Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims

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This article reviews the codification of the international standard for maritime territorial claims, the United Nations Convention on the Law of the Sea (UNCLOS), in context of a transformation in the concept of territorial sovereignty. Shifting climate conditions, new technologies for oil extraction, and increasing international demand—factors that make expensive extraction more viable—have recently created a “Scramble for the Arctic,” featuring competing maritime claims by Russia, Canada, Denmark, Norway and the United States. As territorial disputes are one of the most common correlates to militarized conflict, potential insight for avoiding war through a neoliberal institutional framework is of interest. The resolution of the “arctic scramble” also holds a precedent-setting promise, as there are similar pending crises in Antarctica and contentious territorial claims in the South China Sea. Will these nations observe the rule of international law and dispute resolution procedures set forth in UNCLOS, or will we observe a twentieth century neo-imperial echo to the Scramble for Africa?

Introduction: A Revolution in Sovereignty

Sovereignty has, at least since 1648, been at the heart of the modern international state system. While Stanley Benn outlines seven various meanings of sovereignty, each definition centers upon internal political order and an external demarcation via borders. Similarly, F. H. Hinsley emphasizes the strict demarcation of internal versus external absolute political authority in his definition: “The idea of sovereignty was the idea that there is a final and absolute political authority in the political community . . . and no final
and absolute authority exists elsewhere." While the sovereign nation state is not, nor has ever been, the only possible governing arrangement, it has been the most dominant. Yet we seem to be in an era when notions of strict territorial sovereignty and the monopoly of authority of the territorial nation state are eroding.

In fact, Daniel Philpott argues that in the post-Cold War era, the international system is undergoing yet another “revolution in sovereignty,” one in which international institutions are able to circumscribe the sovereign authority of the nation state. For example, the United Nations attained executive authority to enforce human rights standards and has created standing courts to enforce international principles of justice. States have become subject to outside enforcement of human rights practices, and these practices have been increasingly used to justify multinational intervention, as the recent multilateral NATO intervention in Libya demonstrates. We are seeing a movement in the conception of sovereignty, “toward the circumscription of the sovereign state, and it gives constitutional authority to institutions other than the state, and enables states to have oversight into one another’s affairs.” No longer is the sovereign territorial nation-state always the paramount responsible party to affairs within its own territory.

There are two permutations of this ongoing erosion of strict territorial sovereignty. The first has to do with the types of events that permit external circumscription of sovereign authority. Certainly, action taken by state agents that can be categorized as human rights abuses have become a common reason for international intervention. Yet action not taken by state agents also forms such a basis. The failure of states to live up to their obligations as a governing authority (i.e., failure to enforce laws, provide security, or otherwise control territory as a state is expected to do) is a means used to justify foreign intervention in an otherwise sovereign territory. This is perhaps most obvious in the “war on terror” and the multiple examples of cross-border raids without approval (the most notorious being the killing of bin Laden). Yet the usage of drones to target militants or terrorists in Yemen, Pakistan and elsewhere is not necessarily a new phenomenon (though the technology is), as “militarized manhunts” have long had a permissive effect for the violation of territorial sovereignty. In the age of terrorism and rise of non-state actor violence, securitization has become a mechanism of sovereignty violation. If a state cannot control actions from within its own borders, its failure becomes a permissive cause for other international agents to take action that, in any other context, would be paramount to an act of war.

A second way that territorial sovereignty is undergoing a revolution, and the primary concern of this article, is on the “territorial” side of the
equation. Quite literally, areas of territorial jurisdiction have been broadened. With regard to maritime issues, the United Nations Convention on the Law of the Sea (UNCLOS) embodies the new “layered sovereignty” that is present with regard to maritime borders. Since the seventeenth century, states with coastlines traditionally observed a three nautical mile “cannon shot” rule over what was considered territorial waters, with all water beyond this national boundary subject to the Grotian principle of *mare liberum*: free to all and belonging to none. This “freedom of the seas” principle came under assault in the twentieth century, as countries sought to extend control over proximate maritime natural resources. UNCLOS is the ultimate product of multiple law of the sea conferences and nearly a century’s worth of modification of the previous 3 nm standard. Signed in 1982, UNCLOS became effective in 1994, a year after it was ratified by a sixtieth UN member-state (Guyana).

