Spring 2009

The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims

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The Scramble for the Arctic: The United Nations Convention on the Law of the Sea (UNCLOS) and Extending National Seabed Claims

We examine the United Nations Convention on the Law of the Sea (UNCLOS) and recent expansive territorial claims in the Arctic. We review competing national claims and the status of the Law of the Sea Treaty in the United States.

Abstract:
This paper reviews the codification of the international standard for the exploitation of the continental shelf, the United Nations Convention on the Law of the Sea (UNCLOS). The "Law of the Sea" convention or treaty, this agreement entered into force in 1994 yet still has not been ratified by the United States, despite mounting pressure to do so. Because of shifting climate conditions in the Arctic, new technologies for oil extraction, and increasing international demand that makes expensive extraction more viable, there has recently emerged a new "Scramble for the Arctic" as a USGS survey suggests that up to 13% of the world's undiscovered oil and 30% of its gas remain beneath the seabed. We examine the current state of the Treaty in the United States, as well as the international challenges to US territorial interests in the context of seabed claims made by Russia, Canada, Denmark, and Norway. As early adopters of UNCLOS have until May 2009 to submit claims and the UN Commission on the Limits of the Continental Shelf rules on claims for extended territorial waters, the dispute is only likely to heat up. The resolution of the Arctic Scramble also holds a precedent setting promise, as there is a similar pending crisis in Antarctica. Will the involved nations observe the rule of international law, or will this be a 21st century neo-imperial echo to the Scramble for Africa?

Paper prepared for presentation at the 2009 Annual Meeting of the Midwest Political Science Association, held in Chicago, IL April 2-5, 2009.

→ **Working Draft**

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I. UNCLOS & Background

For the past 400 years the oceans and seas of the world have been subject to a freedom of-the-seas doctrine. Under this doctrine, countries had rights and jurisdiction over a narrow three mile strip of the oceans surrounding their coastline, while the remainder of the ocean was free to everyone and belonged to no single country. Starting in the 20th century - amid growing concerns with regard to offshore resources, fish stocks and pollution - countries began to try to extend their control over the seas.

In 1945, President Harry S. Truman unilaterally extended US jurisdiction to include all natural resources on the United States' continental shelf. This signaled the unofficial end of the freedom of-the-seas doctrine as many other countries followed the US's lead and claimed more of the sea as their own. In 1946, Argentina claimed its shelf and sea above as its own. From 1947-1950, Chile, Peru and Ecuador claimed the rights to a 200-mile zone in hopes of limiting access to distant-water fishing fleets and maintaining the fish stocks in this 200-mile zone. After World War II, Egypt, Ethiopia, Saudi Arabia, Libya, Venezuela and some Eastern European counties, all extended their territorial waters from three to twelve miles. Soon after, Indonesia and the Philippines both asserted dominion over the waters between their various islands. In 1970, Canada, in order to protect Arctic water from pollution, granted itself the right to regulate navigation in an area extending 100-miles from its shores.

As technological advances gave countries access to more and more of the resources available on the ocean floor and fishing fleets the ability to fish at greater distance and in greater volume, seabed territorial claims became increasingly important.

As countries made competing claims to areas of the sea, it became apparent that a treaty was required to establish a standard for control over the sea and to prevent conflict.

By 1967 the United Nations (UN) sought to establish "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction" (The United Nations Convention on the Law of the Sea [A historical perspective], 1998). By 1973, the Third United Nations Conference on the Law of the Sea was convened in New York with the goal "to write a comprehensive treaty for the oceans" (The United Nations Convention on the Law of the Sea [A historical perspective], 1998). After nine years of negotiation with over 160 sovereign states bargaining and trading national rights and obligations, a constitution was adopted: the United Nations Convention on the Law of the Sea (UNCLOS). The Convention was formally ratified in 1994, after Guyana became the 60th state to recognize it.

The Convention was a huge undertaking by the UN, seeking to regulate all aspects of the resources of the sea and the uses of the ocean. All of these issues were addressed within a single treaty:

> Navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and, a more unique feature, a binding procedure for settlement of disputes between States… (The United Nations Convention on the Law of the Sea [A historical perspective], 1998).

Due to the rapid acceptance of the UNCLOS by the international community, nearly all countries have taken steps to bring their territorial claims to the ocean in order with the Convention.

One of the first issues that needed to be resolved at the start of the conference was the setting of limits for territorial waters. Countries arrived at the conference claiming anywhere from 3 to 200 miles off their coast as territorial waters. States with smaller navies were in favor of large territorial seas to protect their coastal waters. States with powerful navies were in favor of small territorial seas to protect their fleets' freedom of movement. Eventually a limit of twelve miles was settled upon for territorial seas with a contingency that a country may police another twelve miles beyond their territorial waters. The Convention also retains the right of "innocent passage" for naval and merchant ships. This innocent passage regulation allows ships the ability to pass through territorial waters unhindered, so long as their passage does not threaten a coastal country's security or violate its laws.

Navigation rights were one of the most difficult matters to negotiate. The establishment of a 12 mile territorial sea would place over 100 straits used for international navigation under an individual country's national sovereignty. This produced a rift, placing the naval powers on one side and the coastal states controlling narrow straits on the other. In particular both the United States and the Soviet Union insisted on free passage through these narrow straits, which would essentially give said straits the same status as the international waters of the high seas. The coastal states rejected this demand because; they were concerned that the passage of foreign warships so close to their shores could pose a threat to their security and possibly involve them in conflicts with outside powers. The coastal states were only willing to grant foreign warships the right of innocent passage through their controlled straits. The naval powers rejected this for two reasons. First, it would require submarines to expose themselves

when traveling through a straight under foreign control. Also, the right of innocent passage does not grant aircraft of foreign states the right to fly over waters where only innocent passage is permitted. The compromise that emerged was the concept of "transit passage" whereby:

> The regime of transit passage retains the international status of the straits and gives the naval Powers the right to unimpeded navigation and over flight that they had insisted on. Ships and vessels in transit passage, however, must observe international regulations on navigational safety, civilian air-traffic control and prohibition of vessel-source pollution and the conditions that ships and aircraft preceded without delay and without stopping except in distress situations and that they refrain from any threat or use of force against the coastal State (The United Nations Convention on the Law of the Sea [A historical perspective], 1998).

Thus, layers of sovereign authority exist beyond the shores of signatory states, balanced with the needs of others in the international community.

The establishment of exclusive economic zones (EEZ) was one of the most revolutionary ideas of the Convention, essentially extending a state's territory. Under the Convention's rules, coastal states are given the rights to "exploit, develop, manage and conserve all resources… to be found in the waters, on the ocean floor and in the subsoil of an area extending 200 miles from its shore" (The United Nations Convention on the Law of the Sea [A historical perspective], 1998). Essentially, coastal states have an additional 200 miles of territory beyond their shore, which also then creates an incentive to claim offshore islands, atolls, or islets. Even uninhabitable rocks allow for the accordant extension of the EEZ. The Convention also resolved the issue of continental shelf exploitation, by establishing that seabed and subsoil exploitation could only be carried out as far as the EEZ extended. Countries with continental shelves longer than 200 miles can petition the Commission on the Limits of the Continental Shelf (CLCS) to gain the rights to exploit their shelf beyond the limit of their EEZ. This, then, is where

much of the dispute around Arctic claims resides; what is the limit of the claimant's continental shelf?

