that have sovereign territory in the Arctic.⁸⁹ Both governments prefer international cooperation over pursuit of their own singular interests in the region, looking to participate in the various international forums related to the Arctic.⁹⁰ Ultimately, the success of the Arctic policies depends on this cooperation.

Scotland and the U.K. both aim to prop up their geostrategic importance based on their position in the High North, calling themselves the Arctic's “nearest neighbor” to support and justify their presence in these discussions.⁹¹ The U.K. and Scotland each promote their capabilities to contribute by offering their world-renowned scientific expertise to research and problem-solve in the Arctic.⁹² This is especially key for each government's prioritization of environmental protection in the region. Both believe immediate action is required to combat the global existential threat of climate change and have made efforts to lead by example internationally.⁹³ The policy frameworks published by both governments also seek to portray their economic experience in maritime matters,⁹⁴ while

88. SCOTTISH GOV'T, *supra* note 6, at 3.

89. JOUAN ET AL., *supra* note 2, at 34; Depledge & Dodds, *supra* note 1, at 24.

90. See SCOTTISH GOV'T, *supra* note 6, at 3; Todorov & Lyzhin, *supra* note 21, at 71, 75.

91. See Depledge & Dodds, *supra* note 1, at 27; see also SCOTTISH GOV'T, *supra* note 6, at 11.

92. See Depledge & Dodds, *supra* note 1, at 27; see SCOTTISH GOV'T, *supra* note 6, at 11.

93. See SCOTTISH GOV'T, *supra* note 6, at 29; see also JOUAN ET AL., *supra* note 2, at 29.

94. See JOUAN ET AL., *supra* note 2, at 41.

highlighting their own opportunities presented by increasing commercial interests in the region.⁹⁵

What is different between the two governments' Arctic policies, however, are the apparent priorities placed on each of these Arctic issues. For instance, although environmental protection is a concern for both, the Scottish policy framework presents a more concerned view of the direct impacts on the nation.⁹⁶ Additionally, Scotland's northern connection is emphasized much more than in the U.K. policy framework, showing distinct views on national identity between the two governments. Scotland goes notably further than the U.K. in its stated desire to learn from its Arctic neighbors in developing solutions to domestic problems.⁹⁷ This is despite the fact that the U.K. has more direct controls on foreign affairs related to the Arctic under the constitutional division of authority.⁹⁸

One of the biggest differences in policy prioritization exists in the realm of military and security matters. As noted above, Scotland does not hold any devolved responsibilities in these matters, which is a reason why it appears to be a higher priority for the U.K. Government. However, with intensifying changes in the geopolitical status of the region, the lack of a unified approach between the two governments is stark. For Scotland, the focus seems to be on the direct impacts it faces and on combating climate change generally, omitting any reference to geopolitical tensions. For the U.K., as the likelihood of military confrontation with Russia and China grows ever closer, these geopolitical tensions become a higher priority to meet both its own security needs and its obligations to other neighboring countries and joint security agreements. The disagreement on nuclear sites in Scottish territory alone is a key difference in policy between the two governments.⁹⁹

As time goes on and new circumstances arise, the need for a cross-government approach will only grow in importance.¹⁰⁰ In the immediate future, with Scotland remaining a part of the U.K., both governments

95. See SCOTTISH GOV'T, *supra* note 6, at 37-41; see also Smieszek & Kankaanpää, *supra* note 6, at 394.

96. See KRUSE, *supra* note 16 (“[B]eing a much smaller nation than the collective [United Kingdom], [Scotland] can generally be expected to place greater political emphasis on more immediate geographical surroundings than a large state would do.”).

97. See, e.g., SCOTTISH GOV'T, *supra* note 6, at 17, 27.

98. See KRISTY HUGHES, FRIENDS OF EUR., SCOTLAND AND BREXIT: SHOCKWAVES WILL SPREAD ACROSS EU 10 (2016), <https://www.friendsofeurope.org/wp/wp-content/uploads/2020/02/FoE-FE-discussion-paper-Scotland-and-Brexit-3.pdf> [<https://perma.cc/4MTB-X49E>].

99. See Depledge & Østhagen, *supra* note 43, at 59.

100. See JOUAN ET AL., *supra* note 2, at 26.

should strive to coordinate their policies. However, the ongoing call for independence from the U.K. by the SNP could exacerbate the already difficult issues facing the Arctic and the broader High North. Whether the differences in policy have an effect on popular domestic support for independence in Scotland remains to be seen. Furthermore, it remains unknown if the implications of these differences would impact the international community's recognition of Scottish independence. Nonetheless, there is room to evaluate these present circumstances under international law and the related principle of the right to self-determination, and doing so is an important endeavor to mitigate diminishing international cooperation in the Arctic following the onset of the "new Cold War."