**UNCLOS and Layered Maritime Authority**

UNCLOS fundamentally changes the exclusive nature of territorial sovereignty, because it defines multiple spheres of overlapping rights, responsibilities, and political authority. Specifically, the convention sets a defined maritime baseline (usually, the mean low-water mark) from which additional areas are defined. Internal waters are located on the landward side of the baseline, over which a state has full authority to set laws, regulate use, exploit resources, and limit foreign vessels. Territorial waters were extended to 12 nm seaward from the baseline, wherein the coastal state can set laws, regulate use, and exploit resources, but foreign vessels are allowed “innocent passage.” Beyond the 12 nm territorial waters, there is an additional 12 nm “contiguous zone,” within which the coastal state has additional rights to enforce laws regarding pollution, taxation, customs, and immigration. Extending 200 nm from the baseline, coastal states control an “exclusive economic zone” (EEZ) within which they maintain sole rights over all natural resources (e.g., fishing rights, mineral rights). Foreign nations maintain rights of navigation, overflight, and the ability to lay submarine pipes and cables. Finally, the “continental shelf” definition presents an opportunity to lay claims beyond the 200 nm limit, but never more than 350 nm from the baseline, or 100 nm beyond the 2,500 meter isobath. On the continental shelf, coastal states have the exclusive rights to harvest mineral and non-living material in the subsoil (e.g., oil). Thus, layers of sovereign authority exist beyond the shores of signatory states, balanced with the needs of others in the international community.
These layers of sovereign authority create an environment of “creeping jurisdiction,” in which state sovereignty is thickening over regions where jurisdiction is as yet incomplete. Yet creeping state jurisdiction encroaches upon the sovereign claims of other states, or more recently intergovernmental and nongovernmental organizations with an interest in reducing state claims, while making juridical claims of their own. As state sovereignty is “most diluted over the extended continental shelf, as states have only exclusive rights to the seabed and subsoil,” and these regions appear to be one of the last frontiers for oil exploration, it is likely that maritime...
disputes, conflict over aquatic “territory,” and contradictory boundary claims will likely require more involvement of international bodies in resolving these disputes, which are already emerging in the Arctic, East Asia and anywhere offshore oil exploration is ongoing.

Essentially, coastal states have a potential additional 200 nautical miles of territory beyond their shore, which then creates an incentive to claim offshore islands, atolls, or islets. Even uninhabitable rocks allow for the accordant extension of a claimant state’s 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. States now have regulatory authority in an adjacent “contiguous zone” out to 24 nm, and exert exclusive economic rights out to 200 nm, 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. Therefore, this is where much of the dispute around Arctic claims resides: what is the defined and recognized limit of the claimant’s continental shelf?

Apart from territorial delimitations, UNCLOS also creates a framework for handling other issue areas. For example, 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 port state may enforce any type of international environmental rule or national environmental regulation, 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, port states have tremendous regulatory power within their territorial seas, such that these seas are best viewed as extensions of sovereign territory.

Typically, the mechanisms for resolving disputes resulting from an international treaty are contained in a separate protocol. UNCLOS is unique in that the dispute-settlement mechanism is incorporated into the treaty, 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 the convention’s negotiations, many countries opposed 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 ensure peaceful settlements was to require states in advance to accept the rulings of judicial bodies. Finally, a compromise was reached. 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.”

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Inherently, UNCLOS is a regime instrument designed to obviate the very types of disputes that are emergent in the Arctic. The question, then, is whether this attempt at dispute resolution and mediation will prove successful as a neoliberal institutional constraint on great power interests, or will so-called “realist” visions of power-seeking international behavior emerge as dominant?

What becomes 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 is quite serious. The 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.

Countries and Extending Maritime Claims

Before beginning a discussion of various Arctic territorial claims, where knowledge of geographic landmarks and seabed descriptions is esoteric at best, a visual reference is helpful. One of the best visual representations of the regions is available through the International Boundaries Research Unit (IBRU) at Durham University [see Figure 2]. What becomes apparent
Figure 2. Illustration of International Boundaries

Source: International Boundaries Research Unit (IBRU), Durham University, United Kingdom.  
http://www.dur.ac.uk/ibru/resources/arctic/
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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 international relations theory: states gener-
ally seek to control territory as a defensive mechanism and prevent others
from controlling vital 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 a neoliberal-institutional vision of international rela-
tions is more appropriate for understanding state behavior in the modern,
globalized international environment.