The layers of sovereign responsibility and control are clarified in **Figure 1**, taken from the Australian Geological Survey Organization's representation of the issue:

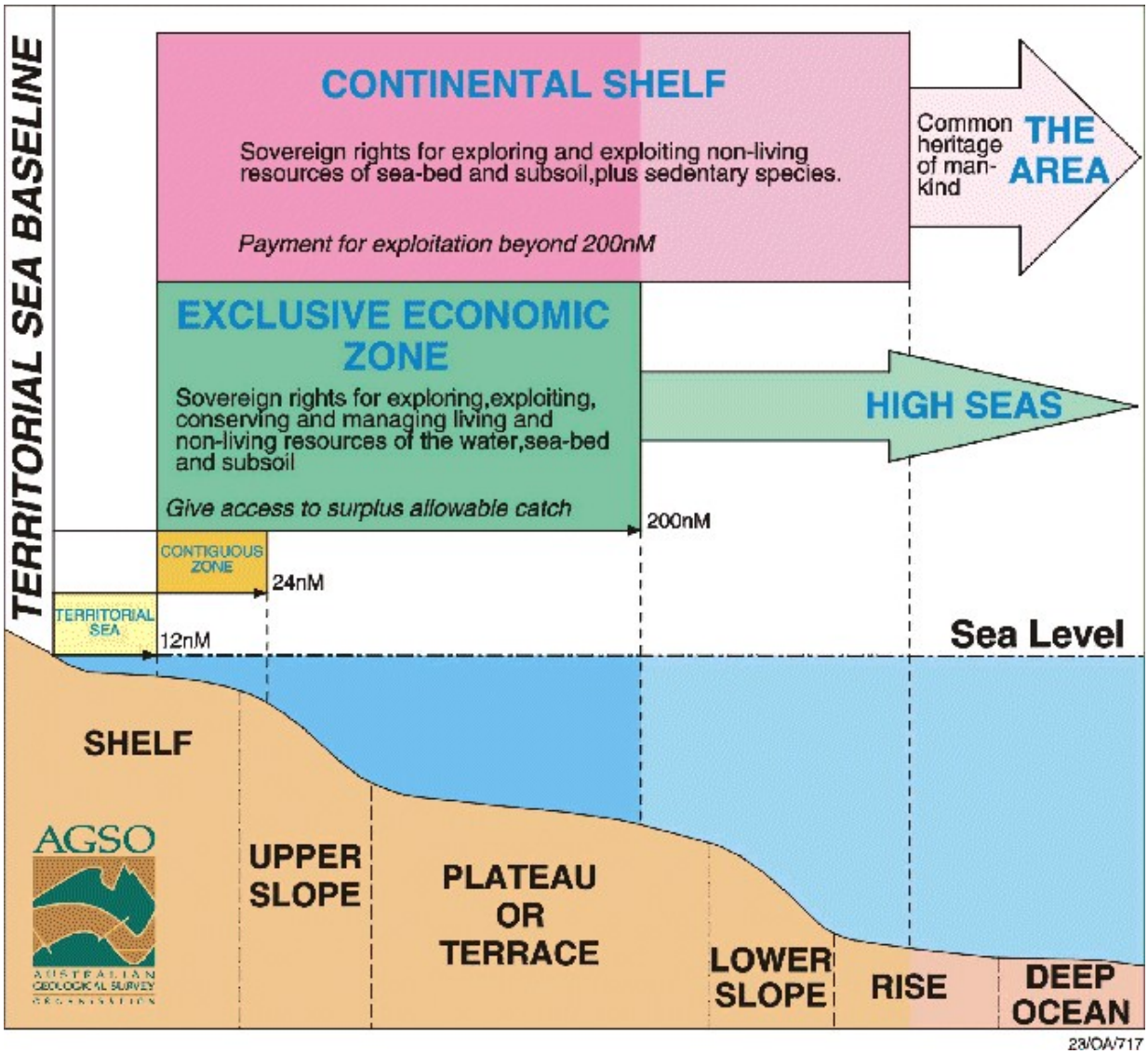


Figure 1. The extent of the Continental Shelf and other marine zones contained within the 1982 United Nations Convention on the Law of the Sea (UNCLOS). (Source: AGSO: **http://www.aph.gov.au/library/Pubs/rp/1998-99/99rp06.htm**).

For example, sovereign territory or exclusive claims now extend well beyond the traditional 'territorial sea' limit of 12 nautical miles (itself an extension of the 'canon fire' principle that established initial limits at 3 nm). States now have regulatory authority in an adjacent 'contiguous zone' out to 24 nm, and exert exclusive economic rights out to 200nm, inclusive of fishing rights and managing all living and non-living resources. *If* the continental shelf extends beyond the 200 nm limit, *then* the state has additional rights to claim non-living resources of the "seabed and subsoil". Most notably for the Arctic dispute, this includes petroleum resources, but the secondary concern over fishery management and tertiary concerns over environmental regulation and controlling access (or limiting 'free passage') should not be overlooked.

Environmental management was addressed in the Convention and all signatories to the Convention have fundamental obligations to protect and preserve the marine environment. "Coastal States are empowered to enforce their national standards and anti-pollution measures within their territorial sea. Every coastal State is granted jurisdiction for the protection and preservation of the marine environment of its EEZ" (The United Nations Convention on the Law of the Sea [A historical perspective], 1998). In regards to pollution by foreign vessels coastal states can only take such action as laid out by the Convention or the International Maritime Organization. In addition,

> it is the duty of the "flag State", the State where a ship is registered and whose flag it flies, to enforce the rules adopted for the control of marine pollution from vessels, irrespective of where a violation occurs. This serves as a safeguard for the enforcement of international rules, particularly in waters beyond the national jurisdiction of the coastal State, i.e., on the high seas. Furthermore, the Convention gives enforcement powers to the "port State", or the State where a ship is destined (The United Nations Convention on the Law of the Sea [A historical perspective], 1998).

This allows the port state to enforce <u>any</u> type of international environmental rule or national environmental regulations, which are in accordance with the Convention, as a condition for the entry of foreign vessels into their ports, internal waters or offshore terminals. Thus, contrary to a 'freedom of the seas' doctrine, port states have tremendous regulatory power within their territorial seas, such that these seas are perhaps better viewed as extensions of sovereign territory.

Typically, the mechanisms for resolving disputes resulting from an international treaty are contained in a separate protocol. The Convention on the Law of the Sea is unique in that the mechanism for the settlement of disputes is incorporated into the document, making it obligatory for parties to the Convention to go through the settlement procedure in case of a dispute with another party. Thus, inherent in the Convention is the vision that it is a dispute-resolution mechanism. During negotiations many countries were opposed to the idea of a binding settlement being decided by third party judges and insisted that issues could be resolved by way of direct negotiations between claimant parties. Others pointed to failed negotiations and long-standing disputes leading to armed conflict and argued that the only way to insure peaceful settlements was to insure that states bind themselves in advance to accept the rulings of judicial bodies. A compromise was settled upon. If direct negotiations fail, a choice of four other procedures are available: "submission of the dispute to the International Tribunal for the Law of the Sea, adjudication by the International Court of Justice, submission to binding international arbitration procedures or submission to special arbitration tribunals with expertise in specific types of disputes" (The United Nations Convention on the Law of the Sea [A historical perspective], 1998). So at its heart, UNCLOS is a regime instrument designed

to obviate the very types of disputes that are at present emergent in the Arctic. The question, then, is will this attempt at dispute resolution and mediation prove successful, or will so-called "realist" visions of power-seeking international behavior emerge as dominant?

II. Countries and Claims

Before beginning a discussion of various Arctic territorial claims, where geographic knowledge of landmarks and seabed descriptions is esoteric at best, a visual reference is undoubtedly helpful. One of the best visual representations of the regions is available through the International Boundaries Research Unit (IBRU) at Durham University, in the UK. **[See Appendix 1]** What becomes immediately apparent is that *if* we view seabed claims as essentially territorial claims, and we recognize that conflicting territorial claims are a traditional basis for armed conflict, *then* the situation in the Arctic seems quite serious. This situation becomes even direr once the purported resource variable is added in to the equation, as countries are becoming more assertive with regard to securing access to strategic resources such as oil.

