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## **Race for the Arctic: Russia's Greatest Journey in our Time**

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### **Abstract**

As technology improves and Arctic sea ice melts, multiple nations are fixing their gaze on the natural resources in the Arctic Circle. Scientists project that the region encompasses 13% of the world's undiscovered oil reserves as well as 30% of the world's undiscovered natural gas reserves. If one nation is able to assert legal or practical dominance over the region and harvest even a fraction of those resources, that nation would secure its energy future for years to come while also creating an economic boom. Although the technology and ships necessary to harvest the crude oil and natural gas in the Arctic en masse are not ready yet, the legal claims cannot wait. The U.N. Convention on the Law of the Sea (UNCLOS) specifies time periods during which countries can submit claims for extensions of their continental shelves. Russia's legal claims are numerous and can be substantiated via UNCLOS if Russia can establish a link between its currently-recognized continental shelf and the submarine formations in the Arctic Circle. Current and potential claims from Canada, Denmark, Norway, and the United States are also examined, weighing their merits and likelihood of success against Russia's claims.

### **Keywords**

UNCLOS, Arctic Circle, Lomonosov Ridge, Russia, Law of the Sea.

## Introduction.

### Why We Should Care About Sovereignty in the Arctic

Many people imagine the Arctic as an empty snowy wilderness. In reality, it is a hub of untapped natural resources necessary to most of the planet's modern societies.<sup>1</sup> Countries with land territory north of the Arctic have already begun exploiting the wealth of natural resources in that region of the globe, establishing some of the world's largest zinc, gold, and nickel mines. The melting Arctic Circle also bodes well for the prosperity of plant life; Greenland hopes for a boom to agricultural production as temperatures rise.<sup>2</sup> Mineral mining and agricultural production aren't the only items of interest contained north of 66.56 degrees latitude North. Russia and the United States made substantial oil and natural gas discoveries in the Arctic in the 1960's, and to-date the Arctic Circle has

an estimated 61 oil and gas fields above-ground.<sup>3</sup>

What about the resources not yet discovered? What riches lie beneath the North Pole itself? Estimates vary by research institution, but the United States Geological Survey believes that the international sphere of ice and water that surrounds the North Pole above 66.56 degrees North latitude contains 13% of the world's undiscovered oil reserves and 30% of its undiscovered gas reserves.<sup>4</sup> To put those percentages in perspective, the Arctic Circle is estimated to hold roughly 90 billion barrels of oil and 1,670 trillion cubic feet of natural gas.<sup>5</sup> Given the economic value of these resources, it comes as no surprise that multiple nations with northerly provinces and territorial holdings have staked claims to the Arctic or plan to do so in the next few years. Russia is among those countries particularly interested in staking claims to the North Pole and the wealth in its polar bosom –

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1 Rosenthal, E., "Race Is On as Ice Melt Reveals Arctic Treasures", *The New York Times*, available at: <http://www.nytimes.com/2012/09/19/science/earth/arctic-resources-exposed-by-warming-set-off-competition.html?pagewanted=all>

2 "The Melting North", *The Economist*, available at: [www.economist.com/node/21556798](http://www.economist.com/node/21556798)

3 Budzik, P., "Arctic Oil and Natural Gas Potential", *U.S. Energy Information Administration, Office of Integrated Analysis and Forecasting, Oil and Gas Division*, available at: [www.eia.gov/oiaf/analysispaper/arctic/pdf/arctic\\_oil.pdf](http://www.eia.gov/oiaf/analysispaper/arctic/pdf/arctic_oil.pdf)

4 Bird, K. J., Charpentier, R. R., "Circum-Arctic resource appraisal; estimates of undiscovered oil and gas north of the Arctic Circle", *U.S. Geological Survey Fact Sheet FS-2008-3049*, 4 p.

5 *Ibid*, note 4, p. 4.

the aforementioned United States Geological Survey from 2008 noted that the West Siberian Basin in Russia is estimated to hold 3.7 billion barrels of undiscovered crude oil and 651 trillion cubic feet of undiscovered natural gas.<sup>6</sup> Those figures reveal that the West Siberian Basin province is believed to contain over one-third of the total undiscovered natural gas in the Arctic. Successful Russian claims to the Arctic would directly result in extensive scientific research and, eventually, an economic boom for the Russian Federation for decades to come. Although the technology needed to harvest this oil through the layers of ice is not affordable or practical to use yet,<sup>7</sup> receding ice and the shrinking number of untapped oil fields signify the importance of plans for national and economic security. Furthermore, claims on the Arctic cannot wait – as will be discussed later, countries must bring claims of geographical border expansion within a certain timeframe.

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6 Schenk, C.J., Bird, K. J., et al. (2008), "Assessment of undiscovered oil and gas resources of the West Siberian Basin Province", *U.S. Geological Survey Fact Sheet FS-2008-3064*, 2 p.

7 Eremenko, A., "Russia's Arctic Rush 'Potential Gravy Train' – Analysis", *RIA Novosti*, available at: [www.en.rian.ru/analysis/20121023/176850003.html](http://www.en.rian.ru/analysis/20121023/176850003.html)

The ability to claim the North Pole and substantial parts of the Arctic Circle has benefits outside of harvesting natural resources. As the polar ice caps melt, new shipping routes are opening up through the Arctic Circle.<sup>8</sup> Arctic sea-ice is reducing in thickness and breadth. Over the last 30 years, Arctic sea-ice has become 10-15% thinner and seen reductions up to 40% in certain areas.<sup>9</sup> The Northwest Passage, a corridor running directly north across the top of Canada, is becoming more hospitable to cargo vessels eager to cut miles off their journey.<sup>10</sup> The other major shipping lane, which ice melting will further enlarge, is the Northern Sea Route (NSR). Because of the unresolved sovereignty questions in the Arctic Circle, the Northern Sea

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8 Currie, D.E.J., "Sovereignty and Conflict in the Arctic Due to Climate Change: Climate Change and the Legal Status of the Arctic Ocean", *GlobeLaw*, available at: [www.globelaw.com/LawSea/arctic%20claims%20and%20climate%20change.pdf](http://www.globelaw.com/LawSea/arctic%20claims%20and%20climate%20change.pdf); "The Arctic Council and the International Arctic Science Committee. Arctic Climate Impact Assessment. 2004, Executive Summary", available at: [www.eoearth.org/article/The\\_Arctic\\_Climate\\_Impact\\_Assessment\\_\(report\\_summary\)](http://www.eoearth.org/article/The_Arctic_Climate_Impact_Assessment_(report_summary))

9 Ibid.

10 Kramer, A.E., Revkin, A.C., "Arctic Shortcut Beckons Shippers As Ice Thaws", *The New York Times*, available at: [www.nytimes.com/2009/09/11/science/earth/11passage.html?\\_r=1&hp](http://www.nytimes.com/2009/09/11/science/earth/11passage.html?_r=1&hp)

Route has different definitions depending on who is speaking, as well as the conditions of the ice at the time. However, this aquatic roadway is commonly thought of as bridging the European ports and far eastern Russian ports, and the NSR's accepted boundaries will most likely expand in tandem with successful Russian claims.<sup>11</sup> The melting Arctic ice will yield a significant increase in maritime traffic above Northern Eu-

rope. Indeed, the President of the Russian Federation, Vladimir Putin, notably predicted the Northern Sea Route will become "the next Suez Canal."<sup>12</sup> To give that comment some perspective, Egypt currently rakes in approximately \$5 billion in revenue from canal fees on ships passing through the Suez Canal.<sup>13</sup> With the monetary stakes so high, it becomes clear why countries consider it a national security to lay claim to the wealth in the Arctic Circle and the indirect wealth that would accompany control of the seas in that region of the globe.