Russia: Claims, Actions, & Areas of Potential Conflict

On 12 March 1997, the Russian Federation signed the United Nations Con-
vention on the Law of the Sea (UNCLOS), which came into effect in Russia
on 11 April 1997. The convention allowed Russia to claim its 200 nm Exclu-
sive Economic Zone (EEZ) along the Russian coastline abutting the Arctic
Ocean, providing Russia with more arctic marine area than any other coun-
try. In addition, in accordance with UNCLOS, Russia also has the ability
to make claim submissions to extend its EEZ boundary further north, which has
caused an increase in arctic seabed research.

Russia has signaled its intent to back up its claims through its military,
flexing its power through activities such as strategic bomber flights,
naval expeditions, and concerted expansion of the operational zone
of their northern fleet in order to show their intent on protecting
their interests in the Arctic.

However, since this claim has already been put forth, Russia is no
longer under an official deadline for resubmission, but is under competitive
pressure from other coastal arctic states. Russia has signaled its intent to back up its claims through its military, flexing its power through activities such as strategic bomber flights, naval expeditions, and concerted expansion of the operational zone of their northern fleet in order to show their intent on protecting their interests in the Arctic.

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 some boundary disputes with the Soviet Union in June 1990, other arctic countries have disputable territorial claims. Norway has the most extensive scope, as Russia and Norway have overlapping EEZs, but Canada’s and Greenland’s theoretical maximum also overlap with Russia’s 2001 claims. 17

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 nm² area is called the “Grey Zone,” in which both countries enjoy fishing access, but not mineral or hydrocarbon access. In its first submission, the Russian Federation included portions of Norway’s EEZ as part of its claimed continental shelf. Additionally, both have potential overlapping claims to continental shelves greater than 200nm from their shores. It is not likely that either country will receive full control over the area beyond their exclusive economic zones, but will instead split the territory on a midline based on their established proximity to the disputed area.

Denmark and Canada are in similar situations regarding overlap with Russian claims. Both countries are performing research on the Lomonosov Ridge, which could extend their maximum claims to slightly beyond Russia’s claimed limit. 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.

In 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. 18 The mission had two purposes: first, to collect samples of soil from the seabed directly beneath the North Pole, which is within the claims that Russia submitted to the commission and along the Lomonosov Ridge; and second, to place a one meter tall titanium Russian Federation flag, creating nationalist symbolism behind Russia’s claim and reinforcing its dedication to being a major power, both scientifically and economically, in the Arctic region.

Because of the suddenness of the claim by Russia, four other countries with a potential stake (Denmark, Norway, the United States, and Canada), and one without a stake (Japan), have submitted written responses to the Commission. Denmark and Canada have both refused to offer an opinion immediately after Russia’s submission, citing the necessity of additional and more specific data. 19 The remaining countries, the United States, Norway, and Japan, 20 have offered 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 overlapping claims along mutual borders, a “maritime dispute” that has not yet been settled and which could be problematic for both countries.\textsuperscript{21} 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. The official U.S. position advised:

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. A broad scientific consensus of the relevant experts... is critical to the credibility of the Commission and the Convention.\textsuperscript{22}

This statement 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. It also indicates that the United States is first deferring to the standards established in UNCLOS for dispute settlement, despite not being a signatory to the agreement.

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 resource potential. 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.

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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 percent of seabed geological features.\textsuperscript{23}

With the predicted melting of the polar ice caps, Arctic shipping routes are also likely to remain 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, or Northeast Passage (NEP). If Russia can provide services comparable to Canada’s, and similarly priced or cheaper transit fees for ships going through Russian “internal” waters, both countries can make shipping less expensive while gaining revenue from fees associated with international shipping, as well as cost-savings realized by shorter routes. The Russian Federation already owns the largest, although aging, fleet of icebreakers and has established 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 reach fifty percent when melting and thinning glaciers allow ships to navigate along a predetermined, straighter route.