The good news – at least as far as avoiding potential armed conflict – is that the debate about territory (and the subsidiary control over as-yet largely hypothetical petroleum deposits) is taking place within the institutional regulatory framework of the United Nations and the UNCLOS dispute-resolution mechanisms. Accordingly, the Scramble for the Arctic may be seen as a 'hard case' for conflict resolution. Not only are the potential stakes high, but these stakes (territory and strategic resources) are at the heart of the realist behavioral model in IR: states generally seek to control territory as a defensive mechanism and prevent others from controlling necessary resources. If

institutions and dispute-resolution mechanisms can constrain conflict here – where very central elements to state behavior are at stake and two of the players are acknowledged 'great powers' – then perhaps an idealist vision of IR is more appropriate for understanding state behavior in the contemporary international environment.

A. **RUSSIA**

Current Extent of Recognized Territory

On 12 March, 1997, the Russian Federation signed the United Nations Convention on the Law of the Sea (UNCLOS), which came into effect in Russia on 11 April 1997 (Chronological, 2009; Commission, 2008). The Convention allowed Russia to claim their 200 nautical mile Exclusive Economic Zone (EEZ) along the Russian coastline abutting the Arctic Sea, which provided them with more Arctic marine area than any other country. In addition, as part of UNCLOS, Russia also has the ability to make claim submissions to *extend* their EEZ boundary further north, which has caused an increase in arctic seabed research.

After Russia signed on to the Convention, they began additional study and review on the arctic seabed. On 20 December, 2001, they became the first arctic country to submit a claim to extend their EEZ, requesting an additional 1.2 million square kilometers (over 460,000 square miles) of marine economic control (*cf.,* Clover 2008). The submission to the Convention on the Limits of the Continental Shelf was considered and reviewed by the Sub-commission at the Convention during their 10th session, held in New York between the dates of 25 March and 12 April 2002 (Commission, 2008).

During deliberation, the Sub-commission recommended that the Division for Ocean Affairs and the Law of the Sea visit the Lamont-Doherty Earth Observatory, where the Division analyzed seismic and observational data from the arctic zone. With the data provided by Russia and the Division, the Sub-commission found that a recommendation for Russia's claim to the continental shelf would take longer than the two weeks allocated, and an additional week of meetings were scheduled, whereupon completion the Sub-commission's findings were reported to the full Commission.

However, since this claim has been put forth, Russia is no longer under an official deadline for resubmission, but it is under competitive pressure from the other coastal states. Russia has signaled their intent to back up their claims through their military, flexing their potential power through activities such as strategic bomber flights during mid-2008, and they have been expanding the operational zone of their northern fleet in order to show their intent on "'protecting [their] national interests' in the Arctic" (Blomfield, 2008).

Areas of Conflict: Overlap or Potential

Every country with potential claims in the Arctic has the possibility of overlapping with, or already does overlap, with Russian claims. While the United States settled boundary disputes with the Soviet Union in June 1990, the other Arctic countries could or do have disputable territorial claims. Norway has the most extensive dispute, as Russia and Norway have overlapping EEZs, but Canada's and Greenland's theoretical maximum claims overlap with Russia's 2001 claims (IBRU, 2008).

Russia and Norway have overlapping exclusive economic zones as well as claimable areas within each other's EEZs. Although the 1957 Varangerfjord agreement

determined the sea boundaries in the Varangerfjord, it did nothing to settle borders in the Barents Sea, where Norway and Russia have overlapping EEZs and claimable continental shelves. Currently, this 38,950 nm^2 area is called the "Grey Zone", of which both countries enjoy fishing access, but not mineral or hydrocarbon access. In their first submission, the Russian Federation included some of Norway's EEZ as part of their continental shelf. Additionally, they both have overlapping claims to continental shelves greater than 200nm from their shores. While it is not certain what the Commission will decide, it is not likely that Russia will receive control of sections of Norway's EEZ. Also, it is not likely that either country will receive full control over the overlapping claims beyond their exclusive economic zones, but will instead split the territory on a midline based on their proximity to the disputed area.

Denmark and Canada are in similar situations regarding territorial claims and overlap with Russian claims. While neither Canada nor Denmark have yet submitted a claim, both countries are performing research on the Lomonosov Ridge (LORITA-1), which could extend their maximum claims to slightly beyond Russia's limit, which is problematic for Russia. If the Lomonosov Ridge spans the entirety of the Arctic Ocean, Russia is likely to cede the furthest reaches of its 2001 claims to Canada and Denmark. Since neither Denmark nor Canada has submitted their respective claims, there is no concrete evidence of what the two countries will claim.

Likely Future Course of Action

Research

Arctic research and exploration is nothing new to Russia. Between the 18th and 19th centuries, Russian explorers, including Vitus Bering, and scientists, such as Mikhail

Lomonosov, explored and studied the arctic regions. In the modern era, two separate research missions have occurred in 1937 and 1950, in which ice packs and glacier fragments were utilized as drifting field stations. These field stations set out to search for arctic islands and to collect data on the Arctic Ocean, including taking seawater and seabed soil samples (Beaufort Gyre Exploration Project, 2008). From 1954 onward, floating ice research missions were roughly continuous until the termination of the program in 1991.

During August 2007, Russian scientists descended 4,261 meters (13,976 feet) beneath sea level at the North Pole, using two dual-manned submersibles, Mir-1 and Mir-2 (Chivers, 2007). Their objectives had two purposes: 1) to collect samples of soil from the seabed directly beneath the North pole, which is within the claims they submitted to the Commission and along the Lomonosov Ridge, and 2) to place a 1 meter tall titanium Russian Federation flag, creating symbolism behind their claim and reinforcing their dedication to being a major power, both scientifically and economically, in the Arctic region.

Responses

Because of the suddenness of the claim by Russia, four other countries (Denmark, Norway, the United States, and Canada) with a potential stake, and one without a stake (Japan) in the areas Russia had attempted to claim have submitted written responses to the Commission. Although none of these countries have yet to submit a claim, and the United States has yet to ratify UNCLOS, the majority have given negative responses. Denmark and Canada have both refused to offer an opinion immediately after Russia's

submission, citing the necessity of additional and more specific data (Permanent Mission of Canada, 2002; Permanent Mission of Denmark, 2002).

The remaining countries, the United States, Norway, and Japan, have offered definitively negative responses. Norway, having submitted a claim in November 2006 (beyond their 200 nautical mile EEZ) that does not overlap with Russia's claim, was most concerned with their overlapping claims along mutual borders, a “maritime dispute” that has not yet been settled and which could be problematic for both countries (Permanent Mission of Norway, 2002). The United States submitted a detailed response, using scientific data to support a position that neither the Alpha-Mendeleev or the Lomonosov Ridges are part of any state's continental shelf, but are rather independent features consisting of magma or freestanding formations (Permanent Representative of the United States, 2002). The U.S. official position also warned that:

> the integrity of the Convention and the process for establishing the outer limit of the continental shelf beyond 200 nautical miles ultimately depends on adherence to legal criteria and whether the geological criteria and interpretations applied are accepted as valid by the weight of informed scientific opinion [and that]... a broad scientific consensus of the relevant experts... is critical to the credibility of the Commission and the Convention.

This suggests that the United States would like the Convention and Commission to look strongly and carefully at the evidence presented by Russia before determining any course of action.

Although Japan does not control any territory in the Arctic region, they have been involved in a dispute over the 'Four Islands' area that the Russian Federation may or may not have rights to (Permanent Mission of Japan, 2002). The islands, located north of the Japanese islands, have been disputed territory since the end of World War II. While both nations have laid claim to them, no talks regarding ownership have succeeded in

allocating the territory. The issues arise from the maps the Russian Federation provided with their submission, showing economic control of the Four Islands as belonging to the Russian Federation.

