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# Cooperation or Conflict in the Arctic? UNCLOS and the Barents and Beaufort Sea Disputes

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THE CITY COLLEGE OF NEW YORK/CUNY

Cooperation or Conflict in the Arctic? UNCLOS and the Barents and  
Beaufort Sea Disputes

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## **Abstract**

The predicted prosperity of the Arctic has propelled countries to compete over territory and natural resources lying beneath the water. There is no doubt that a huge amount of potential natural resources in the disputed areas can cause significant tensions between the countries. Therefore, this paper aims to assess the cooperation and conflict dilemma in the Arctic. I examine the Barents Sea dispute and the Beaufort Sea dispute as case studies to demonstrate the potential for cooperation in the Arctic. I claim that the settlement of the Barents Sea dispute between Norway and Russia gives important lessons on how to solve the Beaufort Sea dispute between the United States and Canada. I will argue that cooperation, not conflict, will dominate future relations in the Arctic region. Even though the right to the Arctic resources may trigger conflict and rising tensions, we live in the increasingly interdependent world, where cooperation is not an option, but rather an obligation. In addition, this thesis will introduce the significance of the United Nations Convention on the Law of the Sea and its role in facilitating cooperation in the maritime boundary delimitation issues. I believe that the Arctic region can bring states together to confront shared challenges, solve common problems, and enjoy the benefits that the improved access to the region's resources will bring.

## Chapter I

### Introduction

There were times when the oceans, except a narrow belt of sea surrounding a nation's coastline, belonged to no one and were free for everyone. However, now, in the twenty-first century, the proliferation of claims over the extension of offshore resources is evident. The tension is rapidly growing among coastal countries. Recently the melting ice in the North Pole prompted the dispute over the rights to the Arctic Circle's territory and its natural resources. Five Arctic countries – Canada, Denmark, Norway, Russia, and the United States are competing to maintain a presence not only on the ocean's surface, but also claiming the rights to the resources under the water.<sup>1</sup>

The focus of this thesis is the settlement of the dispute in the Arctic Circle. There are ample of reasons for the conflict over the rights to the territory in the oceans. The resources of the sea are believed to be enormous. A few of the most significant resources are fish stocks, oil, gas, gold and diamonds. Moreover, coastal countries are concerned about the right to claim the strategic passages in the Arctic Circle as part of their internal waters.<sup>2</sup> In August 2, 2007, Russians planted the flag in the Arctic seabed claiming their right to the territory. Even though physical confrontation was avoided, other Arctic countries perceived the flag-planting ceremony as an aggressive act, and an unnecessary provocation.<sup>3</sup> Moreover, Russia is delaying the ratification of an agreement reached with the United States concerning the control of an area in the Bering Sea.<sup>4</sup> Sovereignty conflicts, the desire to possess

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<sup>1</sup> Roger Howard, *The Arctic Gold Rush: The New Race for Tomorrow's Natural Resources* (London and New York: Continuum, 2009).

<sup>2</sup> *Ibid.*, 8-9.

<sup>3</sup> *Ibid.*, 6.

<sup>4</sup> Lieutenant Colonel Alan L. Kollien, "Toward an Arctic Strategy" (MA thesis, U.S. Army War College, 2009), 8.

large amounts of natural resources, and especially, the overlap of claims between rivals, will inevitably lead to either confrontation or cooperation between countries.

The proliferation of territorial claims in the Arctic suggests the possibility of intense national competition in this region. However, this paper is based on the hypothesis that despite the vast amount of resources at stake, countries will prefer cooperation rather than conflict in the Arctic Circle. In this thesis I intend to answer such questions as: who are the key actors in the region? What are their interests? Where and how do these interests overlap to give rise to conflict and rivalry? Can the issue of competing interests be resolved through cooperation and dialogue in order to achieve a mutually acceptable compromise? Specifically I will rely on two case studies; one dealing with cooperation and the other dealing with ongoing dispute. I will analyze how the agreement between Russia and Norway, over the Barents Sea, was reached, what the consequences are, and what made both nations cooperate after four decades of disagreements and inability to reach a compromise. In addition, I will discuss if, or how the lessons from this boundary settlement between Norway and Russian can be applied to the outstanding issue between the United States and Canada in the Beaufort Sea.