IV. THE RIGHT OF SELF-DETERMINATION AND THE SCOTTISH INDEPENDENCE MOVEMENT

When a nation or group of peoples seeks to secede from an already existing nation-state, they must have a valid claim under international law to achieve international recognition of its independent status. This possibility has been recognized as the right to self-determination in various provisions, the most important of which being the Charter of the United Nations (U.N.). Article 1(2) of the U.N. Charter states one of the main purposes of the Charter is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."¹⁰¹ Article 55 of the Charter reiterates the importance to respect the right of self-determination.¹⁰² Over the period following the founding of the U.N. until the dawn of the 21st century, the right of self-determination as a legal concept continued to evolve with world events.¹⁰³ Secession from a nation, referred to as external self-determination, was primarily supported by the international community when it involved a former colony, or egregious acts of oppression or discrimination against a distinguishable group of peoples.¹⁰⁴ After the decolonization movement had essentially come to a close, a presumption against external self-determination secession became well-founded in international law.¹⁰⁵ This

101. U.N. Charter art. 1, ¶ 2.

102. *Id.* art. 55.

103. See generally Peter Hilpold, *Self-Determination and Autonomy: Between Secession and Internal Self-Determination*, 24 INT'L J. ON MINORITY & GRP. RTS. 302, 332 (2017).

104. *Id.* at 324-25.

105. Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 INT'L & COMPAR. L.Q. 857, 869 (1994).

was mainly to protect against continuous changes to the national territories and governance, raising the possibility for war and the disruption of international peace and security.¹⁰⁶ This limitation on the right of external self-determination did not foreclose changes, and instead increased autonomy, referred to as internal self-determination, was seen as sufficient unless the circumstances required support for a peoples' secession from the already existing state.¹⁰⁷

Scotland itself is an example of the realization of greater access to internal self-determination. The politically harmonized relationship between Scotland and the English began with Act of Union in 1707, officially integrating Scotland into the U.K. constitutional structure.

The political and territorial unification between Scotland and England began with the Act of Union in 1707, officially integrating Scotland into the U.K. constitutional structure.¹⁰⁸ For more than two centuries, the Scottish people were almost exclusively governed by the British Parliament¹⁰⁹ despite retaining their distinct Scottish national identity. Beginning in the 20th century, Scottish attitudes towards their relationship with the U.K. began to shift, and by 1934 there was an official SNP to advocate for Scottish self-determination.¹¹⁰ Scots were slow to join the SNP however, and it was not until the 1960s and 1970s that popular support grew to the level necessary to have the U.K. Parliament explore granting greater autonomy.¹¹¹ When the first devolution referendum was held in 1979, the total Scottish vote in favor of negotiating devolved responsibilities was 52%,¹¹² but the U.K. Government reversed course and did not negotiate with the Scots. It took until 1997 to grow sufficient popular support, when over 74% of Scots voted for devolution.¹¹³ From that point, the SNP and the U.K. Government negotiated what would

106. Lawrence M. Frankel, *International Law of Secession: New Rules for a New Era*, 14 HOUS. J. INT'L L. 521, 535-36 (1992).

107. See Hilpold, *supra* note 103, at 324 n.56.

108. See Adams, *supra* note 65, at 45.

109. *But see* John M. Mackenzie, *Brexit: The View from Scotland*, 105 THE ROUND TABLE 577, 578 (2016) (noting Scottish reservations in the 1707 Treaty of Union on topics such as banking and education).

110. Peter Lynch, *Scottish Independence, The Quebec Model of Secession and the Political Future of the Scottish National Party*, 11 NATIONALISM & ETHNIC POL. 503, 504 (2005).

111. See Fergus Ewing & Jennifer Erickson, *The Case for Scottish Independence*, 25 FLETCHER F. WORLD AFF. 89, 91 (2001).

112. Adams, *supra* note 65, at 46; *see also* McCorquodale, *supra* note 105, at 869 n.65 (explaining only thirty-three percent of Scottish total electorate voted in favor of devolution).