The legitimacy and likelihood of success of these claims and potential claims vary considerably, but the best vehicle for all of them is generally the same. The third United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS"), the origination of modern claims to maritime ter-

11 Timchenko, L. (2001), "The Northern Sea Route: Russian Management and Jurisdiction Over Navigation in Arctic Seas", *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, The Hague, M. Nijhoff, pp. 269-270; Butler, W.E. (1978), *Northeast Arctic Passage*, Martinus Nijhoff, Leiden, p. 42; Ivanov, Y., Ushakov, A. (1992), "The Northern Sea Route Now Open", *International Challenges*, No. 1(12), p. 15: "The NSR is bounded in the west by the western entrances to Novaia Zemlia's straits and by the meridian going north of Zhelaniaa Cape, and in the east, in the Bering Strait by the 66 degree latitude north and the 168 degree 55 minute 37 seconds longitude west. The NSR's northern boundary coincides with the boundaries of the Russian economic zone"; Kolodkin, A. L., Volosov, M. E. (1990), "The Legal Regime of the Soviet Arctic: Major Issues", *Marine Policy*, No. 14, p. 164: "The Northern Sea Route has no single fixed route [...] But under any circumstances a significant part of the Northern Sea Route lies within the Soviet economic zone, or the territorial and even internal waters of the USSR".

12 Bryanski, G., "Russia's Putin Says Arctic Trade Route to Rival Suez", *Reuters U.S.*, available at: [www.reuters.com/article/2011/09/22/russia-arctic-idAFL5E7KM43C20110922](http://www.reuters.com/article/2011/09/22/russia-arctic-idAFL5E7KM43C20110922)

13 Hargreaves, S., "U.S. Missing out on Arctic Land Grab", *CNN Money*, available at: [www.money.cnn.com/2012/07/18/news/economy/Arctic-land-grab/index.htm](http://www.money.cnn.com/2012/07/18/news/economy/Arctic-land-grab/index.htm); *U.S. Geological Survey. Minerals Yearbook 2008: Area Reports: International, Africa and the Middle East*, Interior Dept., Geological Survey, 2010, 376 p.

ritory, was concluded in 1982.<sup>14</sup> It has since been ratified by 164 States and the European Union, although some nations have ratified it with reservations.<sup>15</sup> One of the few nations refusing to ratify UNCLOS at all is the United States. This abstention will be discussed below, but it does not wholly prevent participation in the international musical chairs contest for the riches of the Arctic Circle. Claims to the Arctic incorporate other legal principles, such as historic title, intent and usage, and the principles of third-party dispute resolution from arbitration and mediation law. For Russian claims to have any chance of success, Russian political leaders must arm themselves with an array of legal and scientific weapons, including but not limited to:

- a long history of Russian intent to exercise dominion over the Northern Sea Route,

- actual usage of the North Pole directly north of its Siberian landmass,

- geological similarities between the sediment of its currently-recognized continental shelf and the sediment of the North Pole ocean floor closest to its Siberian landmass,

- distance and depth measurements corresponding to the accepted legal definitions of UNCLOS, and

- the weakness and/or invalidity of claims by its chief competitors in the race for the riches beneath the North Pole.

At present, UNCLOS is the most universally recognized format for establishing and bringing forth claims to the Arctic Circle, and the most successful of those claims will be those in which the submitting nation can establish a strong relationship between the extension of its continental landmass and that of underwater land formations in the Arctic Circle. Russia has one such favorable claim, and Canada has another. Other countries can make smaller claims to small portions of northerly territory, but their claims on the Arctic Circle and the North Pole itself pale in comparison to the geographic and geological arguments that Russia and Canada can bring to bear.

14 "United Nations Division for Ocean Affairs and the Law of the Sea. The United Nations Convention on the Law of the Sea – A historical perspective", available at: [www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm)

15 "United Nations Division for Ocean Affairs and the Law of the Sea. Chronological Lists of Ratifications of, accessions and successions to the Convention and the related Agreements as at 7 November 2012", available at: [www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea)

## The Emergence of UNCLOS and Growing Pains in Maritime Law

Notably, countries seeking to extend their sovereignty to include parts (or all) of the Arctic Circle are not doing so based on land claims. The Arctic Circle, while relatively fixed and stable, is a massive sheet of ice; the Arctic Circle is not land, dirt or earth in the same way that Siberia and Iceland are. Thus, the UNCLOS is the relevant authority because it determines how far coastal states' sovereignty over the sea actually extends.

Prior to the multiple UNCLOS conventions, several countries attempted to lay claim to the Arctic based on the sector principle. The sector principle stipulates that land facing the Arctic gives the owner of that land sovereignty to the Arctic region to the north. On its face, the definition seems to be a straightforward proximity definition. Borne out by historical treatment, the sector principle is too vague and unenforced. Because multiple countries have recognized landmass boundaries that 'face' north toward the Arctic Circle, the sector principle has *de minimis* relevance in resolving competing claims on the North Pole. Countries with geographic submarine ranges heading into the Arctic Circle have an argu-

able claim, despite having no surface / above-water 'land' in the classic sense facing the North Pole. The term 'facing' is not well defined, either. Nevertheless, Canada, Russia, Norway, and the USA all made sector claims in the 1920's.<sup>16</sup> These claims were not practically tested during that period, as the technology to undertake submarine geological analysis or geographic mapping did not exist yet.

In 1969, the International Court of Justice recognized underwater extensions of a coastal nation's landmass as an extension of its sovereignty past the edge of its surface territory.<sup>17</sup> In the North Sea Continental Shelf cases, the ICJ noted that a natural prolongation could extend a coastal nation's sovereignty and right to harvest resources.<sup>18</sup> This concept of underwater natural prolongation of coastal territory and sovereignty extension began to modernize international legal theory on the law of the sea. Mean-

16 McKitterick, T.E.M. (1939), "The Validity of Territorial and Other Claims in Polar Regions", *Journal of Comparative Legislation and International Law*, No. 21, pp. 89-97.

17 Spielman, B. (2009), "An Evaluation of Russia's Impending Claim for Continental Shelf Expansion: Why Rule 5 Will Shelve Russia's Submission", *Emory International Law Review*, No. 33, p. 350; "North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.)", *I.C.J.*, 1969, No. 3, p. 31.

18 Ibid.

while, representatives of U.N. member nations met for several conventions on maritime law. The U.N. held three conferences on the law of the sea; the third and final conference concluded in 1982; the treaty which came from the conference went into effect in 1994 and today has 164 parties.

On ratification of UNCLOS, that nation becomes a party to the convention's terms and conditions. A nation has 10 years from the date of ratification in which to submit a claim for a modification and/or extension of its recognized continental margin, also known as an Article 76 claim.<sup>19</sup> This 10-year time window is a critical strategic component of claims in the Arctic Circle. Ratifying early gives a nation the option (and advantage) to pre-empt other claims on parts of the Arctic Circle. However, countries that ratify UNCLOS in later years have the flexibility to change and adapt their claims to reflect arguments and terms the reviewing body prefers. Those nations can also tweak their claims to answer

and refute claims made on the same territory by competing nations.

The reviewing body, established under the authority of Annex II in the third UNCLOS treaty, is the U.N. Commission on the Limits of the Continental Shelf (hereinafter referred to as 'UN CLCS'). As prescribed in Annex II, the functions of this body are:

(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;

(b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).<sup>20</sup>

One unique distinction stands out almost immediately – the UN CLCS is responsible for making 'recommendations' not 'ultimate or binding decisions. Nevertheless, as the UN CLCS is the only multi-national or international party with some accepted level of authority on the matter, its recommendations are treated

<sup>20</sup> Ibid.