In order to consistently answer my research questions and properly evaluate the cooperation and conflict dilemmas, this thesis will be structured in separate chapters addressing different issues. In the first chapter of this thesis, I intend to analyze the importance of the issues in terms of two main international relations theories: realism and liberalism. Both theories offer valuable explanations and very distinct insights into a country's practice of international relations in the Arctic Circle.

Moreover, the significance of the cooperation or conflict needs to be viewed through the lenses of the Arctic strategy documents. They will be analyzed in Chapter

I as well. Contents of such documents provide necessary information about each country's interest and priorities in the region. This thesis intends to analyze how those interests differ and in what way they are compatible? Therefore, I will examine and compare the Arctic Strategy documents of Norway, the Russian Federation, Canada, and the United States.

The second chapter of this thesis addresses the significance of the United Nations Convention on the Law of the Sea (UNCLOS) and its applicability in the Arctic region. The UNCLOS is an unprecedented attempt by international community to regulate all aspects of the resources of the sea and the uses of the ocean. It defines the rights and responsibilities of nations and their use of the world's oceans. It indicates specific jurisdictional limits within which countries can exercise their authority. This thesis examines whether the UNCLOS provisions offer the solution to the disputed areas. In a situation, where rival claimants appear to have equally strong claims (when the coasts of two states are opposite or adjacent to each other), the UNCLOS indicates that the delimitation of borders should be affected by agreement on the basis of international law, in order to achieve an equitable solution.<sup>5</sup> Obviously, the concept of equity is very flexible and subjective. This general rule leaves the negotiating parties to decide on the method to be used in the settlement of boundaries.<sup>6</sup>

The third chapter focuses on the resources in the Arctic and disputes over them. It also discusses delimitation issues in the region and introduces delimitation methods which are the key to divide territories.

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<sup>5</sup> United Nations Convention on the Law of the Sea (UNCLOS) (1982), Article 74.

<sup>6</sup> Clive Archer, and David Scrivener, eds., *Northern Waters: Security and Resource Issues* (London: Croom Helm, 1986), 170.



Chapter four examines the Barents and Beaufort Sea disputes. I will claim that the settlement of the Barents Sea dispute can guide Canada and the United States towards a constructive resolution of the Beaufort Sea dispute. I believe that uncertainty about the exact amount of resources and the issue of their recoverability will prevent confrontations between countries. The proper exploration of the resources is not possible until the agreements between the countries are reached and the territories are divided or shared.

The last chapter sums up the cooperation/conflict dilemma in the Arctic and suggests ways the Beaufort Sea dispute might be solved.

### Theoretical Literature Review

#### *Neorealism*

Hans Morgenthau, a classical realist, would claim that states' interests are defined in terms of power. Therefore, the dispute over the borders would be viewed as each country's wish to dominate in anarchical international system. Classical realists view human nature as aggressive and conflicting. Thus, war over the disputed borders would appear to be inevitable.

However, neorealists suggest that states actions are driven by the desire to survive. As a result, tension between the countries is a consequence of survival issues. Mearsheimer, as an offensive realist, claims that there are three patterns of behavior in international system. Firstly, states fear each other. Secondly, states aim to guarantee their own survival. Finally, states seek to maximize their relative power positions over the other states. The greater the military advantage, the more secure it can feel.<sup>7</sup> As neorealists would suggest, all claimant countries perceive the disputed territory as a

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<sup>7</sup> John J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19 (3) (1994): 11-12.

source from which they can maximize their relative power. The world is seen as a struggle for relative power, where the victor achieves a higher status among the other units within the international community. Control over a certain territory in the Arctic helps to maintain their influence in the region. Meanwhile, other countries may view one country's claim to control the disputed territory as a threat to their relative power in the region. According to realists, since no international organization is ultimately capable of enforcing order, every state has to provide its own security.

Neorealists also try to explain why some countries are unable to find a compromise and cooperate in order to solve the dispute. All countries, interested in Arctic territories, are concerned about the relative gains that can be achieved from oil and gas exploration in the disputed territories. From the neo-realists' perspective, the disputes in the Arctic appear to epitomize a zero-sum game. The definitive characteristic of a zero-sum game is that players have strictly opposed preferences. Interaction between Russia and Norway, and the United States and Canada are competitive; no grounds for bargaining and agreement exist. Zero-sum game territorial disputes are particularly resistant to peaceful settlements. Therefore, awarding sovereignty rights, over a certain territory to one party, result in the loss for another claimant.<sup>8</sup>