113. Adams, *supra* note 65, at 46.

become the Scotland Act of 1998, and in 1999 the Scottish Parliament reopened.¹¹⁴

The SNP continued their criticisms of the constitutional structure for Scottish self-governance into the 21st century, and in 2012 reached an agreement with U.K. Parliament to hold a 2014 national referendum in Scotland on the question of becoming independent.¹¹⁵ Provided with only two choices—“yes” or “no”—to whether Scotland should be an independent country, a little over 55% decided to vote “no” to remain a part of the U.K.¹¹⁶ When the 2016 Brexit referendum across the U.K. passed with a slight majority, in spite of a significant majority vote in Scotland to remain in the European Union (E.U.), the SNP again repeated its calls for independence from the U.K.¹¹⁷ As the withdrawal negotiations between the U.K. and the E.U. became highly contentious and drawn out over years, the SNP felt that this could be the time to capitalize on the rise in support for independence through a second referendum.¹¹⁸ In 2022, rather than negotiating with U.K. Parliament to hold another national referendum, the SNP referred the question to the U.K. Supreme Court regarding whether Scotland could unilaterally hold a national referendum without the U.K. Parliament’s approval.¹¹⁹ The U.K. Supreme Court answered this question in the negative, and also held that Scottish external self-determination claims were insufficient under international law.¹²⁰ Whether the U.K. Supreme Court’s view was correct on these self-determination claims under international law, however, is questionable.¹²¹ The implications of the two governments’ Arctic policies could be an important factor in how the claims would be viewed under international law by the international community writ large.

114. See Ewing & Erickson, *supra* note 111.

115. Elisenda Casanas Adam, *Self-Determination and the Use of Referendums: The Case of Scotland*, 27 INT. J. POL. CULT. SOC. 47, 55-56 (2014).

116. See Adams, *supra* note 65, at 47.

117. See Nicola McEwen, *Irreconcilable Sovereignties? Brexit and Scottish Self-Government*, 10 TERR. POL. GOVERNANCE 733, 744 (2022).

118. See JOHN CURTICE & IAN MONTAGU, *Is Brexit Fuelling Support for Independence?*, SCOTCEN SOC. RSCH. 1, 4 (2020).

119. Loqman Radpey, *The Scottish Independence Ruling: Here We Go Again!*, OXFORD HUM. RTS. HUB (Dec. 14, 2022), <https://ohrh.law.ox.ac.uk/the-scottish-independence-ruling-here-we-go-again> [<https://perma.cc/7HHK-LEUZ>].

120. *Id.*

121. *See id.*

V. HAS SCOTLAND BEEN DENIED MEANINGFUL ACCESS TO SELF-
DETERMINATION RE: ARCTIC POLICY?

Should there come a day when Scotland sees a majority vote in another national referendum and thereafter declares independence from the U.K. without the consent of the U.K. Government, the issue could be contested in some form under international law. The ultimate determination whether Scotland has violated international law by declaring independence,¹²² or whether the U.K. has violated Scots' right to external self-determination by refusing to negotiate with the Scottish Government on independence, would comprise of two main considerations: (1) whether the Scottish peoples have been denied meaningful access to "pursue their political, economic, cultural and social development";¹²³ and (2) the necessity for the protection of the U.K.'s territorial integrity and the maintenance of international peace and security.¹²⁴ Each government's Arctic policy will likely be one of the various factual considerations involved in both stages of this analysis. The question of whether the U.K.'s constitutional structure allows for sufficient Scottish development and implementation of their preferred Arctic policies is important to understanding whether Scotland has meaningful access to pursue its own political, economic, social, and cultural development.

Scotland has devolved responsibilities over fisheries, environmental, and economic policies,¹²⁵ all of which are directly relevant to forming policy on the Arctic and the High North. Although foreign affairs are a matter reserved for the U.K. Government, Scotland has still been able to participate in and contribute to international discussions on the Arctic, with 2017 being a prime example.¹²⁶ The 2019 release of Scotland's Arctic policy framework also shows Scotland's ability to set its own domestic Arctic policy. Therefore, any argument for a meaningful denial of access to Scotland's ability to pursue its own political, economic, social, and cultural development as related to Arctic policy formation would not be given substantial weight, absent more evidence that Scotland is not consulted in U.K. Arctic policy formation, as was the case for the U.K.'s 2013 Arctic Policy framework.¹²⁷ Yet, the opportunity for additional instances similar to 2013 exists, as the Scottish Arctic Policy Framework

122. *But see* Hilpold, *supra* note 103, at 305 & n.2 (noting the International Court of Justice's ruling that a declaration was not a per se violation of international law).