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19 "United Nations Convention on the Law of the Sea (1982). United Nations Division for Ocean Affairs and the Law of the Sea", (hereinafter referred to as UNCLOS), Annex II, Art. 3, available at: [www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)

as strong sources of authority in mediating and resolving claims. The UN CLCS is comprised of 21 elected persons from "States Parties to this Convention"; notably this means that the United States has no representative on the UN CLCS and is forced to challenge competing claims by other means. The relevant provision of UNCLOS also requires (by way of the compulsory legal word "shall") that these elected commission representatives be experts in the field of geology, geophysics, or hydrography. Because the relevant legal elements revolve around sediment thickness, marine depth, and slopes, the UN CLCS panel's required level of scientific knowledge in these areas is high. Furthermore, it gives them the ability to objectively review submitting nations' claims for errors and discrepancies, although it seems likely that submitting nations include or exclude particular data to make their claims as favorable as possible.

### UNCLOS Terminology Explained

The UNCLOS sets forth the terminology and descriptions for evaluating the end of a coastal nation's landmass and defining the limits of its national sovereignty and jurisdiction. Internal

waters are those bodies of water, which run inside the nation's border.<sup>21</sup> They are areas of exclusive national jurisdiction. UNCLOS parses out coastal waters into several categories. All of these zones are measured from a baseline (*see Appendix A*). The baseline is given a somewhat-flexible definition in Article 5 of UNCLOS as being "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."<sup>22</sup> Territorial waters represent the first 12 nautical miles from a coastal state's baseline. In territorial waters, coastal states are free to set laws, use resources, and regulate the use of resources by foreign vessels and entities.<sup>23</sup> Foreign vessels have

21 Ibid. Part II, Art. 8.

22 Ibid. Part II, Art. 5. NOTE: The definition is preceded by the phrase "except where otherwise provided in this Convention", indicating that nations submitting claims might be able to use other definitions of the baseline that are more favorable. Additionally, low-water baselines are less practical in unstable tidal environments, such as the side of an island facing the mainland. In these circumstances, Article 7 allows coastal states to rely on straight baselines; straight baselines use the furthest extent of the low-water line, meaning that for the most part, straight baselines will stretch a continental margin out further. Notably, straight baselines are generally only appropriate for islands because they allow a coastal state to treat the waters between the two points as internal waters.

23 Ibid. Art. 21.

the ability of innocent passage through these waters, with notable limitations on what innocent passage means.<sup>24</sup> Innocent passage does not include fishing (which is technically harvesting resources) or military passage, although coastal states may choose to provide certain military straits through which foreign military vessels may travel.<sup>25</sup>

The contiguous zone establishes an additional 12 nautical miles from the baseline past the territorial waters.<sup>26</sup> This zone specifically provides the coastal state with an area in which to pursue a foreign vessel if the foreign vessel commits an infraction. The coastal state can enforce laws in contiguous zone that govern the territorial waters if the infraction began in territorial waters. For this reason, the contiguous zone has become colloquially termed as the hot pursuit area. The contiguous zone exists to prevent foreign vessels from veering into territorial waters with non-innocent conduct and then slipping back out of territorial waters before a coastal vessel catches up with them. This provision has generally been interpreted to mean that the contiguous zone is merely the outer limit for the commencement of the pur-

suit; it is not a fixed border at which the pursuit stops if the fleeing vessel leaves the contiguous zone.<sup>27</sup>

Not including the contiguous zone, the Exclusive Economic Zone (EEZ) extends 200 nautical miles out beyond the outer limit of territorial waters.<sup>28</sup> The EEZ grants the coastal state the authority to use and prohibit or regulate the use of natural resources in this area, just as in the territorial waters.<sup>29</sup> Part of this regulation and prohibition is the authority to grant environmental protection to

27 "Standing Committee of the National People's Congress. The Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone. 25 February 1992, Art. 14", available at: [www.asianlii.org/cn/legis/cen/laws/lotprocottsatecz739](http://www.asianlii.org/cn/legis/cen/laws/lotprocottsatecz739); "U.S. Coast Guard. Model Maritime Operation Guide – International Law. 21 April 2003. Chapter 2 Section B", available at: [www.uscg.mil/international/affairs/MMOG/English](http://www.uscg.mil/international/affairs/MMOG/English); "Federal Act on the Internal Maritime Waters, Territorial Sea and Contiguous Zone of the Russian Federation on July 16, 1998, Art. 23", available at: [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS\\_1998\\_Act\\_TS.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1998_Act_TS.pdf)

28 UNCLOS, note 19 above, Part V, Art. 55: "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention."

29 Ibid. Art. 56.

24 Ibid. Art. 19.

25 Ibid. Part III, Art. 41-42.

26 Ibid. Part II, Art. 33.

marine resources, both living and non-living. The coastal state may still harvest these resources to the exclusion of others. What is lacking in the EEZ definition is the control over foreign vessel passage. Passage rights are still somewhat restricted, since fishing passage would conflict with the definition of EEZ, but military passage that does not negatively affect marine life or consume the natural resources in the EEZ is not a violation of the EEZ's definition.

The EEZ stands as a key motivation behind multiple nations' claims on the Arctic Circle. A 200-nautical-mile extension and/or a connecting point in the Arctic Circle could potentially grant that nation greater national jurisdiction over the waters in that area. Although territorial waters is a fairly confining zone and the EEZ cannot be expanded so far as to cover the entire Arctic Circle, a claiming nation which can justify extension of its continental margin could still acquire the sole authority to use natural resources in the area with the ability to exclude others. In light of the aforementioned riches to be had in the Arctic, exclusive exploitation of natural resources would be an economic boon to any nation able to claim even a fraction of the Arctic successfully.

A nation's continental margin has a complex definition explained in greater

detail below, but the margin's purpose for existence as an international term is to measure the extent to which a country's natural coastal landmass extends into the sea.<sup>30</sup>

### **Methods for Claiming an Extension of the Continental Margin How to Expand Marine Sovereignty under the Umbrella of UNCLOS**

Article 76 of UNCLOS presents the key area of the dispute over the wealth up for grabs in the Arctic Circle. The continental margin includes the continental shelf (relatively flat area of the coast), the continental slope (depth increasing, still coastline), and the continental rise (depth increasing down to the abyssal floor) – *see* Appendix B. The continental margin is specifically defined as either 200 nautical miles from the baseline or the natural prolongation of land territory to the outer edge of the continental margin. Generally speaking, if you were attempting to claim an underwater terrain formation like the Lomonosov Ridge is part of your continental margin, you would opt to use the latter definition since it does not set a

<sup>30</sup> Ibid. Part VI, Art. 76.

fixed numeric outer limit. However, for certain coastal states, the flat rate of 200 nautical miles is more favorable, since it applies if the continental margin ends short of 200 nautical miles.

In plotting the outer limits of a coastal state's continental shelf, the coastal state can avail itself of two formulas, a 1% sediment thickness test or a line 60 nautical miles from the foot of the continental slope.<sup>31</sup> The sediment thickness test assures that a coastal state's claimed extension must bear some geological similarity to its previously accepted continental margin, and is not a unique volcanic or oceanic formation. The 60-nautical-mile definition prohibits a coastal state from claiming the ocean floor as part of its continental shelf. If there is no longer a slope on the continental margin, the submarine terrain in question is treated as abyssal floor and no longer an extension of the coastal state's landmass (see Appendix D for an illustration).

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31 Ibid. Art. 76(4)(a):

"(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or  
(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope."