As mentioned above, an ongoing dispute over the drilling for the natural resources in the Arctic Circle is becoming a crucial issue that will shape future relationships among the states. According to neorealists, international anarchy fosters competition and conflict among states and inhibits their willingness to cooperate, even

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<sup>8</sup> Veronica Ward, "Regime Norms as 'Implicit' Third Parties: Explaining the Anglo-Argentine Relationship," *Review of International Studies* 17(2) (1991): 174-177, 179-183.

when they share common interests.<sup>9</sup> They theorize that should a compromise be reached and an agreement negotiated, countries would still not be able to overcome the issue of uncertainty about another party's intentions. Despite the concern about the relative gains, a possibility of cheating, opponents' non-compliance is another obstacle to the agreements.<sup>10,11</sup>

Other international relations theories try to diminish realists' ability to explain the disputes in the Arctic Circle in terms of gaining power and international recognition. Alternative theories may suggest that the disputed areas are not of vital importance to assure claimants' position in the international system. However, the gaining of sovereignty right over a certain territory may lead to more ambitious claims toward the resources and territory in the Arctic.<sup>12</sup>

### *Neoliberalism*

Neoliberalism supports the neo-realist view about international anarchy. Moreover, it claims that states are rational egoists that calculate costs and benefits of alternative actions. States are egoists, because they are independent. Neoliberals oppose neorealists and suggest that states are concerned about their possible absolute gains, rather than relative gains.<sup>13</sup> Therefore, they gain or lose not because they lose or gain over others. Hence, neoliberals do not perceive the dispute over the territory in the Arctic as a zero-sum game. Instead, they would describe it as a mixed-motive game where both incompatible and coincidental interests occur between the parties involved.

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<sup>9</sup> Joseph M. Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International Organization* 42(3) (1988): 487-488.

<sup>10</sup> Ibid.

<sup>11</sup> Mearsheimer, 12, 13.

<sup>12</sup> Ward, 176-177.

<sup>13</sup> Grieco, 496-499.

Doyle<sup>14</sup> claims that states are peaceful, however he does not deny the possibility of war over resources. This could explain the tensions in the Arctic over the resources. However, Kant, liberal internationalist, claims that liberal states exercise peaceful restraint and peace exists among them. With the increase in number of liberal states in the world, the possibility of global peace will rise. Nevertheless, a subtype of Neoliberalism – liberal internationalism does not deny the likelihood of the war between liberal and non-liberal states. Liberal states assume that non-liberal states are not just. This logic can be applied to the dispute between Russian and Norway. Since non-liberal governments such as in Russia are aggressive with their own people, liberal governments perceive the foreign relations policies of non-liberal governments’ as deeply suspicious. Liberal republics are prepared to protect private property and the right of individuals overseas against non republics and promote democracy by any means necessary. This liberalists’ position explains, why Russia may not be a trustworthy partner for Norway.<sup>15</sup> The regimes in both countries are different, which according to liberals, would explain why there was a possibility for the war to break out in the first place.

Moravcsik indicates the neoliberal theory seeks to generalize the social conditions under which the behavior of self-interested actors moves towards cooperation or conflict. When willingness to employ coercion does exist, it can be associated with a few factors. Divergent fundamental beliefs, for example, a democratic regime versus an autocratic regime, may be one factor that could generate tension. Secondly, conflict over scarce natural resources such as oil and gas, as in the

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<sup>14</sup> Michael W. Doyle, “Liberalism and World Politics,” *The American Political Science Review* 80 (4) (1986): 1152-1154, 1156.

<sup>15</sup> Ward, 184-185.

case in the Arctic, may contribute to the employment of force.<sup>16</sup> Finally, inequalities in political power may lead to conflict, in addition to issues around representation and state preferences. In Norway, the United States and Canada, representative institutions and practices reflect the preferences and social power of individuals that are translated into state policy. However, in Russia, the leader could be motivated overwhelmingly by his personal political ambitions.