However, using icebreakers is costly, and it is likely that the NEP will not be economically viable in the near-term, until 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. Presently, vessels cannot be wider than 30 meters, as they are limited by the width of the icebreakers they follow. These restrictions on vessels make it more economical to use current routes through less harsh environments. Currently, the NEP is used primarily for northern Siberian oil fields and to ship food and supplies to local communities, a practice subsidized by the Russian government due to high cost.

Canada: Claims, Actions, & Areas of Potential Conflict
Although the Canadian government has only recently stepped up the intensity and the extent of their claims of sovereignty in the Arctic, Canada has a history of similar assertions. Canadian made formal claims over the region 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 perceived “internal” waters caused controversy and concern in Canada. Many in the Canadian government and general public felt that the time had come for Canada to formally claim control of the region. The move was viewed as necessary not only for potential economic benefits, but as compulsory to regulate commerce in waters Canada viewed as “internal.”

Canada’s first territorial claim in the Arctic waters concerns the Beaufort Sea, and conflicts with a claim of the United States. The Beaufort Sea is 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. Canada claims that the correct boundary should run along the 141st W meridian, which would be an extension of the land boundary that was delimited in the treaty. However, the United States 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 United States is using the equidistance principle in support of their claims. The conflicting positions have resulted in a territorial overlap of 7,000 nm².

To bolster its claim, the Canadian government began mapping the continental shelf, and by 2006 had committed $51 million to the project.
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.” According to Verhoef, the Beaufort Sea’s 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. 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 that may span the Arctic Ocean. Here, Canada conflicts with Russia and Denmark, who also claim a portion of the underwater mountain range. Initially, the Canadian claims of the Lomonosov Ridge seemed to be a stretch, but Canadian scientists presented evidence at a conference in Norway suggesting “clear geological links between Ellesmere Island and the Lomonosov Ridge.” If upheld, these findings would be a 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.

Canada has also come into conflict with Denmark over sovereignty rights in regards to Hans Island. This island—roughly half a square mile in area—sits in the Nares Strait between Canada’s Ellesmere Island and Denmark’s Greenland. The rocky outcropping 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. 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. In addition, the Rangers also placed a plaque that declared Hans Island Canadian and constructed an Inuit stone marker known as an inukshuk. 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. During the visit, Graham strengthened the Canadian push for sovereignty over Hans Island, stating: “Our position has consistently been that it’s Canadian.” 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. Canada and Denmark continue to agree to disagree.

Denmark: Claims, Actions, & Areas of Potential Conflict

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).

Even though there has been a push for Greenland's independence, Denmark currently holds the responsibility for the defense of Greenland and its EEZ. 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. Since Denmark ratified UNCLOS in 2004, they have until 2014 to submit their claims of continental shelves beyond 200 nm to the Commission on the Limits of the Continental Shelf (CLCS). Denmark has potential claims in five potential areas off Greenland and the Faroe Islands. These five areas are south, northeast, and north of Greenland, as well as northeast and southwest of the Faroe Islands.

The three potential areas off of Greenland include Eirik’s Ridge, the Losmonov Ridge, and the East Greenland Ridge. Eirik’s Ridge is on the southern part of Greenland near Canada and the Labrador Sea, and 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.” The potential claim on the northeast 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.” Again, the “sedimentary successions” on the north and south of the ridge are likely to contribute to the claim area. 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.

The 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.” If “thick sedimentary successions” are shown in the Amundsen Basin, then there may be a possibility to enlarge the potential claim area. As Russian claims also center on this territory, the Lomonosov Ridge is likely to be a region of contestation, as Denmark and Russia also both claim the area as their exclusive territory.

The two potential claims around the Faroe Islands lie to their northeast and southwest. The potential claim to the northeastern area is based on “basaltic rocks” that “reach far offshore on the continental shelf,” and the potential claim to the southwestern area off of the Faroe Islands is based on the “assumption that the Faroe-Rockall Plateau constitutes a microcontinent.” Great Britain, Ireland, and Iceland have also made individual designations for the same area. This means that the potential claims off of the Faroe Islands will be contested by multiple countries, and will likely be harder to sustain than the claims off of Greenland.