Effects

There are many reasons for the Russian Federation to maximize their claim, as there is for any country with potential for expansion. What makes the Russian Arctic claims unique, however, is the scope of their potential. In 1999, the head of Russia's Ministry of the Environment, Viktor Orlov, estimated that there are 88 billion metric tonnes of hydrocarbon resources within the areas of the Arctic they already own and an additional 9 to 10 billion tonnes in the claims Russia has submitted to the UN (Куколевский & Шкуренко, 2007).

Russia is already a world leader in the production of natural gas and oil exports. They hold the largest proven natural gas reserves in the world, followed by Qatar and Iran, and they produce more natural gas than any other country in the world (BP Statistical Review, 2008). In oil, they are out produced only by Saudi Arabia by a mere 1.8 million metric tonnes, which is within 99.6% of Saudi Arabia's total output. Russia also has the 7th largest proven oil reserves, trailing behind the major OPEC members Saudi Arabia, Iran, Iraq, Kuwait, United Arab Emirates, and Venezuela.

If Russia's proven reserves are combined with their estimated potential hydrocarbon resources in the Arctic, Russia has the potential to dominate the oil and gas markets in the near future, and become especially dominant in Europe, as they are a major supplier to Eastern Europe. Within the next 20 to 30 years, estimates predict

enough melting of glacial ice to allow for the extraction and use of the Arctic resources, which is a good time frame for Russia. However, the estimates of resources in the Arctic could be far off, as the data on the Russian Arctic territory only covers between 9 to 12% of seabed geological features, which may not be an efficient estimator of overall resources, in either over- or under-estimation (*cf.*, Yenikeyeff & Krysiek, 2007).

If the estimated fuel resources are available in the quantities predicted, the implications for the Russian Federation are astounding. The International Energy Agency expects that the world's proven reserves of oil are expected to last another 40 years at current consumption rates, while natural gas reserves should last for another 60 years (*cf.*, International Energy Agency, 2008). Given current technology constraints, this would put the Russian Federation in a prime temporal location to increase its already considerable economic influence. If the buyers of Russia's fuels do not or are unable to switch to fuel sources that are made within each independent country, then Russia is situated to become the world's largest fuel and hydrocarbon exporter. The proceeds from massive fuel exploitation would boost their infrastructure, which could restore Russia to a level of influence similar to that that they held during the peak Cold War era.

Russia may find difficulties in extracting their hydrocarbon resources in the icy north. Russia's largest oil and gas companies, Gazprom (50.002% state-owned), Rosneft (75% state-owned), and Lukoil, are poorly equipped for and have little experience in Arctic fuel exploration and extraction. It is a possibility that Russia may have to turn to foreign-based companies, such as American-based Exxon-Mobil (with drilling experience in Northern Alaska) or Norwegian-based companies Statoil or Norsk Hydro.11 A potential national option, although one which will need expansion if it is to

be viable, is the Rosneft- and Gazprom-owned company Sevmorneftegaz, which currently operates two small off-shore drilling platforms in the Pechora and Barents Seas, as well as three gas deposits in Western Siberia (Sevmorneftegaz, 2009).

With the predicted melting of the polar ice caps, Arctic shipping routes are likely to be open far longer each year than ever before. Currently, the most viable sea routes are through Canada's Northwest Passage, and to a lesser extent, through Russia's Northern Sea Route, more commonly known as the Northeast Passage, or NEP (Ragner, 2008). Canada claims that the Northwest Passage runs through their domestic waters, which is a benefit for Russia; if Russia can provide services comparable to Canada's and similarly priced or cheaper transit fees for ships going through their waters, both countries can make shipping less expensive while increasing their cash flows from international shipping. The Russian Federation already owns the largest, although aging, fleet of ice-breakers and has decent Arctic shipping infrastructure. Since the current route through the NEP varies due to ice flows, the distance savings per trip between Europe and Eastern Asia could be as much as fifty percent when melting and thinning glaciers, allow ships to navigate along a predetermined, straighter route. This may well occur before the end of the century, as the northern ice cap is predicted to be diminished to 50% of current sizes by the then (*cf*., Arctic Council, 2005).

However, using ice-breakers is costly, and it is likely that the NEP will not be economically viable in the near-term, until the ice caps recede enough to allow cargo ships through. The current state of the NEP does not allow for large ships, as there are several shallow straights that limit the maximum transport depth to 12.5 meters. Also, shippers cannot be wider than 30 meters, as they cannot exceed the width of the

icebreakers they follow. These cause restrictions on vessels that make it far more economical to use current routes through much less hostile environments. Currently, the NEP is used primarily for Northern Siberia oil fields and to ship food and supplies to Northern communities, a practice subsidized by the Russian government due to high cost.

B. CANADA

Current Extent of Recognized Territory

Although the Canadian government has only recently stepped up the intensity and the extent of their claims of sovereignty in the Arctic, Canada has actually made similar assertions in the past. Formal Canadian claims over the region first occurred in 1969 after the *SS Manhattan*, a U.S. oil tanker, attempted to traverse its way through the ice laden waters of the Northwest Passage. The entry of a foreign vessel into the Arctic waters caused a good amount of controversy and concern in Canada. Many in the Canadian government and general public felt that the time had come for Canada to stake a claim of sovereignty in the region. The move was viewed as necessary not only for potential economic benefits but as compulsory for the pride and glory of the country. What follows are the details of Canada's two current claims regarding their sovereignty in the Arctic and the various steps they have taken to increase their control and presence in the region.

Areas of Conflict: Overlap or Potential

Canada's first territorial claim in the Arctic waters concerns the Beaufort Sea, and conflicts with the claims of the United States. The Beaufort Sea is the body of water

located west of Canada's Arctic Archipelago and lies above the Canadian-Alaskan border. The disagreement in the region stems from divergent interpretations of an 1825 treaty between Great Britain and Russia (International Boundaries Research Unit Note 6). Canada claims that the correct boundary should run along the 141st W meridian which would be an extension of the land boundary that was delimitated in the treaty. However, the U.S. argues that the 1825 treaty was meant to only govern the land boundary and cannot be applied to any territory beyond the water's edge. Instead, the U.S. is using the equidistance principle in support of their claims (Killaby, 2006). The conflicting positions have resulted in a territorial overlap of 7,000 nm^2 (IBRU, 2008).

In order to prove its claim regarding the Beaufort Sea, the Canadian government has begun programs mapping its continental shelf, and as of 2006 it has committed $51 million to the project. While the research for this project is ongoing, it would appear that there is early indication the ruling might go in Canada's favor. Jacob Verhoef, Canada's federal scientist in charge of their mapping project, claims that "'The entire Beaufort Sea -- all the way up to the north -- is covered with significant amounts of sediments, which makes our case look very promising'" (Boswell, 2008). According to Verhoef and Canada, the Beaufort Sea's ocean floor is covered with sediment and silt, hundreds of meters thick, which has been flowing out of the Mackenzie River for "over tens of thousands of years" (Boswell, 2008). Under UNCLOS rules, this sedimentary evidence would constitute a sufficient legal extension of Canadian territory in the Beaufort.

Canada's second territorial claim in the Arctic also involves an extension of its continental shelf and pertains to the Lomonosov Ridge, an underwater mountain chain which spans the Arctic Ocean. In addition to his duties in the Beaufort, Verhoef has also

been charged with the task of proving Canada's connection to the Lomonosov Ridge through Ellesmere Island, Canada's northern most land extension. In this claim Canada is going up against Russia and Denmark who are also laying claim to the underwater mountains. Initially, the Canadian claims of the Lomonosov Ridge seemed to be a stretch, but Verhoef and his team have been working hard to prove there is validity to Canadian Arctic claims. The Canadian scientists presented evidence at a conference in Norway which suggested a "clear geological links between Ellesmere Island and the Lomonosov Ridge" (Boswell, 2008). If these findings are true it would be a tremendous victory for Canada's territorial claims in the Arctic, as the Lomonosov Ridge would extend Canada's territory to the edge of the North Pole. However, it was Canadian scientists presenting evidence for a Canadian claim so in all likelihood, as with the evidence regarding the Beaufort Sea, the data and findings could be skewed to fit their argument. Nevertheless, Canada is hoping that it will be able to find more proof in order to make both of their claims undeniable in the eyes on the United Nations and international community.