In order to prevent unchecked expansion, UNCLOS specifies two methods for drawing constraint lines past which it is not possible to claim a continental shelf limit. The continental shelf cannot extend 350 nautical miles beyond the coastal state's baseline or 100 nautical miles beyond the 2,500-meter isobath (oceanic depth), whichever is greater.<sup>32</sup> A country may use any combination of these constraint lines, but cannot claim a point beyond both of these constraint line formulas. Most of the claimed Arctic areas do not represent depths beyond 2,500 meter, so this is the most favorable/forgiving definition for a coastal state to use in staking a claim.

Coastal states necessarily have to conduct analysis of underwater slopes and formations in order to determine whether they have the scientific ammunition to justify an Article 76 claim. UNCLOS Article 76 describes three classifications of underwater ranges: oceanic ridges, submarine ridges, and submarine elevations. Article 76(3) mentions the term 'oceanic ridges' without defining it precisely, only noting that the deep ocean floor has oceanic ridges, and that these are not part of the continental shelf.<sup>33</sup> In this sense, the oceanic ridge is unfav-

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32 Ibid. Art. 76(5). See also Appendix C.

33 Ibid. Art. 76(3).

avorable to nations submitting claims of expansion and favorable to nations attempting to oppose those claims. The term 'submarine ridge' appears in Article 76(6), also lacking a precise definition, but with the stipulation that submarine ridges cannot be claimed as part of the continental shelf beyond 350 nautical miles from the coastal state's baseline in question.<sup>34</sup> The text of the Article itself notes that a submarine ridge, unlike a submarine elevation, is not a natural component of the continental margin. A submarine ridge this might have similar geological identity, but if its origins are volcanic or otherwise different in nature from the continental margin, it cannot be claimed past the 350 nautical mile line. The most inclusive term, the submarine elevation, is a natural component of the continental margin and is only subject to the 2500 isobathic depth + 100 nautical mile limit.

A barrier to an Article 76 claim is the Rule 5 'in-dispute' rule.<sup>35</sup> This rule

stands for the principle that the UN Commission will refrain from issuing binding recommendations on Article 76 claims if the claim involves disputed territory. The rule language notably does not clarify whether competing continental shelf extension claims qualify as a land dispute, a maritime dispute, or some other type of dispute. However, based on the UN Commission's encouragement to Norway and Russia to come up with a delimitation boundary<sup>36</sup>, it's reasonable to assume that the UN Commission treats Rule 5 as instructive in evaluating Article 76 claims. Thus, a nation submitting an Article 76 claim needs to either: 1) prove that its claim is so good (or that competing claims are so bad) that a dispute is non-existent, 2) secure prior consent of the other nations to waive their Rule 5 protection with respect to the submitted claim, or 3) secure prior agreements on delimitation boundaries beyond which a nation waives its Rule 5 protection.

34 Ibid. Art. 76(6).

35 "UN Commission on the Limits of the Outer Shelf. Rules of Procedure of the Commission. 17 April 2008, Annex I, Rule 5(a)", available at: [www.un.org/Depts/los/clcs\\_new/commission\\_rules.htm](http://www.un.org/Depts/los/clcs_new/commission_rules.htm); Rule 5(a) provides: "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by

any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute".

36 "The Secretary-General. Oceans and the Law of the Sea: Report of the Secretary General. Doc. A/57/57/Add.1", available at: <http://daccess-ods.un.org/TMP/1724194.88430023.html>

## Russia's Claim: The Lomonosov and Mendeleev Ridges are Extensions of the Russian Landmass in the Eurasian Continent

As a country with 3,420<sup>37</sup> miles of coastline above the water's surface facing northward toward the North Pole, Russia is an obvious contender for the riches underneath the Arctic Circle. Due to its vast northern shore, Russia has long recognized the possibility and favorable nature of its claims on waters and territory north of its coastal baseline. Although this analysis does not purport to be a comprehensive and complete historical timeline of Soviet and Russian legal thought regarding maritime law, a brief review of the sector principle is helpful in providing the context for the current demarcation lines and pre-Article-76-claim borders.

Less than a year after Canada's famous 1925 sector principle claim on the Arctic, the Central Executive Committee of the Union of Soviet Socialist Republics issued a Decree on April 15, 1926, running east from the Vaida Bay

through a triangular marker in Cape Kekurski.<sup>38</sup> Soviet research continued, using expansionist arguments to further justify Russian claims on the Arctic. Soviet scientist V.L. Lakhtin notably published a booklet entitled *Права на северные полярные пространства* (Rights over the Arctic Regions), which set forth the Soviet understanding of the sector principle.<sup>39</sup> Lakhtin stipulated that the claims on the Arctic were of both an economic and national security origin,<sup>40</sup> but stated a very different understanding than the modern UNCLOS. Under a sector principle claim, the dividing lines were specific lines of latitude and longitude based on coastal territorial points. All lands and islands inside these sectors were therefore under the jurisdiction of the country with coastal territory facing northward to those lands and islands in the Arctic Ocean. Because of the harsh climate and the inability at that time to explore into the Arctic, Lakhtin and

37 Kovalyova, A., De Carbonnel, A., "Arctic Ice Melt Lifts Hopes for Russian Maritime Trade", *Reuters U.K.*, available at: [www.uk.reuters.com/article/2012/01/27/us-russia-arctic-idUKTRE80Q1FA20120127](http://www.uk.reuters.com/article/2012/01/27/us-russia-arctic-idUKTRE80Q1FA20120127)

38 Butler, W.E. (1978), *Northeast Arctic Passage*, Martinus Nijhoff, Leiden, p. 72. This Decree used the same demarcation line established in the 1867 Boundary Treaty ceding Alaska to the United States.

39 Timchenko, L. (1997), "The Russian Arctic Sectoral Concept: Past And Present", *Arctic Journal*, No. 1(50), p. 30; Lakhtine, W. (1930), "Rights over the Arctic", *American Journal of International Law*, No. 24, pp. 703-717.

40 Ibid.

other sector principle advocates did not focus on the continental shelf as a basis for adjustment of claims on the Arctic. In a sense, the sector principle relies on maps and cartography, as opposed to the modern approach of bathymetry and submarine geology.<sup>41</sup> Lakhtin did seem uncertain as to whether State sovereignty extended over drifting ice, but declared that undrafted ice would be certainly included under national jurisdiction within a sector. Other Soviet scholars disagreed with Lakhtin's position; they argued that the term "lands and islands" necessarily included ice surrounding seas.<sup>42</sup>

By the 1960's, most Soviet authors on the subject agreed that Arctic states had a specific sector, although disagreement continued as to whether seas were included or only actual lands and islands.<sup>43</sup> After the Soviet Union signed the United Nations Convention on the Law of the Sea in 1982, Soviet scholars adjusted their argument basis to reflect principles of international law and relevant terms and articles of UNCLOS itself. Nevertheless, sector principles

seemed to be grandfathered in to an extent: Soviet-Norwegian negotiations on exclusive economic zones in the Barents Sea and Soviet-American negotiations in the Chukchi Sea both relied heavily on previously-established sectors of nations with coastal territory facing northward to the Arctic Circle.<sup>44</sup>

On 10 April 1997, the Russian Federation ratified the United Nations Convention on the Law of the Sea. This ratification started the 10-year countdown, during which the ratifying nation can submit an Article 76 claim. Russia did not use its entire 10-year window, however, and it made a submission to the UN Commission on the Limits of the Continental Shelf on 20 December 2001. Russia's submission (and the transcript of its presentation before the Commission) is not publicly available in its entirety<sup>45</sup>, but the probable legal argumentation used is clear, as are the areas for concern.<sup>46</sup> Russia's likely argument, and

41 Bathymetry is the study of underwater depths.

42 Timtchenko, note 39 above; E Korovin, E.A. (1926), "The USSR and the Polar lands" ["SSSR i polyarnye zemli"], *Sovetskoe pravo*, No. 3, pp. 43-46.