There are two areas of potential arctic conflict for Denmark. The first is with Canada over Hans Island, and the second lies north of Greenland. Hans Island is an uninhabited island in between Canada’s Ellesmere Island
and Greenland. Denmark has disputed Canadian claims on the bases that Hans Island was discovered by Hans Hendrik, an Inuit from Greenland; that the island contains “geological similarities” with Greenland; and that the native Inuits from Greenland may have used the island in the past.\textsuperscript{37} The 1973 Delimitation Treaty between Denmark and Canada determined the delimitation of the continental shelf between Greenland and Canada. 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. 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.”\textsuperscript{38} The Danish military came back to the island four times between 1988 and 2003, planting a new Danish flag each time they came. These inflammatory nationalistic actions by both Canada and Denmark are a cause for concern.

Elsewhere, Denmark has the potential to claim the area north of Greenland, extending to the North Pole. This claim overlaps in parts with the Russian claim that was submitted to the CLCS in 2001. The area could also be disputed with Canada, as they also have potential claims to the Lomonosov Ridge. If the median line is used between Canada and Greenland’s continental shelves, then there will be no dispute between the two countries.\textsuperscript{39} 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.

\textbf{Norway: Claims, Actions, \& Areas of Potential Conflict}

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. The claimed exclusive economic zones and continental shelf in these areas represent an area that is six times larger than the Norwegian mainland.\textsuperscript{40} 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. The Western Nansen Basin is the smallest of the three areas Norway claimed, yet the eastern part of this claim crosses the median line between Norway and Russia, but does not overlap with any Russian claims on the continental shelf.\textsuperscript{41} Exact lines have not been drawn yet, as both countries have agreed to wait on the recommendation of the CLCS.

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. Norway was “granted sovereignty”
Scramble for the Arctic

to Svalbard through the 1920 Svalbard Treaty. While this treaty gave Norway sovereignty over the island, it also provided “treaty parties equal rights to Svalbard resource exploitation.” This aspect of the treaty is what created the controversy over who controls the EEZ and continental shelf of Svalbard.

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. 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. 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. 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 Svalbard are stated in the Treaty.” This position suggests that Norway should possess exclusive rights to resource exploitation in the EEZ and continental shelf of Svalbard. 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.”

While Norway takes a very literal view of the 1920 Svalbard Treaty, others take a more interpretive stance. 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. Norway takes this argument further, suggesting that the nondiscrimination principles of the treaty “explicitly applied to all legal maritime areas known 85 years ago,” and should be applied to “areas added to Svalbard through the development of international law.” 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.” This stance gives Norway sovereignty of 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. The determination of access to the continental shelf, Norway asserts, can be made after the commission identifies the outline of the continental shelf.

Elsewhere, Norway’s claim in the Loop Hole of the Barents Sea overlaps with Russian claims. The Loop Hole is the area in the Barents Sea outside of the EEZs of both Norway and Russia. The Loop Hole is about 155,000 km² in area, and is reportedly highly rich in natural resources. As with many maritime territorial disputes, the overlapping claims in this area are due to different interpretations of how to draw territorial 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 conven-
tion, where it states that “in the absence of agreement,” or unless there are “special circumstances, the boundary is the median line.” Norway’s view is further supported by Article 75 of the UNCLOS, which states that “the delimitation of EEZ between states with opposite or adjacent coasts shall be effected by agreement.”\(^47\) This article was created “to achieve an equitable solution” between the neighboring states.

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. Russia claims that “the area’s military-strategic significance and a Soviet decree from 1926 which first laid claim to the sector principle” constitute the special circumstances for this claim.\(^48\) A sector line would grant Russia the entire Loop Hole, as well as some of Norway’s EEZ that does not presently overlap with the Russian EEZ.\(^49\)

Finally, 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. In 2006, a procedural agreement on how to delimit the area was reached. The procedure is to wait for the recommendations by the CLCS, and to generate a final delimitation based on these recommendations. Reflecting the potential of UNCLOS and the ability of the CLCS to mediate territorial conflict, all three countries (Norway, Iceland, and Denmark) have agreed to submit this dispute to the CLCS for their recommendations.