Canada has also come into conflict with Denmark over sovereignty rights in regards to Hans Island. This is the literal piece of rock—the island is no more than half a square mile in area—which sits in the Nares Strait between Canada's Ellesmere Island and Denmark's Greenland (Killaby, 2008). The island has been under contention since the early 1970s, but the issue has been left unresolved because the island is precariously situated directly on the continental shelf boundary which separates Greenland from Canada's Arctic islands (US Department of State, 1976). But the developing events in the Arctic have led the respective governments of Canada and Denmark to renew their

heated and tense debate over the unpopulated landmass. Serving as an exemplar of the extent to which Arctic countries will go to defend their interests, in the summer of 2005 the Canadian military conducted *Exercise Frozen Beaver* in which Arctic Rangers landed on Hans Island and substituted the Canadian flag for the Danish flag, which had been erected in 1984 by Danish Minister Tom Hoeyem (BBC, 2005). In addition, the Rangers also placed a plaque which declared Hans Island Canadian and constructed an Inuit stone marker known as an *inukshuk* (Killaby, 2008). A week later the Canadian Minister of National Defense, Bill Graham, accompanied the military to Hans Island in what he described as part of his tour of Canadian installations located in the Far North (Killaby, 2008). During the visit Graham strengthened the Canadian push for sovereignty over Hans Island saying: "Our position has consistently been that it's Canadian" (Globe and Mail, 2005). These visits caused a considerable uproar in Denmark, which has consistently rejected Canada's assertions over the tiny island. But apart from formal objections and continued back and forth visits by both countries, no significant changes have occurred. As of now, Canada and Denmark are content to agree to disagree.

Likely Future Course of Action

In order to strengthen their territorial claims and sovereignty in the Arctic, Canada has expanded their surveillance and the presence of the Canadian Forces (CF) in the region. Canadian Prime Minister Stephen Harper outlined this strategy in a speech to the House of Commons in 2007 saying, "We're expanding our military and coast guard presence into the High Arctic and improving our surveillance capacity, including strengthening the Arctic Rangers." Harper emphasized that Canadian sovereignty and border security was not safe without this increase in military spending adding, "That's

why our government will continue rebuilding our long-neglected military, so our men and women in uniform are able to do the work we ask them to do… as safely and effectively as possible" (Stephen Harper speech, 2007). As a part of this rebuilding process the Canadian Navy is developing an Arctic/Offshore Patrol Ships (A/OPS). "The primary tasks of the A/OPS would be to conduct sea-borne surveillance operations in Canada's EEZs, including the Arctic; provide cross-governmental situation awareness of activities and events in the regions; and cooperate with other elements of the CF and other federal government departments to assert and enforce Canadian sovereignty, when and where necessary" (BG–07.023, 2007).

As a part of its increased observation of the Arctic, Canada has started the Polar Epsilon project which is a space-based system being "developed to address the need of the CF to improve surveillance capabilities over the Arctic and other large areas of responsibility" (BG-08.001, 2007). Valued at $60 million dollars, this project is intended to improve supervision of Canada's Arctic region which has been hampered in the past due to poor technology. However, the Polar Epsilon project is able "to provide all-weather day/night surveillance" and is capable at detecting and tracking foreign vessels in Canadian territory. This improved technology will allow Canada to strengthen its sovereignty in the North, monitor passage of ships in waters it considers to be 'internal', and which will provide a foundation for solidifying territorial claims in the region.

C. **DENMARK**

Current Extent of Recognized Territory

Denmark maintains sovereignty over mainland Denmark, Greenland, and the Faroe Islands. In reference to arctic territories, the continental shelf of Greenland and the

Faroe Islands are the territories of importance. Greenland lies between Canada, Norway, and Iceland. Denmark has agreed upon boundaries between these countries in the majority of their neighboring exclusive economic zones (EEZ). The main areas for potential claims lie outside of Greenland's EEZ and the neighboring countries' EEZ.

Denmark's Potential Claims

Denmark currently holds the "responsibility for the defense of Greenland and its EEZ" (Killaby, 2006). This means that they are able to exploit "Greenland's natural resources" (Killaby, 2006). While there is potential for the "mining of gold, diamonds, and water from icebergs," the "greatest prize" lies on Greenland's continental shelf where the oil and gas reserves exist (Killaby, 2006). Since Denmark ratified the UNCLOS in 2004, they have until 2014 to submit their claims of continental shelves beyond 200 nautical miles to the CLCS. Denmark has a right to make claims in "five potential areas off Greenland and the Faroe Islands" (Marcussen, 2004). These five areas are south, north-east, and north of Greenland as well as north-east and south-west of the Faroe Islands.

The three potential areas off of Greenland include Eirik's Ridge, the Losmonov Ridge, and the East Greenland Ridge. The Eirik's Ridge is on the southern part of Greenland near Canada and the Labrador Sea. The Eirik's Ridge is "assumed to be a natural prolongation," which is one of the key points in a claim to the CLCS. With this and the existence of "sedimentary successions between Greenland and Canada," there is a "basis for a claim far out into the Labrador Sea" (Marcussen, 2004).

The potential claim on the north-east side of Greenland is between Greenland, Jan Mayen, and Svalbard. The East Greenland Ridge is "assumed to be a natural prolongation of north-eastern Greenland" (Marcussen, 2004). Again, the appearance of "sedimentary successions" exist on the "north and south of the ridge, are likely to contribute to the claim area" (Marcussen, 2004). This area is in the northern part of the Banana Hole, yet is outside of the continental shelf claims from Norway's submission to the CLCS in 2006 (IBRU, 2008).

The potential claim to the north of Greenland spreads all the way to the North Pole. This claim would involve the "Lomonosov Ridge and the Morris Jesup Rise" which are "assumed natural prolongations of northern Greenland" (Marcussen, 2004). If "thick sedimentary successions" are shown in the Amundsen Basin, then there may be a possibility to "enlarge the potential claim area" (Marcussen, 2004). In its 2001 submission to the CLCS, Russia claimed the Lomonosov Ridge stating that they should "have sovereign rights over the natural resources of the shelf" (Powell, 2008). In 2007, Russia "embarked on a mission to the Lomonosov Ridge," and planted a Russian flag "on the seabed below the North Pole" (Powell, 2008). The initial claim by Russia to the CLCS was not upheld as they advised Russia to "conduct further research" on the Lomonosov Ridge (Powell, 2008). The Lomonosov Ridge is likely to be a place of great debate in the UN, as Denmark and Russia also both want to claim the area as theirs.

The two potential claims around the Faroe Islands lie to their north-east and south-west. The potential claim to the north-eastern area is based on "basaltic rocks" that "reach far offshore on the continental shelf" (Marcussen, 2004). The potential claim to the south-western area off of the Faroe Islands is based on the "assumption that the

Faroe-Rockall Plateau constitutes a micro-continent" (Marcussen, 2004). Great Britain, Ireland, and Iceland have also "made individual designations for the same area" in the south-western area (Marcussen, 2004). This means that the potential claims off of the Faroe Islands will be contested by multiple countries, and will be harder to make than some of the claims off of Greenland.

Areas of Conflict: Overlap or Potential

There are two areas of potential conflict for Denmark. The first area is with Canada over Hans Island, and the second area of potential conflict lies north of Greenland. The area north of Greenland is an area where Denmark and Russia may have overlapping claims.