123. Radpey, *supra* note 119.

124. McCorquodale, *supra* note 105, at 879.

125. Kruse, *supra* note 16, at 4.

126. *See* Middleton, *supra* note 55; Depledge et al., *supra* note 20, at 30

127. *See* Depledge & Østhagen, *supra* note 43, at 54-55.

itself notes Scotland will need to “continue to lobby the U.K. government to maintain” European relationships,¹²⁸ representing its lack of authoritative control over partnerships important to Scottish interests.

Further support for a claim that Scotland has been denied meaningful access is its preference that the U.K. prioritize Arctic policy, a preference driven by the closer connection Scotland has with the Arctic. Military and national security—matters constitutionally reserved to the U.K. Government—additionally prevent the Scottish Government from developing comprehensive Arctic policy without considering whether the policy is permissible under U.K. law and policy.¹²⁹ In these matters, Scotland is denied access to pursue its own policy much more meaningfully than it does in all other Arctic policy areas. For example, the U.K.’s Defence Arctic Strategy was released without considering Scottish defense policy preferences.¹³⁰ One commentator has noted that this lack of power over Scotland’s own national security could itself be a reason to pursue independence.¹³¹

One of the most important factors for Scotland’s Arctic policy formation is the impact of Brexit on Scotland’s interests in the region.¹³² The E.U. was a major source of funding for Scotland’s pursuit of its interests in the Arctic.¹³³ Brexit could additionally impact any cooperation between Scotland and Arctic countries in the E.U., potentially reducing the involvement of British and Scottish scientific expertise.¹³⁴ While the financial and political implications for Scotland are important, future bilateral and multilateral agreements with Arctic countries, including the U.S., could substitute for Scotland’s previous relationships with the E.U.¹³⁵ It remains unclear whether this will negate the negative impacts on Scottish pursuit of its own Arctic policy. However, the broader implications of Brexit on Scotland strengthen the case for Scottish

128. SCOTTISH GOV’T, *supra* note 6, at 42.

129. Kruse, *supra* note 16, at 1, 8.

130. See Depledge et al., *supra* note 20, at 30.

131. Kruse, *supra* note 16, at 8.

132. See Depledge & Østhagen, *supra* note 43, at 58; Adams, *supra* note 65, at 57.

133. See SCOTTISH GOV’T, *supra* note 6, at 6.

134. See Depledge et al., *supra* note 20, at 38 (noting the scientific capabilities of other E.U. countries, such as Germany); Robin McKie, *UK’s Years Out of EU Horizon Programme Did ‘Untold Damage’ Say Scientists*, GUARDIAN (Sept. 9, 2023), <https://www.theguardian.com/science/2023/sep/09/britain-eu-horizon-programme-scientists-research-scheme-flagship> [<https://perma.cc/Y9RH-62VQ>]; Hannah Devlin, *Brexit Row Could Prompt Exodus of Senior Scientists from UK*, GUARDIAN (Jun. 10, 2022), <https://www.theguardian.com/science/2022/jun/10/brexit-row-could-prompt-exodus-of-senior-scientists-from-uk> [<https://perma.cc/KT7Q-GRCD>].

135. See Depledge et al., *supra* note 19, at 7.

independence by denying Scotland the ability to pursue its own political, economic, social, and cultural development. Therefore, even if access to Arctic policy formation and implementation does not play a significant role in support of Scotland's external self-determination claim, other Arctic considerations—primarily related to the maintenance of international peace and security by preserving the U.K.'s territorial integrity—must be evaluated regarding any limitations on Scotland's right to external self-determination.

VI. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY IN THE ARCTIC

The Arctic's true "nearest neighbor" may seem a trivial debate at first glance, but if Scottish succession leads to legally stricter borders between Scotland and England, the "nearest neighbor" claim would be of great significance for international security concerns. If currently increasing tensions reach the level of the previous Cold War, any security crisis in the Arctic "would demand that the U.K. be involve[d]."¹³⁶ Many of the U.K.'s "frontline defence capabilities" related to Arctic security are located in Scotland, including nuclear submarines and Royal Air Force combat squadrons (Figure 2).¹³⁷ These military installations provide a source of deterrence to Russian aggression in the region, and are crucial to protect NATO's "northern flank" and transatlantic sea lines of communication.¹³⁸