43 Ibid.

44 Ibid; Molodtsov, S. V. (1982), *The Legal Regime of Sea Waters* [*Pravovoi rezhim morskikh vod*], *Mezhdunarodnye otnosheniya*, Moscow, 229 p.

45 UN Commission on the Limits of the Outer Shelf, note 36 above, Annex II, Section 2: Coastal nations may classify any data relating to their claim not otherwise publicly available.

46 "UN Commission on the Limits of the Continental Shelf. Continental Shelf – Submission to the Commission by the

indeed the most favorable position for it, would be to argue that the Lomonosov and Mendeleev Ridges are submarine elevations of the Eurasian continental shelf. Because submarine elevations are considered extensions of the nation's continental shelf and not incidental volcanic features, Russia would thus be justified in expanding its declared continental shelf and also its zone of economic control.

While Russia's interest in the Arctic has clearly been long-standing, the nation recently amped up its public relations element of nationalist, patriotic claims on the Arctic while simultaneously expanding and operating its scientific research on submarine territorial formations between Russia's current accepted boundary and the North Pole itself. In 2007, a famous Russian explorer and State Duma member set off a flurry of renewed discussion on the wealth of the Arctic when he funded a Russian submersible's dive down to the Arctic floor, where the craft's mechanical arm planted a Russian flag on the Arctic seabed.<sup>47</sup>

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Russian Federation", available at: [www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_rus.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm)

47 Chivers, C.J., "Russia Plants Flag on Sea Floor at North Pole", *The New York Times*, available at: [www.nytimes.com/2007/08/03/world/europe/03arctic.html?\\_r=0](http://www.nytimes.com/2007/08/03/world/europe/03arctic.html?_r=0)

Obviously, planting a flag is not an accepted method of bringing an Article 76 claim under UNCLOS, but it started an avalanche of media attention aimed at various Arctic nations' efforts to research and bring claims on the mass of frozen ice that covers the North Pole.

In 2002, the United Nations Commission on the Limits of the Outer Shelf determined that additional research was needed in order to fully evaluate Russia's Article 76 claim. The Commission gave Russia until 2013 to submit more research in support of its claim.<sup>48</sup> A Russian North Pole science expedition was created and dispatched into the Arctic aboard an icebreaker heavily modified with science equipment.<sup>49</sup> Akademik Fedorov, a Russian icebreaker known as Russia's floating Arctic laboratory, accommodated the Shelf-2010 research team as well as the Konigsberg, a multi-beam echosounder.<sup>50</sup> A multi-beam echo-sounder is a type of SONAR technology; distance (or depth) to an object is calculated by

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48 Benitah, M., "Russia's Claim in the Arctic and the Vexing Issue of Ridges in UNCLOS", *American Society of International Law*, available at: [www.asil.org/insights071108.cfm](http://www.asil.org/insights071108.cfm)

49 "Scientists continue work to substantiate Russia's Arctic claims", *Russia Today*, available at: [www.rt.com/news/sci-tech/arctic-lomonosov-ridge-expedition/](http://www.rt.com/news/sci-tech/arctic-lomonosov-ridge-expedition/)

50 Ibid.

measuring the time it takes a signal to travel from the transmitter to the seafloor and back to the receiver.<sup>51</sup> A multi-beam echo-sounder sends out sound signals in a fan-shaped array, and this approach allows scientists to run comparative analysis on seafloor depths.<sup>52</sup> A typical Article 76 claim would thus include a comprehensive list of bathymetric coordinates acquired by an echo-sounder. Russian scientists have been using the Konigsberg for years to accumulate a vast amount of bathymetric data to include in their new submission to the UN Commission.

An Article 76 claim on the North Pole should also necessarily include sediment samples to establish the geological similarity between Russia's accepted continental shelf and the Lomonosov and Mendeleev Ridges. In 2007, Russia declared it had successfully recovered soil samples conforming to accepted international standards (the sediment thickness test) which would validate Russia's claim to the Lomonosov Ridge.<sup>53</sup> This

51 "United States Office of Coast Survey. Multibeam Echo Sounders", available at: [www.nauticalcharts.noaa.gov/hsd/multibeam.html](http://www.nauticalcharts.noaa.gov/hsd/multibeam.html)

52 Ibid.

53 "The Great Seabed Grab: Soil Samples 'Prove' Arctic is Russian", *Spiegel Online*, available at: [www.spiegel.de/international/world/the-great-seabed-grab-soil-samples-prove-arctic-is-russian-a-507062.html](http://www.spiegel.de/international/world/the-great-seabed-grab-soil-samples-prove-arctic-is-russian-a-507062.html)

announcement lacked any mention of the Mendeleev Ridge, which leads the author to speculate that Russia may not be pursuing the Mendeleev Ridge claim strongly in its additional submission to the UN CLCS this year. Russia has until 2013 to present all of its updated (and new) findings to the UN Commission, when a further review will take place. Russia's primary challenger for claim to the Lomonosov Ridge, Canada, also has a 2013 deadline for its own submission. Canada and the United States both made formal notes to the Secretary-General regarding Russia's claim; Canada's response to Russia's submission was inconclusive<sup>54</sup>, while the United States argued for treatment of the Lomonosov Ridge on Russia's side as a unique free-standing ocean formation, and not an extension of Russia's continental shelf.<sup>55</sup>

54 "Permanent Mission of Canada to the United Nations. Note Verbale. Notification regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf", available at: [www.un.org/Depts/los/clcs\\_new/submissions\\_files/rus01/CLCS\\_01\\_2001\\_LOS\\_\\_CANtext.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/rus01/CLCS_01_2001_LOS__CANtext.pdf)

55 "Permanent Mission of the United States of America to the United Nations. Note Verbale. Notification regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf", available at [www.un.org/Depts/los/clcs\\_new/submissions\\_files/](http://www.un.org/Depts/los/clcs_new/submissions_files/)

The U.S. further argued that the Mendeleev Ridge was a hot spot formed by the eruption of hot magma, and noted that it did not share the same morphology as accepted continental shelf elevations.<sup>56</sup> Although Russia's first submission has no public executive summary, we can loosely reverse-engineer Russia's argument based on the U.S. dissent: Russia originally claimed both the Lomonosov and Mendeleev Ridges are submarine elevations and not distinct submarine or oceanic ridges of separate oceanic, volcanic or tectonic origin, as the United States would clearly prefer.

Russia could also face a Rule 5 issue when the UN Commission decides the fate of Russia's claim for an extension of its continental shelf. A blanket acceptance of the Lomonosov Ridge as a natural prolongation of Russian territory would prematurely sink Canada's claim, and probably also prejudice future claims by Denmark and the United States. Because Rule 5 serves as a stopgap to protect non-submitting or pre-submitting parties, Russia might find its own chances of success limited in this manner. However, the UN Commission could recommend the Lomonosov Ridge be divided

up, with competing nations gaining part of the Ridge that falls on their side of the North Pole. This would be an ideal outcome for Russia, since Norway already found itself substantially limited by the UN Commission in the Commission's prior finding on the Norwegian shelf. Furthermore, Denmark's (Greenland's) position relative to the Lomonosov Ridge means that it would be more likely to vie for the Canadian/Western endpoint of the Lomonosov Ridge rather than the Russian/Eastern endpoint. In this sense, the Western endpoint is in a state of contest between Canada, the United States, and Denmark, while the Eastern endpoint is essentially Russia's or no one's.<sup>57</sup> So long as Russia can make a legitimate claim to the Eastern endpoint of the Lomonosov Ridge, it should be able to secure a determination from the UN Commission that at least part of the Lomonosov Ridge is a natural prolongation of its continental margin.