Neoliberalism permits state preferences to vary while holding power and information constant. It focuses on how domestic conflict, not international anarchy, imposes outcomes.<sup>17</sup> In an anarchic international environment, states are not the same and the nature of the domestic political regime has an important influence on foreign policy behavior. Liberals would suggest that each claimant in the Arctic could create tension in the disputed territory in order to divert attention from domestic political and economic problems facing them at home. Governments, especially non-democratic ones, often tend to turn to foreign policy issues in the hope that the people will forget about their domestic plight. Moreover, there is a linkage between domestic oppression and foreign aggression. Tyrannical rulers, who ignore moral and legal constraints in the treatment of their citizens, tend to ignore similar constraints in dealing with other nations, because their actions go unchallenged. Dictators inevitably become persuaded that they can remain unpunished for their actions.<sup>18</sup> Thus, neoliberals would argue that regimes and behavior are inextricably linked. Dispute settlement would limit the states' freedom of action as it would have to respect certain boundaries. Neorealists would suggest that regimes, being the creations of states, have no independent

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<sup>16</sup> Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International Organization* 51 (4) (1997): 517, 526.

<sup>17</sup> *Ibid.*, 518-520.

<sup>18</sup> Fernando R. Teson, "Review," *The American Journal of International Law* 81 (2) (1987): 556-562.

influence or value beyond that which is specifically granted or assigned to it by member states. For neorealists, states, driven by survival considerations, become members of regimes (such as UNCLOS) only to enhance their own positions in international system. Neoliberals claim that individual states may refine their interests and seek joint gains in some areas, while continuing to play the zero-sum game in other fields. The answer of which tactic a state is going to prefer lies in the existence of international regimes as social institutions. Krasner indicates that in a world of sovereign states, the basic function of regimes is to coordinate state behavior to achieve desired outcomes in particular issue-area.<sup>19</sup> Thus international regimes, as social institutions, function to shape and constrain the behavior of individual actors and groups of actors in the international arena. In addition, neoliberals would argue that even though cheating is an obstacle to cooperation among rationally egoistic states, international institutions can help states to overcome this barrier to joint action. Here the importance of the United Nations Convention on the Law of the Sea emerges.

This thesis claims that there is no doubt that countries realize the benefits of cooperation and a need to avoid the zero-sum game, where there is only one winner in the field. Seminal approach is vital to maintain the stability in the region. The interest and priorities of all countries should be taken into consideration to ensure the peaceful management of relations among the countries in the Arctic.

### Methodology

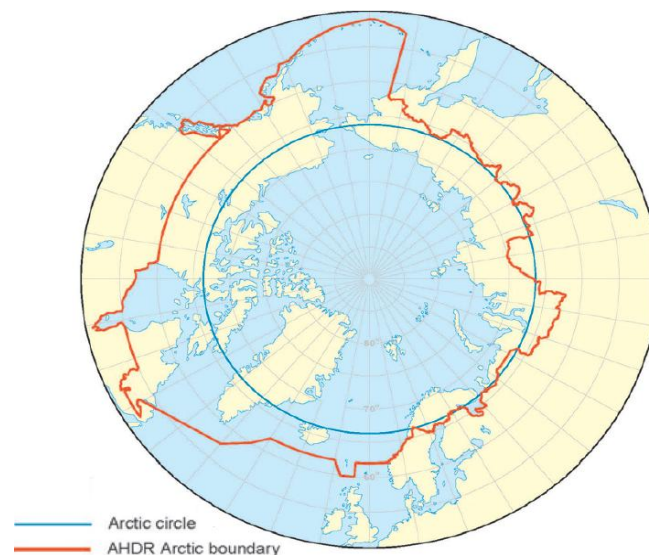
This thesis employed qualitative data in order to verify the research question of whether cooperation or conflict dominates international relations in the Arctic.

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<sup>19</sup> Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables," *International Organization* 36 (2) (1982): 186-190.

Selected sources mainly include written studies on the Arctic problematic. One of the different positions on the disputes in the Arctic, were analyzed by reviewing sources such as each country's Arctic strategy documents, newspapers, maps and critical interpretations of them. Arctic is a current issue on the international relations agenda, therefore, I will also rely on the secondary sources such as journal articles, and books.

Before starting to analyze the thesis question, it is crucial to define what the Arctic is. The Arctic had been studied for centuries, yet there is no clear geographical or juridical definition describing it. Each Arctic country prefers to have its own definition of the Arctic.<sup>20</sup> For the purpose of this paper, the Arctic is defined as the northern polar region located around the North Pole and limited in the South by the Arctic Circle, i.e. parallel 66°32' North latitude.<sup>21</sup> Figure 1 indicates this area, which is approximately three times the size of mainland Europe – 30 million km<sup>2</sup>.<sup>22</sup>



**Figure 1. Arctic borders.** The Arctic Human Development Report Boundray is shown in red. The map is available at: [http://arctic-council.org/section/maps\\_and\\_photos](http://arctic-council.org/section/maps_and_photos).