Hans Island Dispute

Hans Island is an uninhabited island in between Canada's Ellesmere Island and Greenland. This small island, measuring only "1.3 square kilometers," is claimed by "both Canada and Denmark" (Carnaghan, 2006). Canada's claim dates to 1971 when they "first claimed sovereignty over Hans" while in discussions over the "boundary between itself and Greenland" (Stevenson, 2007). Denmark has disputed this claim on the basis that Hans Island "was discovered by Hans Hendrik," an Inuit from Greenland, the island contains "geological similarities" with Greenland, and that the native Inuits from Greenland "may have used the island in the past" (Stevenson, 2007). The 1973 Delimitation Treaty between Denmark and Canada determined the "delimitation of the continental shelf between Greenland and Canada" (Carnaghan, 2006). With both sides at

a stalemate over Hans Island, the Delimitation Treaty failed to address the issue. In an effort to solidify their claims to the island, Canada conducted "research trips" in 1981 and 1983 (Stevenson, 2007). After Canada had done this, the Danish responded by "planting a Danish flag on the island" and starting a "new visitor tradition by leaving a bottle of aquavit behind" (Stevenson, 2007). The Danish military came back to the island four times between 1988 and 2003, "planting a new Danish flag" each time they came (Stevenson, 2007). Then in 2005 when Canadian armed forces went to Hans Island, they "planted a Canadian flag and built an Inukshuk" (Stevenson, 2007). These inflammatory movements by both Canada and Denmark are a cause for concern.

Currently, the dispute remains unresolved. The inability of Canada and Denmark to come to an agreement on Hans Island during the negotiations for the Delimitation Treaty in 1973 has led to these frequent visits and flag planting by both countries. With the bilateral talks failing and an escalation of movements by both countries, a possible solution to the problem would be to go to arbitration by a third party. The International Court of Justice "has become a more popular choice of late" for a third party arbitrator (Stevenson, 2007). While the International Court of Justice views "territorial claims backed by a treaty" as the most important aspect, in this case neither country has a clear claim backed by a treaty (Stevenson, 2007). This means that the International Court of Justice would look at the "customary use" of the island to see if either country has "established effective control" over the island (Stevenson, 2007). With neither country establishing effective control, the International Court of Justice would likely divide ownership in an "equitable" manner (Stevenson, 2007).

The Hans Island dispute between Canada and Denmark will likely be settled through a bilateral agreement in which concessions are made in order for one country to claim the island, or through a third party arbitrator which would likely result in a form of split ownership over the island.

North of Greenland

As stated, Denmark has the potential to claim the area north of Greenland extending out to the North Pole. This claim overlaps in parts with the Russian claim that was submitted to the CLCS in 2001 (IBRU, 2008). The area could also be disputed with Canada, as they also have potential claims to the Lomonosov Ridge (IBRU, 2008). If the median line is used between Canada's and Greenland's continental shelves, then there will be no dispute between the two countries (IBRU, 2008). The conflict over the Lomonosov Ridge would then be between Greenland and Russia, and Canada and Russia. Neither of the disputes over the Lomonosov Ridge or the North Pole will likely be settled before Canada and Denmark submit their claims to the CLCS.

Likely Future Course of Action

After Denmark submits their claim to the CLCS, they will likely pursue a policy of negotiations based on the recommendations of the CLCS. In regards to the Southern Banana Hole off of the Faroe Islands, Denmark has formed an agreement with Norway and Iceland (Raaen, 2008). This agreement suggests that Denmark is willing to negotiate with other countries as a primary policy, and that they are willing to seek the recommendations of the CLCS. This agreement also suggests that none of the potential

disputed areas will begin to be resolved until after the CLCS has made a recommendation on the area.

Since Denmark has not submitted their claim to the CLCS, there is the possibility for future claims and potential disputes. One possible way for this to occur would be through the discovery of new bathymetric information that expands the claims of an arctic state. Any new information that provides additional claims to an arctic country could have an impact on Denmark's claim. No new disputes will likely arise until both Canada and Denmark submit their claims to the CLCS. Once the submittals are received, the continental shelf claims in the arctic will have been submitted by all the arctic signatory states of the UNCLOS. The next step in the process will be the recommendations of the CLCS. The final step will be how the countries accept the recommendations. This is where negotiations could break down, and armed conflict could result.

D. **NORWAY**

Current Extent of Recognized Territory

Norway possesses sovereignty over the mainland of Norway, Jan Mayen Island, and Svalbard. In addition to these areas, Norway submitted their claim to the Loop Hole, Banana Hole, and the Western Nansen Basin to the Commission on the Limits of the Continental Shelf (CLCS) in 2006 (United Nations, 2006). The claimed exclusive economic zones and continental shelf in these areas represent an area that is six times larger than the Norwegian mainland (Pedersen, 2006). The actual amount of territory

Norway will be able to gain is less clear due to competing claims in Svalbard, the Loop Hole, and the southern area of the Banana Hole.

One of the areas in Norway's claim is the Western Nansen Basin. The Western Nansen Basin is an area in the Arctic Ocean north of Svalbard, west of Greenland, and crossing the Russian median line (United Nations, 2006). The Western Nansen Basin is the smallest of the three areas Norway claimed as part of their continental shelf. The eastern part of this claim, that crosses the median line between Norway and Russia, does not overlap with any Russian claims on the continental shelf (IBRU, 2008). The exact lines have not been drawn yet, as both countries have agreed to wait on the recommendation of the CLCS.

Areas of Conflict: Overlap or Potential

The actual amount of territory Norway will be able to gain through their submission to the CLCS is unclear due to the Svalbard controversy and competing claims in the Loop Hole, the southern area of the Banana Hole, and parts of the Western Nansen Basin.

Svalbard Controversy

Norway was "granted sovereignty" to Svalbard through the 1920 Svlabard Treaty (Pedersen, 2006). While this treaty gave Norway sovereignty over the island, it also provided "treaty parties equal rights to Svalbard resource exploitation" (Pedersen, 2006). This aspect of the treaty is what created the controversy over who controls the EEZ and

continental shelf of Svalbard. The conflict over rights to the EEZ and continental shelf of Svlabard is seen as a "judicial dispute" (Pedersen, 2006).

The interpretation of the 1920 Svalbard Treaty is where the two sides disagree. Norway believes that since the treaty only explicitly discusses equal exploitation rights in the territorial sea, it "has no relevance" outside of this area (Pedersen, 2006). In order to strengthen this assertion, Norway established a four mile territorial sea for Svalbard. By establishing a specific territorial sea for Svalbard, Norway "sought to restrict the geographical area to which the 1920 Treaty applied" (Pedersen, 2006). Since the 1920 Treaty gave equal exploitation in the territorial sea, Norway's attempt to define this area would allow them to gain complete control over the EEZ and continental shelf of Svalbard. Norway believes that this is valid, as they assert that "any restrictions on sovereign rights must be stated clearly and unambiguously in the original Svalbard Treaty text" (Pedersen, 2006). There is a justification for this position, as the Spitsbergen Commission Report from the 1919 Paris Peace Conference states that "all restrictions on Norwegian sovereignty over Svlabard are stated in the Treaty" (Pedersen, 2006). This position suggests that Norway should possess exclusive rights to resource exploitation in the EEZ and continental shelf of Svlabard. Another point Norway argues is that Norway has "been awarded 'full and absolute sovereignty' as opposed to a mandate over Svalbard," which means that Norway receives the "LOS Convention privilege of exclusive rights to such ocean areas" (Pedersen, 2006).