**The United States and UNCLOS**

In many ways, the United States 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 United States 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. As H. Corell notes, “The United Na-
tions Convention on the Law of the Sea is the comprehensive multilateral regime that applies in the Arctic." Even so, new discoveries have sparked an underwater land grab, with Arctic countries petitioning the Commission on the Limits of the Continental Shelf (CLCS) 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 UNCLOS. In 2008, the U.S. 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 U.S. Extended Continental Shelf Project (ECSP), a task force made up of eleven 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 U.S. ECSP also conducts seafloor-mapping research off the Atlantic East Coast, the Gulf of Mexico, the Gulf of Alaska, in the Bering Sea, the Kingman Reef, and the Marianas Islands.

However, since the United States is not a signatory state to UNCLOS, it does not have access to the forum in which potential claims 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. President Reagan described the treaty as “socialism run amok” and a “third world giveaway.” Conservatives strongly dissent with the claim made by the convention that seabed wealth beyond territorial limits is the world’s common heritage. 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. This seems to be at the heart of the shift away from such a hardline 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 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, reiterating his desire to join the convention and stressing the urgency of doing so. The directive also acknowledged the fact that most known fuel deposits are outside present U.S. jurisdiction,
and emphasized the need for the access and development of this fuel to be balanced with other priorities. 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.” 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 maintain an ability to block treaty ratification in the Senate.

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While the United States debates whether or not the convention would undermine U.S. sovereignty, Russia, Canada, and the other Arctic nations are doing all they can to prove that these newly available territories belong to them. By waiting to ratify the convention, the United States risks losing potential territory to countries that are already operating under the treaty, specifically Canada. For example, the Beaufort Sea includes an area where the EEZs of the United States 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 United Kingdom 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 maritime boundary was ever negotiated between Canada and the United States, the boundary should run along the median line between the two coastlines. This is the kind of territorial dispute the United States stands to lose by not ratifying the convention.

In order to have a legitimate say in the dividing of the newly available Arctic resources, one approach is that the United States should ratify the United Nations Convention on the Law of the Sea as soon as possible. Almost all opposition to the convention can be attributed to old-guard politics and irrational distrust of international organizations like the United Nations. According to J. D. Watkins and L. E. Panetta, “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.” By ratifying the treaty, the United States would not only be able to further its own goals in relation to the Arctic Scramble, but also
take on a leadership role in international negotiations. Failure to do so may result in a loss of claimable Arctic territory and the resultant strategic resources.

Conclusions

From the foregoing discussion of the ongoing scramble for geographic position in the Arctic, we can draw some implications and lessons. The related issues of UNCLOS, the creation of new maritime "territory," an emergence of "layered sovereignty," and the potential for militarized conflict over territory or resources are not solely applicable to the Arctic. These are topics of discussion and contention in many maritime zones, so while the Arctic Scramble may be an interesting case in and of itself, there is external applicability to whatever lessons may be parsed from the neo-imperial territorial rivalries currently playing out in the far north.

Indeed, we derive five main contributions from the preceding case. First, with the ratification of UNCLOS and the creation of new marine zones beyond a territorial baseline, the international community effectively created "new" maritime territory that could be claimed by states. This new territorialization has resulted in a maritime "land rush," especially in regions with overlapping claims and extant (or merely believed) resources. This process is not limited to the Arctic, but at play anywhere neighboring states share access to the world's oceans. Furthermore, this process is not limited to a maritime environment. In many ways, it replicates the similar creation of new "property rights" (patents, copyrights, intellectual property) that are then regulated or defined through other IGOs, like the WTO. Property, like territory, is also being redefined, expanded, and created; IGOs play an important role in managing both.

Second, because of the layered nature of the new maritime zones (e.g., 12 nm territorial sea, 24 nm contiguous zone, 200 nm EEZ, potential to extend to 350 nm if continental shelf extends) and the variety of activities that the state can regulate in each zone, the concept of "layered sovereignty" is supplanting the traditional understanding of sovereignty as predicated on exclusion and political monopoly. Multiple states can have overlapping claims; the international community has rights in zones that can also be regulated by shoreward states; and organizations like the United Nations are then left to arbitrate. Again, this notion of layering is not exclusive to the maritime realm.