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<sup>57</sup> Technically, the United Nations Commission could find that Russia does not have a natural prolongation of its continental margin that extends to the Lomonosov Ridge, while also finding that Canada does have a natural prolongation to the Lomonosov Ridge. This outcome would be the worst possible one for Russia, since it would essentially grant the entire Lomonosov Ridge to Canada.

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rus01/CLCS\_01\_2001\_LOS\_\_  
USAtext.pdf

<sup>56</sup> Ibid.

## Canada's Claim: Historic Inuit Title, The Canadian Arctic Archipelago, and the Western Edge of the Lomonosov Ridge

Canada's claims are numerous and strong. Canada demonstrated an early interest in the Arctic when it relocated the Inuit people to the High Arctic area of the Canadian continent, arguably with the intent of proving it has historic title claims on the Arctic Circle.<sup>58</sup> Canada also vocalized a claim to the Arctic based on the sector principle before any other nations declared their own sector principle claims to the Arctic.<sup>59</sup> Recently under the Stephen Harper administration, Canada constructed a northern military training facility at Resolute Bay in Nunavut, and plans to deploy a fleet of ice-capable military vessels specifically designed to patrol the Northwest Passage, the still-icy maritime transport lane over which Canada has attempted to assert jurisdic-

tion.<sup>60</sup> The presence of military vessels and attempts to enforce authority is key to the aforementioned historic title claim. Canada can also bring a claim of internal waters if it can successfully chain-link the Canadian Arctic Archipelago far enough into the Arctic Circle. Finally, Canada can submit Article 76 claims by way of UNCLOS. Because Canada ratified UNCLOS in 2003, it has until 2013 to present its UNCLOS-based claims of internal waters and continental shelf limit extensions.

Some of the evidence for Canada's claims is better than other evidence. The claim of historic title based on the presence of the Inuit people in the northerly spaces of Canada is not provided for in UNCLOS because UNCLOS Article 76 claims only deal with the geographic and geological angle of claims of expansion. Nevertheless, there is some international case law on the topic and the standards are clear. Two elements must be met, although a related decision from the International Court of Justice suggests that the standard of proof is more relaxed in inhospitable climates.<sup>61</sup> Still,

58 Marcus, A.R. (1991), "Out in the cold: Canada's experimental Inuit relocation to Grise Fiord and Resolute Bay", *Polar Record*, No. 27, p. 285.

59 Byers, M., Lalonde, S. (2009), "Who Controls the Northwest Passage?", *Vanderbilt Journal of Transnational Law*, No. XLII, p. 1150; Reid, R.S. (1974), "The Canadian Claim to Sovereignty Over the Waters of the Arctic", *The Canadian Yearbook of International Law*, No. 12, p. 115.

60 "Canada First Defence Strategy", available at: [www.forces.gc.ca/site/pri/first-premier/index-eng.asp](http://www.forces.gc.ca/site/pri/first-premier/index-eng.asp)

61 Donovan, T. W. (2003), "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis", *Journal*

Canada must demonstrate an intention to act as the sovereign and an actual exercise of authority in order to claim that it historically has had the title.<sup>62</sup> Since the United States refuses to recognize even Canada's claim to the Canadian Arctic Archipelago, Canadian claims are on the Arctic Circle itself will probably not be resolved through mediation or agreement. Furthermore, Canada only declared a claim of historic title in 1973, which is probably not a sufficiently long period of time over which it has exercised or attempted to exercise exclusive jurisdiction. Finally, as noted by the United States' refusal to recognize Canada's claims, Canada has failed to secure prior authorization for travel through its alleged waters.

During the third (and final) UNCLOS convention, Canada successfully

lobbied for the inclusion of Article 234, a measure placing additional restrictions and protections on pollution in ice-covered waters.<sup>63</sup> Several years later in 1985, Canada passed domestic legislation to operate in tandem with UNCLOS Article 234.<sup>64</sup> This new domestic legislation, AWPPA, was aimed at giving Canada the legislative teeth to police natural resource exploitation and subsequent pollution in the area of the Arctic Circle that it believes it has claim to, especially the Northwest Passage.

Regardless of the merits of Canada's claims of historic title or perhaps because of their flaws, the international community writ large thus far seems content to allow the UNCLOS Commission the Limits of the Outer Shelf to speak as to the legitimacy and validity of claims submitted, including Canada's.<sup>65</sup> There-

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*of Transnational Law and Policy*, No. 13, p. 68; "Legal Status of Eastern Greenland (Den. v. Nor.)", *P.C.I.J. (ser. A/B)*, 1933, No. 53, pp. 45-46: "A claim to sovereignty based upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign and some actual exercise or display of such authority".

62 Donovan, note 62 above, p. 68; "Clipperton Island Arbitration (France v. Mexico)", *American Journal of International Law*, 1932, No. 26, p. 390: "the actual, and not the nominal, taking of possession is a necessary condition of occupation".

63 Oude-Elferink, A., Rothwell, D. (2001), *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, The Hague, M. Nijhoff, p. 251.

64 "Arctic Waters Pollution Prevention Act, R.S.C. 2 (1970), amended by S.C. 41 (1977-78)", available at: [www.laws-lois.justice.gc.ca/eng/acts/A-12/](http://www.laws-lois.justice.gc.ca/eng/acts/A-12/)

65 Ibid. Canada successfully lobbied for an additional sub-rule to be inserted into UNCLOS (Article 234), which allows coastal states to promulgate and enforce non-discriminatory laws in ice-covered areas. However, the full language of this article has clauses that seem to make it apply specifically to the prevention

fore, the claim will be decided on the merits of the continental margin formula, and not based on a claim of historic title through a group of transplanted persons who occupied the territory within the last century.

Canada must demonstrate the legitimacy of its claims on three key points. First, Canada must successfully claim the Canadian Arctic Archipelago so that it has a connected chain of territory up to Ellesmere Island. An archipelago is defined in the UNCLOS in Part IV, Article 46. The key feature of the definition is that the ratio of the area of the water to the area of the land within straight baselines between the islands is between 1 to 1 and 9 to 1. This rather confusing definition can be cautiously simplified to mean that the islands cannot be so small and infrequent as to insult the definition of an island chain. A coastal state may not attempt to extend its territorial control of the sea by simply reference one or two small, isolated points of land.

Assuming Canada can prevail on this issue, Canada must also demonstrate that Ellesmere Island has a continental margin that extends to the point of making contact with the submarine elevation

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and control of marine pollution, not all transport through the ice-covered passages entirely.

of Lomonosov Ridge. Using the aforementioned formula, Canada must ensure that the Ellesmere Island slope does not end too quickly or that the sediment remains thick all the way up to its end of the Lomonosov Ridge. The Lomonosov Ridge represents the closest contact point to Canada's northernmost territorial holding (Ellesemere Island), so it is the best launching point from which to attempt to secure a claim on the North Pole and the Arctic Circle as a whole. Because the Lomonosov Ridge bisects the Arctic Circle from one end to the other, any successful claim would be of enormous benefit to the claiming nation.

Third, Canada must also show that Lomonosov Ridge has the relevant geological properties consistent with (a) the UNCLOS formula and (b) the sediment of Ellesmere Island. Using the second formula, Canada needs to be able to establish that the thickness of the sediment on the northernmost side of Ellesmere Island does not thin out too quickly at the 2500m isobath depth. Additionally, the sediment must be of the same composition or near to that of the Lomonosov Ridge. Both of these samples must be sediment, not volcanic rock. If part of either or both is found to be volcanic rock, the feature from which the sample was extracted will be assumed to

be a submarine ridge. Submarine ridges are independent volcanic activity caused by collisions of tectonic plates and not assumed to be part of a continental shelf of a coastal state.