While Norway takes a very literal view of the 1920 Treaty, others take a more interpretive stance. Countries, like Iceland and Russia, who oppose Norway's stance on the 1920 Treaty, claim that Svalbard "has its own continental shelf and that the

nondiscrimination principles" apply "to the adjacent shelf" (Pedersen, 2006). They then take this argument out further suggesting that since the nondiscrimination principles of the treaty "explicitly applied to all legal maritime areas known 85 years ago," it should be applied to "areas added to Svalbard through the development of international law" (Pedersen, 2006). The prevailing international opinion is that Norway maintains "full sovereignty over Svalbard and its jurisdiction in the maritime areas around" it, and that the "Svalbard Treaty provisions must apply to these areas" (Pedersen, 2006). This stance gives Norway sovereignty to the EEZ and continental shelf, yet it still allows for the exploitation of the 1920 Treaty signatory states. The stance also has a way of getting around Norway's counterargument that the treaty did not allow for any restrictions on Norway's sovereignty over Svalbard that was not stated in the treaty, by recognizing Norway's full sovereignty.

After Norway submitted their claims to the CLCS, Spain wrote a note to the commission stating its stance that the "principles of liberty of access and nondiscrimination" apply to the continental shelf of Svlabard "within and beyond a distance of 200nm (Permanent Mission of Spain, 2007). Norway countered in a note to the commission stating that the interpretation of the 1920 Treaty has "no bearing on the work of the commission" (Permanent Mission of Norway, 2007). Norway's stance here is that the interpretation of the 1920 Svalbard Treaty is a judicial issue that has nothing to do with how the continental shelves are divided. The determination of access to the continental shelf, Norway asserts, can be made after the commission identifies the outline of the continental shelf.

Loop Hole

Norway's claim in the Loop Hole of the Barents Sea overlaps with Russian claims in the area (IBRU, 2008). The Loop Hole is the area in the Barents Sea outside of the EEZs of both Norway and Russia (IBRU, 2008). The Loop Hole is about 155,000 km² in area, and is "highly rich in natural resources" (Raaen, 2008). The overlapping claims in this area are due to different interpretations of how to draw boundary lines.

Norway argues for a median line, while Russia argues for a sector line. Norway's argument for a median line is justified by "Article 6 of the Convention" where it states that "in the absence of agreement," or unless there are "special circumstances, the boundary is the median line" (Raaen, 2008). Norway's view is further supported by Article 75 of the UNCLOS, which states that "the delimination of EEZ between states with opposite or adjacent coasts shall be effected by agreement" (Raaen, 2008). This was article was created "to achieve an equitable solution" between the neighboring states (Raaen, 2008).

While Norway uses the median line, Russia argues that there are "special circumstances" that call for an alternate boundary line. The Russians argue that the "sector principle" applies in the Loop Hole, which would "draw a line straight from the westernmost point of Russian territory to the North Pole (Raaen, 2008). A sector line would grant Russia the entire Loop Hole, as well as some of Norway's EEZs that do not overlap with Russian EEZs (IBRU, 2008). Russia claims that "the area's military-strategic significance and a Soviet decree from 1926 which first laid claim to the sector principle" constitute special circumstances (Raaen, 2008). The sector line proposed by Russia seems to be overly ambitious in what would not be, by any means, a fair and equitable solution.

Southern Banana Hole

The Southern Banana Hole is the region in the Norway Basin between the mainland of Norway, Jan Mayen, Svalbard, Iceland, and the Faroe Islands (Denmark). This is where the mainland of Norway, Jan Mayen, the Faroe Islands, and Iceland all have competing claims to the continental shelf (United Nations, 2006). In 2006, a "procedural agreement on how to delimit" the area was reached (Raaen, 2008). The procedure is to "wait for the recommendations by the CLCS" and generate a "final delimitation" based on these recommendations (Raaen, 2008). Figure 1 shows how the agreement is broken up into three main areas. The quadrilateral ABCF is the area between Norway and Iceland, the quadrilateral FCDE is the area between the Faroe Islands and Norway, while the AEDCB area appears to belong solely to Norway (MFA, 2006). As a result of the agreement, all three countries (Norway, Iceland, and Denmark) have agreed to submit this dispute to the CLCS for their recommendations (Raaen, 2008).

Likely Future Course of Action

Norway is likely to pursue settle their disputes after the recommendations from the CLCS have been provided to them. In regards to the Banana Hole and the Western Nansen Basin, Norway has already agreed to wait for the recommendation from the CLCS (United Nations, 2006). The situation is different in both the Barents Sea and Svalbard.

In the Barents Sea, Norway's "historical skepticism towards establishing a bilateral relationship with Russia" could slow the process (Raaen, 2008). This skepticism

also makes it important for Norway to maintain their key allies such as the US and Germany in negotiating with Russia (Raaen, 2008). Norway's bargaining power is further compromised by their "more pressing" desire to exploit the natural resources in the disputed area (Raaen, 2008). While Russia has vast amounts of productive oil fields, Norway is in "need of access to new areas" (Raaen, 2008). This makes an immediate resolution to the solution more desirable for Norway. This desire lowers Norway's bargaining power as Russia can decide to stand firm in their position and refuse to negotiate with Norway unless they agree to a more favorable solution for Russia.

In Svalbard, Norway holds a different policy that does not involve negotiations. Norway "sees no need to initiate a negotiated settlement" in Svalbard (Pedersen, 2006). Norway is taking a hard stance in this area, and has no reason to negotiate with another country. While other countries are challenging Norway, both countries must agree to take the issue to the International Court in order for the court to take the case. Norway will likely not agree on this as they assume sovereignty over the issue.

III. UNITED STATES & UNCLOS

In many ways, the US embodies the historic debate over UNCLOS, and also encompasses the future of the regime as a dispute-resolution mechanism. As a non-signatory, will the US submit to international regime rules and formalize the treaty? Or will the United States insist upon no international oversight of areas of 'national interest'? While a warming climate has the potential to open up new resources in the Arctic and new shipping lanes offer considerable economic promise, it is important to note that the Arctic is not simply free territory to be claimed by the first person that plants

a flag there. “The United Nations Convention on the Law the Sea is the comprehensive multilateral regime that applies in the Arctic” (Corell, 2008). Even so, these new discoveries have set off a kind of underwater land grab, with Arctic countries petitioning the Commission on the Limits of the Continental Shelf for the rights to add these areas to their respective EEZs.

The United States is among the countries that believe they have a stake in this Arctic sweepstakes, though it alone is a non-signatory country to the UNCLOS. In 2008, the US government spent $5.6 million to prove that the United States’ continental shelf off Alaska extends beyond the 200-mile EEZ limit. This research, conducted by the US Extended Continental Shelf Project (ECSP), a task force made up of 11 different agencies, has been ongoing since 2001 in anticipation of the ratification of the Convention. In addition to sending cruises to map the arctic seafloor, the US ECSP also conducts seafloor-mapping research off the Atlantic East Coast, the Gulf of Mexico, the Gulf of Alaska, in the Bering Sea, Kingman Reef, and the Marianas Islands.

However, by not being a signatory state to the UNCLOS, the US does not have access to the forum in which their claim could be protected. Despite being deeply involved in the initial actions that led to the creation of UNCLOS, the United States has yet to ratify the treaty. The treaty was attacked by President Reagan as, “socialism run amok” and a “third world giveaway” (Salvaging the Law of the Sea, 1994). Conservatives strongly dissent with the claim made by the Convention that seabed wealth beyond territorial limits is the world’s common heritage. Their basic position is, “if that wealth belongs to everybody, why is anybody’s permission needed to reap it?” (*cf.* Salvaging the Law of the Sea, 1994). Yet there is significant area north of current

holdings off the Alaskan North Slope that could be solidified, and claimed as within American territorial limits. And this seems to be at the heart of the shift away from such a hard-line Republican position: other countries are extending the delineation of their territory, and less is being left as 'common heritage'.