This "layered sovereignty" leads to the third point regarding UNCLOS: Precisely because UNCLOS is unique in its decision to include a dispute

By ratifying the treaty, the United States would not only be able to further its own goals in relation to the Arctic Scramble, but also take on a leadership role in international negotiations. Failure to do so may result in a loss of claimable Arctic territory and the resultant strategic resources.
settlement mechanism within the agreement, it is able to “self-regulate” challenges that would otherwise undermine the convention. By defining exactly how different maritime zones are measured (based on geological features), and then providing a dispute-resolution mechanism, we see national actors voluntarily complying and casting legal arguments explicitly based on the terms as defined by UNCLOS. For example, Russian claims—while expansive—are being made based on continental shelf measurements, geological features, and interpretations of maritime midlines. Similarly, other Arctic nations are basing their territorial claims on the framework provided by UNCLOS.

Precisely because UNCLOS is unique in its decision to include a dispute settlement mechanism within the agreement, it is able to “self-regulate” challenges that would otherwise undermine the convention. By defining exactly how different maritime zones are measured (based on geological features), and then providing a dispute-resolution mechanism, we see national actors voluntarily complying and casting legal arguments explicitly based on the terms as defined by UNCLOS. For example, Russian claims—while expansive—are being made based on continental shelf measurements, geological features, and interpretations of maritime midlines. Similarly, other Arctic nations are basing their territorial claims on the framework provided by UNCLOS.

As a result, the fourth insight provided by the “Scramble for the Arctic” and the legal wrangling of actors involved is more of a “big picture” application. This case of maritime competition seems to bolster a neoliberal institutionalist understanding of modern international relations behavior, which consequently undermines a traditional realist power-politics vision of global politics. Why? Because in a quest for territory and vital natural resources, powers (great and small) are voluntarily observing the rules, regulations, and processes of an IGO, rather than merely pursuing their own interests with no regard to the international community or legal propriety. Here, where we would expect to see Russia, for example, not be constrained in a pursuit of new territory and resources, we see instead that they and other Arctic actors are explicit in their deference to the framework of UNCLOS.
The United States alone seems to be the exception that proves the rule, yet it, too, is under pressure to ratify the treaty, even though the United States is already bound by the laws that are derived from UNCLOS becoming effective in 1994.

Fifth and finally, it does seem that UNCLOS reflects a larger sea-change in how the international community, and legitimate international governing bodies, can create frameworks for cooperative action, or at least limit the damage of non-cooperative action. As such, by including dispute-resolution mechanisms in future framework agreements, IGOs like the United Nations can productively expand into new or emerging areas of global governance. Accordingly, it does appear that the Arctic Scramble, and maritime disputes elsewhere, need not recall the imperial division of Africa. Rather, there appears to be widespread recognition and acceptance of UNCLOS as the legitimate framework for establishing, defining, deciding, and resolving disputes on maritime territorial issues.

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Notes

5 Philpott, Revolutions in Sovereignty, p. 260.
7 By international agreement, a nautical mile is exactly 1,852 meters. This equates to roughly 6,076 feet, or 1.15 miles.
8 UNCLOS established the International Seabed Authority as the designated authority responsible for controlling mineral and resource exploitation of the deep seabed in areas
beyond national jurisdiction. Also, UNCLOS contains a provision for landlocked states to be given a right of access to and from the sea, without taxation of traffic through transit states. This would be another circumspection of internal territorial sovereignty, if “paths to the sea” were to become widespread practice.


13 200 nautical miles equals roughly 230 miles.


15 Ibid.


20 Although Japan does not control arctic territory, Japan has an ongoing dispute over the “Four Islands” area that the Russian Federation also claims. The islands, located north of the main Japanese islands, have been disputed territory since the end of World War II. While both nations have laid claim, no talks regarding ownership have succeeded in allocating the territory. The issue arises from the maps the Russian Federation provided with their arctic claim submission, showing economic control of the Four Islands as belonging to the Russian Federation. Permanent Mission of Japan, “Notification regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf,” March 14, 2002, [http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_JPNext.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS_JPNext.pdf).


28 Ibid.
29 Killaby, “Great Game.”
32 Killaby, “Great Game.”
34 Ibid.
35 Ibid.
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38 Ibid.
39 IBRU 2008.
41 IBRU, 2008.
42 Pedersen, “Svalbard..”
43 Ibid.
44 Ibid.
45 Ibid.
46 IBRU, 2008.
48 Ibid.
49 Ibid.