136. Kruse, *supra* note 16, at 4.

137. *Id.*

138. See Depledge & Østhagen, *supra* note 43, at 50.



Figure 2: Map of U.K. Military Bases in Scotland.¹³⁹

With an independent Scotland in the mix, and the territorial integrity of the U.K. affected, concerned countries would, at minimum, want either an agreement between Scotland and the U.K., or assurance that the Scottish military capabilities and contributions will maintain the status quo in exchange for recognition of its external self-determination claims.¹⁴⁰ Although Scotland could likely develop a similar defense force to that of other, smaller NATO countries, such as Norway and Denmark,¹⁴¹ Scotland's softer military policies would require increased security contributions from the larger NATO countries, at least those active in the Arctic.¹⁴² This is assuming both that NATO would accept an independent Scotland into the organization,¹⁴³ and that Scotland would be able to build up its own sufficient defense force faster than is fiscally likely.¹⁴⁴ Russia could theoretically see an independent Scotland as a military advantage

139. *Id.* at 48 fig. 1.

140. *See id.* at 61.

141. *Id.* at 55.

142. *See id.* at 55-56.

143. *See id.* at 59-60.

144. *See* Delepe & Østhagen, *supra* note 43 at 59, 61.

for them, and seek to deepen the divide between Holyrood and Westminster.¹⁴⁵

The impact of Scottish independence on U.K.'s territorial integrity would include the loss of the expansive exclusive economic zone generated by the Shetland Islands under international law.¹⁴⁶ If Scotland chose not to follow the current legal framework of the U.K. in sovereign Scottish waters, it would significantly affect naval operations throughout the region. At this time, projecting actual security needs to counter Russian actions in the Arctic is a difficult task. Tensions are higher now than they were even ten years ago, but direct military confrontations are generally absent from the Arctic.¹⁴⁷ For NATO, although concern over Arctic security is growing, focus remains elsewhere in the world.¹⁴⁸ However, under NATO's Article V obligations, any NATO country must defend any fellow NATO countries should they be attacked.¹⁴⁹ While NATO's concerns are, for now, contained to Ukraine, there is ever-growing fear of the conflict expanding to NATO countries. The impact of escalated tensions on Arctic security requirements for NATO countries (such as the U.K., U.S., and Norway) would therefore strengthen the case to limit Scotland's right to external self-determination, making Arctic policy consideration a key factor in that phase of the analysis.

CONCLUSION

Before concluding, it must be noted that this Comment raises additional questions about certain Arctic policy considerations to the evaluation of Scottish self-determination claims under international law. The following examples are only some of the questions that should be explored more in-depth to provide a sounder conclusion to this analysis:

- *Are the differences in Arctic policies that different from a micro-perspective?*
- *What will be the final assessment of Brexit's impact on Scottish Arctic policy preferences?*

145. *Id.* at 58 (political divisions between Scotland and the U.K. "would be a gift to Russia").

146. See Todorov & Lyzhin, *supra* note 21, at 70.

147. See JOUAN ET AL., *supra* note 2, at 10.

148. *Id.* at 52 (the Arctic is of "peripheral interest" for NATO).

149. See Depledge & Dodds, *supra* note 1, at 28.

- *Is the current need for security extreme enough to make Scottish independence a threat to international peace and security?*
- *What would be the true impact on military installations in the U.K. if Scotland were to secede?*
- *Would NATO allow Scotland to join NATO after secession?*

Conceding that a more complete review was not conducted for this Comment, the broad comparison of Scottish and U.K. Arctic policies and mechanisms provides enough information for an initial analysis under international law related to Scotland's right to external self-determination. This Comment concludes that Arctic military and security policy would be the most significant Arctic policy consideration in a Scottish claim to self-determination, primarily as a limitation on the right. Despite some merit to differences between U.K. and Scottish Arctic policies supporting a Scottish claim, Scotland's current ability to develop Arctic policy, both domestically and with international partners, does not constitute a sufficiently meaningful denial of access to pursue its own political, economic, social, and cultural development at this time.

At most, it appears that the status of Arctic policy formation in Scotland would lead to more devolved authority under its right to internal self-determination. Should Scotland refuse an expanded devolution approach and declare independence anyway, international recognition—vital to its independent success—could be inhibited. This Comment recommends that Scottish claims to external self-determination downplay the impact of altered U.K. territory to the maintenance of international peace and security in the Arctic. Further, Scottish claims should highlight all instances in which its Arctic policy preferences have not been met or have been ignored altogether by the U.K. Government. These arguments give more weight to Scottish independence under international law and likely increase the chances of recognition by the international community. With ambiguities remaining, one thing is certain: the changing Arctic will impact countless aspects of the geopolitical landscape awaiting us.