Canada also plans to shore up its claim using occupation and historic title. It announced plans to build six ice-capable military vessels for which to patrol the Northwest Passage; Canada also intends to build a cold-weather base near the Northwest Passage from which to train soldiers.<sup>66</sup> A visible and active defense and patrol of the Canadian-claimed portions of the Arctic will bolster Canada's accepted presence and legitimacy in the Arctic race, even if certain aspects of its Article 76 claim are not persuasive to the UN Commission.

Canada's claim will also be judged at least in part with respect to UN Commission on the Limits of the Outer Shelf Rule of Procedure 5. Rule 5 could both help and hurt Canada's assertion of a natural prolongation; if the UN Commission finds that Canada is claiming disputed territory as part of its continental shelf extension, Canada will not be able to claim any of that land. However, if territory is not believed to be disputed

by other possible claimants, Canada will be able to secure a recommendation for shelf extension. Because the U.S. and Denmark can obviously submit at least some sort of claim to the North Pole (should they choose to do so), Canada's gains may be limited. Still, because of Rule 5, they are unlikely to be wholly eclipsed by another earlier claim, either. In the instant matter, Russia's claims could very well be limited by Rule 5, and Canada is unlikely to 'lose' the entire Lomonosov Ridge to Russia unless Canada's claim is so nebulous/unpersuasive (with respect to UNCLOS Article 76 formulas 1 and 2) that the UN Commission thinks that Canada cannot actually bring a reasonable dispute to the Ridge. Even if that is the case, there is the U.S. and Denmark to think about; thus, the Western endpoint of the Lomonosov Ridge is probably still 'up for grabs.'

### **United States' Claim: Submarine Chukchi Plateau actually an Extension of Alaskan shelf**

The United States has yet to ratify UNCLOS, making it one of the few coastal states to abstain, and the only nation with a legitimate Arctic claim to abstain. This abstention has obvious and

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<sup>66</sup> "Canada First Defence Strategy", available at: [www.forces.gc.ca/site/pri/first-premier/index-eng.asp](http://www.forces.gc.ca/site/pri/first-premier/index-eng.asp)

substantial limitations on what recognizable authority (besides military presence) the U.S. can bring to bear in justifying claims on oceanic territory. The United States has thus far refrained from ratifying UNCLOS because of language describing the deep seabed and UNCLOS' establishment of the International Seabed Authority as a regulatory agency for deep seabed mining.<sup>67</sup> Further, the U.S. is wary of sovereignty issues that may arise.<sup>68</sup> The U.S. has accepted many provisions of the 1982 UNCLOS convention as customary international law<sup>69</sup>, but that is a long way from ratification. The lack of U.S. ratification raises interesting questions as to the enforceability of UN

Commission findings, although it is believed that the U.S. will eventually ratify UNCLOS so it has a widely accepted vehicle from which to make an Article 76 claim.

If the U.S. does ratify UNCLOS, it will have the standard ten-year window in which to bring an Article 76 claim. The basis for such a claim would probably be the Chukchi Plateau in the Chukchi Sea off the coast of the Alaska. This submarine plateau is the closest (spatial distance) underwater formation of U.S. territory to the Lomonosov Ridge, the turning point of most Arctic Circle claims. In bringing such a claim, the U.S. should aim to assert the Chukchi Plateau as a submarine elevation so that its claim is subject only to the 2500-meter isobathic depth with the 100 nautical mile buffer beyond that.

### **Denmark's Claim: The Massive Arctic Province of Greenland**

Denmark ratified UNCLOS in 2004. As the country which has historically asserted Greenland as its province, Denmark has a substantial physical presence in the Arctic waters. Denmark will have until 2014 to bring a claim, which puts it chronologically toward the tail end of most submissions. Although the delay

67 Howard, J. W. (2008), "Don't Be Left Out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea", *Georgia Law Review*, No. XLII, p. 852; Schiffman, H.S. (2005), "United States Membership in UNCLOS: What Effects for the Marine Environment?", *ILSA Journal of International and Comparative Law*, No. 11, p. 478.

68 Hagelin, R., "Sovereignty at Stake: Losing Under a 'Lost' Treaty", *Heritage Foundation*, available at: [www.heritage.org/research/commentary/2007/05/sovereignty-at-stake-losing-under-a](http://www.heritage.org/research/commentary/2007/05/sovereignty-at-stake-losing-under-a)

69 Duff, J. A. (2005/2006), "The United States and the Law of the Sea Convention: Sliding Back from Accession and Ratification", *Ocean and Coastal Law Journal*, No. 11, p. 6.

in time could have drawbacks (Norway already successfully staked a claim), it also permits Denmark to analyze the failed attempts of its Arctic competitors and adjust its own claim accordingly.

Denmark will also have the opportunity to review the UN Commission's determination on Canada's claim (one of its two competitors for the western endpoint of the Lomonosov Ridge), and thus evaluate how and to what extent the UN Commission incorporates Rule 5 in this particular section of the globe. Denmark's claims could be substantially limited by Rule 5 in the same way that other countries are likely to face this restriction, although Denmark has the advantage of Greenland's exceptionally-high-in-latitude placement on the globe. Because Greenland surface territory is so far north, Denmark can probably make direct claims to the North Pole, rather than trying to 'chain-link' its shelf to the Lomonosov Ridge, as countries like the United States would be forced to do. Denmark did preemptively agree to delimitation lines that enabled Norway to expand its shelf into the Norwegian Sea, which means that Denmark may offer some data for a mild extension up to the edge of its delimitation agreement with Norway and Iceland; the primary focus of Denmark's submission to the

UN CLCS is likely to be on the similarities and suggested submarine elevation between Greenland and the North Pole.

### **Norway's Claim: Aim Small, Miss Small (and the Power of Prior Agreements)**

Norway is currently the only nation besides Russia that has already submitted (and received a response) regarding an extended shelf submission.<sup>70</sup> Norway's claim centered on a contested section underneath the Norwegian Sea, colloquially known as the Banana Hole. This particular submarine segment is believed to bear geological similarities to not only Norway, but also Iceland and Denmark.<sup>71</sup> In order to preemptively avoid a Rule 5(a) challenge from these nations, Norway secured prior agreement

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70 Isted, K. (2009), "Sovereignty in the Arctic: An Analysis of Territorial Disputes & Environmental Policy Considerations", *Journal of Transnational Law & Policy*, No. 18, p. 360; "The Royal Norwegian Ministry of Foreign Affairs. Norway submits documentation on the extent of its continental shelf", available at: [www.regjeringen.no/en/dep/ud/press/news/2006/Norway-submits-documentation-on-the-extent-of-its-continental-shelf.html?id=43686](http://www.regjeringen.no/en/dep/ud/press/news/2006/Norway-submits-documentation-on-the-extent-of-its-continental-shelf.html?id=43686): Norway ratified UNCLOS in 1996 and had until 2006 to make a submission for a continental shelf extension, which it did in 2006.

71 Ibid. Note 72.

from these nations establishing delimiting lines. Delimiting lines in the context of maritime law draw outer boundaries within which a coastal state is agreed to have full sovereignty. Interfacing with Denmark and Iceland regarding their planned submission, Norway succeeded in securing some limited agreement as to outer maritime boundaries around the Banana Hole, dodging a Rule 5(a) torpedo. Because the involved parties to a potential maritime dispute involving the Banana Hole created dispute resolution procedural agreements, there is no Rule 5(a) problem and the UN CLCS is free to make a recommendation on the substance of Norway's claim on the Banana Hole. However, Norway encountered more resistance with respect to its claim on the Loop Hole, a section of the Barents Sea that overlaps with area claimed by Russia. Because Russia's first submission is believed to include this area, and because there was no prior agreement, Norway's claim on the Loop Hole ran afoul of Rule 5(a) in spite of meeting the Article 76 formulaic requirements.<sup>72</sup> Nevertheless, Russia and Norway came to an understanding to split the 175,000

square kilometer area almost in half in late 2010.<sup>73</sup> Despite UNCLOS' establishment of the UN Commission on the Limits of the Continental Shelf, the preferred method of dispute resolution is bilateral agreement between involved nation-states, since bodies of international law cannot always enforce their will upon nation-states. Norway's emphasis on prior bilateral and trilateral agreements, as well as its modest claims of shelf extension (relative to the other nations' claims), allowed it to achieve recognition of some continental shelf extension from the international community.