President George H. W. Bush's administration revived negotiations to get the Convention closer to passage. President Clinton signed the treaty and sent it to Congress, where it was not deemed suitable for accession by a Republican-dominated Congress. President George W. Bush has also attempted to push the Convention through Congress and had been a proponent of the treaty. On his last day in office, President George W. Bush enacted National Security Presidential Directive 66. This directive reiterated President W. Bush's desire to join the convention and stressed the urgency of doing so. The directive also acknowledges the fact that most known fuel deposits are outside US jurisdiction and emphasized the need for the access and development of said fuel to be balanced. While the Obama administration has not yet taken a defined stance on ratifying the Convention it is believed by many that such ratification is only a matter of time. For example, Secretary of State Clinton has already expressed her strong support for the convention and her desire to see it passed as soon as possible.

Many conservatives however, still support Reagan's view that the Convention has too much power for an "unaccountable international bureaucracy" and that it represents "a dramatic step towards world government" (Lloyd's List 2007). Perhaps the biggest reason explaining why the United States government has not accepted UNCLOS is the fact that Republicans, for the most part, are strongly opposed to the Convention, are notoriously anti-international government, and have controlled Congress for a long time.

Nonetheless, the time may have finally come for the US to join the more than 150 countries - including the other 4 Arctic nations - that have already ratified the Convention. With most of the issues with the Convention either being resolved through amendments or being dismissed as ideological, many opponents of the treaty are now in support of it. The US government has been abiding by the treaty for close to twenty years without actually being an official member. Though this keeps the US from being held accountable by the judicial system of the Convention, it also excludes them from the Commission on the Limits of the Continental Shelf, which could potentially grant more seafloor territory to the United States. As evidenced by the map published by Durham University's International Boundaries Research Unit (IBRU), the US could potentially claim enough territory to nearly double its current holdings in the Arctic.

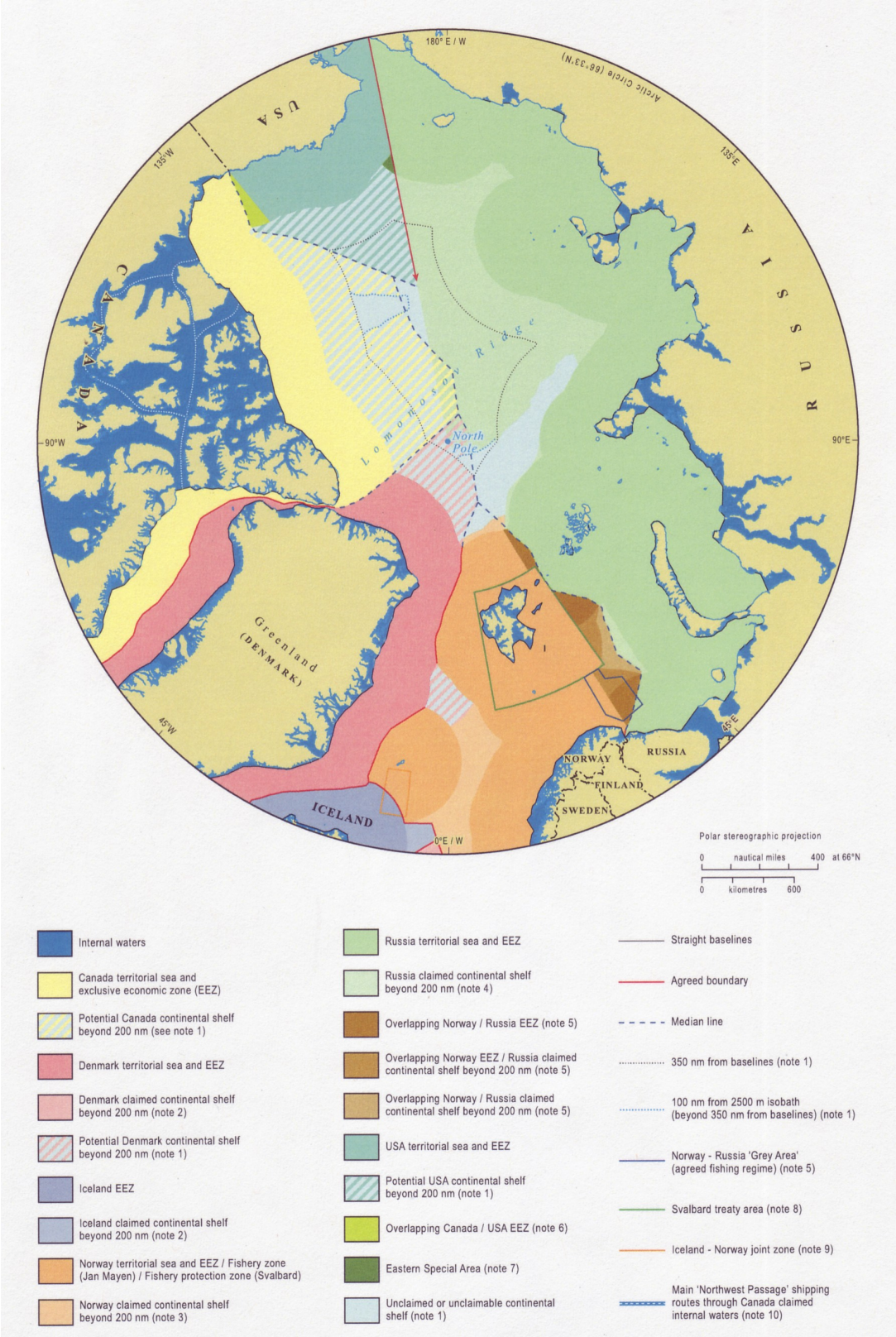
While the US debates whether or not the Convention would undermine US sovereignty, Russia, Canada, and the other Arctic nations are doing all they can to prove that these newly available Arctic territories belong to them. By waiting to ratify the Convention the US risks losing potential territory to countries that are already operating under the treaty, specifically Canada. Case in point, in the Beaufort Sea there is an area where the EEZs of the US and Canada overlap. Predictably, the two countries have differing opinions on how the area, which covers more than 7,000 square nautical miles, should be demarcated. Canada argues that the treaty signed between Russia and the UK in 1825, defining the boundary as following the 141° west meridian "as far as the frozen ocean," should stand. The United States position is that since no boundary was ever negotiated between Canada and the US, the boundary should run along the median line between the two coastlines. This is the kind of territorial dispute the US stands to lose by

not ratifying the Convention. With other countries aggressively staking claims in the Arctic, the question among many is becoming: how long can the US afford to wait before ratifying the treaty?

One answer is that in order to have a legitimate say in the dividing up of the newly available Arctic resources, "the United States should ratify the Law of the Sea Convention as soon as possible" (Stevens, 2008). Almost all opposition to the Convention can be attributed to old-guard politics and irrational distrust of international organizations like the United Nations. "The Law of the Sea Treaty has a diverse and bipartisan group of experienced national backers, including military leaders, environmentalists, ocean industries, think tanks and political figures who recognize and support the pressing need to sign this treaty" (Watkins & Panetta, 2008). The US government needs to shuffle loose their self-imposed shackles and take their place at the table they helped build. By doing so, the US would not only be able to further its own goals in relation to the Arctic scramble but also take on a leadership role in the international negotiations; failure to do so will likely result in a loss of claimable Arctic territory. With a looming deadline for signatory states to submit claims to the Commission of the Limits of the Continental Shelf (early adopters have until May of 2009) and the possibility of the US ratifying the Convention, what does the future hold for the Arctic, and what does this portend for other areas of seabed territorial contestation?

IV. Projections, Precedent & IR Application: (In Progress)

Appendix 1: Maritime Jurisdiction and Boundaries in the Arctic Region



Source: IBRU, Durham, UK: http://www.dur.ac.uk/ibru/resources/arctic/

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