## Conclusion

The race for the Arctic is as much a technological race as a legal one. Icebreakers are a relatively-new class of seagoing vessel and until recently, the technology to actually harvest natural gas and oil deposits under the Arctic Circle did not exist. Although the technology has come into existence in the modern era, the cost and reliability of drilling remains much steeper than conventional drilling on-land and in shallower wa-

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72 "UN Commission on the Limits of the Outer Shelf. Summary of the Recommendations", available at: [www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_nor.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm)

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73 Harding, L., "Russia and Norway resolve Arctic border dispute", *The Guardian*, available at: [www.guardian.co.uk/world/2010/sep/15/russia-norway-arctic-border-dispute](http://www.guardian.co.uk/world/2010/sep/15/russia-norway-arctic-border-dispute)

ters.<sup>74</sup> Early estimates put the cost of acquiring oil at roughly \$700 U.S. dollars per barrel, compared to the average figure of \$12-15 U.S. dollars per barrel that Russia spends now.<sup>75</sup> Notable petroleum company BP has also retreated from its ambitious plan, wary of the increasing price tag of drilling Arctic waters.<sup>76</sup> The frontier-level technology of Arctic drilling means that the UN Commission's legal findings on the Arctic Circle will provide valuable insight into which nations should actually bother to invest the money necessary to mine and/or patrol the area surrounding the North Pole. An unfavorable result could substantially discourage the nation in question from Arctic research and development, at a

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74 Eremenko, A., "Russia's Arctic Rush 'Potential Gravy Train' – Analysis", *RIA Novosti*, available at: [www.en.rian.ru/analysis/20121023/176850003.html](http://www.en.rian.ru/analysis/20121023/176850003.html); "Royal Dutch Shell. 2012 Media Release – Royal Dutch Shell Alaska drilling update", available at: [www.shell.com/global/aboutshell/media/news-and-media-releases/2012/alaska-drilling-update-17092012.html](http://www.shell.com/global/aboutshell/media/news-and-media-releases/2012/alaska-drilling-update-17092012.html): Shell revealed that a prototype containment dome suffered damage during tests of an Arctic Containment System in preparation for future drilling in the Arctic.

75 *Ibid.*

76 "BP pulls back on offshore oil project in Alaska's Arctic", *Alaska Dispatch*, available at: [www.alaskadispatch.com/article/bp-pulls-back-offshore-oil-project-alaskas-arctic](http://www.alaskadispatch.com/article/bp-pulls-back-offshore-oil-project-alaskas-arctic)

time when many countries are facing budgetary cutbacks.

Even with Norway's successful claim in the region, the giant mass of ice surrounding the North Pole and the already-melted waters that we collectively refer to as the Arctic Circle are still largely up for grabs. The UNCLOS terminology provides some guidance on claims, but the burden is still very much on the submitting nations to conduct extensive geological, bathymetric, and legal research to evaluate and pursue the best claim strategies. Norway's ability to stake a claim is limited, and it correctly limited its scope so as not to be subject to a dispute, and thus actually secure the UN Commission's agreement on a small extension of its continental margin. The other countries (Russia, United States, Canada, and Denmark) are all vying for the grand prize – the North Pole and its adjacent circular platform of ice.

Because the Lomonosov Ridge bisects the entire North Pole, running from a point close to Canada all the way across the North Pole to another point close to Russia, Canada and Russia likely have the best claims from a mapping / spatial-distance perspective. As illustrated (in Appendix E), even an extensive international mapping compilation does not fully reveal which (if any) nations have definite con-

tinental shelf connections. Further analysis incorporating geological samples that corresponds to appropriate latitude/longitude/isobathic coordinates will provide a submitting coastal state with the best odds of success. Looking at the International Bathymetric Chart of the Arctic Ocean, it is clear that the most substantial challenge for Arctic countries will be overcoming the criticism that the Lomonosov Ridge is volcanic in nature or has origins different and apart from the outer shelves of the Eurasian continent or the North American continent. However, the vague and weak distinctions between the types of underwater ridges leaves much open to debate, so the battle to claim the Arctic Circle is still very much a race in progress.

Even if the UN Commission on the Limits of the Outer Shelf abstains from providing any clarification as to competing Canadian and Russian claims on the Lomonosov Ridge, Russia will substantially benefit from the continued American abstention from UNCLOS. American political interest in the Arctic is high, and the U.S. has the naval power to exert its oceanic influence beyond that of any country. However, without the declared support of UNCLOS and with a presumably-weaker geological/graphical claim than Canada or Russia, the U.S. will find itself out in the cold in the con-

test to claim either the Lomonosov Ridge or one of the two future Arctic shipping lanes. As Norway's successful claim reveals, the UN Commission has already begun dividing up the Arctic Circle. A longer American delay in ratifying UNCLOS means that Russia has one less opponent in the contest for dominance over the riches of the North Pole.

Furthermore, if the UN Commission returns with any recommendation that Russia expand its official continental shelf limit, Russia can begin to mix in the historic title principles and exercise control over much of the Northern Sea Route. Because the aforementioned high cost of Arctic drilling makes North Pole claims a long-term benefit as opposed to a short-term one, Russia should remain focused on the short-term prize of acquiring recognizable sovereignty over land territory and underground riches along the Northern Sea Route. Shipping traffic through the Northwest Passage and the Northern Sea Route is likely to become a reality of global economics before a substantial level of North Pole mining commences, simply because of the technological barriers and associated costs that yet remain. Russian President Putin has already declared his intention to ramp up infrastructure along the northern coast of Russia in anticipation of this bright

icy future<sup>77</sup>, and a UN Commission recommendation for expansion will only strengthen Russia's grip on the Arctic.

The Russian liquefied natural gas (LNG) tanker *Ob River* recently completed its journey through the Northern Sea Route, escorted by icebreakers.<sup>78</sup> The successful journey demonstrated the expanding possibility of the Northern Sea Route as an efficient shipping lane – *Ob River* used 40% less fuel making the journey from Norway to Japan by way of the Northern Sea Route and also shaved three weeks off the old route through the Mediterranean Sea and the Suez Canal.<sup>79</sup>

Under the supervision of Russia's largest independent natural gas producer OAO Novatek, construction began in July on a shipping port in Sabetta on the Yamal Peninsula<sup>80</sup>; once completed, the Russian port in Sabetta will be one of the largest Arctic ports in the world.<sup>81</sup> These developments reinforce Russia's efforts to realize a dream of domination in the Arctic Circle, and a favorable UNCLOS recommendation treating the Lomonosov Ridge as a submarine elevation of Russia's continental shelf would only strengthen the Russian claim to the North Pole.

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## Арктическая гонка: большое путешествие современной России

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### Аннотация

В статье проведен сравнительный анализ правовых и практических задач, стоящих перед Россией в расширении охвата своего суверенитета на предмет включения Северного полярного круга, учтенных против конфликтующих претензий четырех других арктических государств, с применением модели Конвенции ООН по морскому праву.

### Ключевые слова

ЮНКЛОС, Северный полярный круг, хребет Ломоносова, Россия, морское право.

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