<sup>20</sup> For more details regarding definitions see Emergency Prevention, Preparedness and Response (EPPR), “Field Guide for Oil Spill Response in Arctic Waters 1998,” Environment Canada (Canada: Yellowknife, 1998), iv. Available at: <http://eppr.arctic-council.org/content/fldguide/fldguide.pdf>.

<sup>21</sup> Definition is used by the Arctic Council. Available at: [http://arctic-council.org/section/the\\_arctic\\_council](http://arctic-council.org/section/the_arctic_council).

<sup>22</sup> Alf H. Hoel, “The High North Legal-Political Regime,” in *Security Prospects in the High North: Geostrategic Thaw or Freeze?*, eds. Sven G. Holtmark and Brooke A. Smith-Windsor (Rome: NATO Defence College, May 2009), 83.

There are two major reasons why the Barents Sea dispute and the Beaufort Sea dispute were chosen for a research. Firstly, both disputed areas encompass the region's two major oil deposits locations.<sup>23</sup> In 1981, report by the U.S National Petroleum Council on U.S. Arctic oil and gas noted that the Beaufort Sea may contain 12.9 billion barrels of oil.<sup>24</sup> Meanwhile, Russia estimates that the recoverable resources in the disputed area in the Barents Sea may equal the equivalent of 39 billion barrels of oil or 6.6 trillion cubic meters of gas or a combination of both.<sup>25</sup> Other experts say the estimation is exaggerated, while some speculate the amount of resources is even greater. Secondly, even though most of the Arctic's rich oil and gas resources lie not in the disputed territories, but within established borders, the ownership of the assets in the areas of Barents Sea and Beaufort Sea are open to serious question. Therefore, the Barents Sea and the Beaufort Sea disputes are similar in causing considerable controversy and rival's disputes.

As a result, the research will include a data on how the disputed areas should be divided. The first criteria for determining how the area should be divided, is the median line method, which means that borders should be drawn according to the length of a country's coast – every point of the median line is equidistant to the nearest point on the coast. The United States and Norway favor median line method.

Another approach, which is preferred by Russia and Canada, is the sector method as legal grounds to claim territory in the Arctic.<sup>26</sup> Sector approach allows countries to claim a pie-shaped area, which is formed by drawing the lines from

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<sup>23</sup> Charles Emmerson, "Our Friends in the North," *Russia Beyond the Headlines*, September 29, 2010, accessed February 28, 2011, [http://rbth.ru/articles/2010/09/29/our\\_friends\\_in\\_the\\_north04992.html](http://rbth.ru/articles/2010/09/29/our_friends_in_the_north04992.html)

<sup>24</sup> Donald R. Rothwell, *Maritime Boundaries and Resource Development: Options for the Beaufort Sea* (Canada: The University of Calgary, 1988), 28.

<sup>25</sup> Chris Weather, "Race for the Arctic and for FDI," *Russia Beyond the Headlines*, September 15, 2010, accessed February 28, 2011, [http://rbth.ru/articles/2010/09/15/race\\_for\\_arctic\\_and\\_fdi04945.html](http://rbth.ru/articles/2010/09/15/race_for_arctic_and_fdi04945.html).

<sup>26</sup> Howard, 59.



country's coast to the North Pole.<sup>27</sup> The different approaches to the demarcation of borders prove the challenges that disputes in the Arctic pose.

### Arctic Strategy Documents

It is crucial to include in the research, current Arctic strategy documents that were issued by all disputant countries: Norway, Russia, Canada, and the United States. The existence of such documents indicates the importance of the Arctic and emphasizes the opportunities available and the challenges that each claimant country is going to face in the near future. I intend to analyze only those parts of strategy documents that are related to this thesis, which are cooperation and conflict in the region. In particular I am interested in the language in which the documents are written, identifying the positions that the countries are taking and how they differ. Moreover, this research will evaluate each claimant's intentions and strategic priorities in the Arctic. Attention to the each country's military presence and activities in the region will be crucial as well.

### *Russian Arctic strategy*

Russia can be identified as one of the most determined Arctic players. It seeks recognition of its leading role in political, economic and military areas in the Arctic.<sup>28</sup> Russia has been stressing the importance of its role in the Arctic in the National security strategy and the Arctic strategy. On May 2009 Russia's President Dmitry Medvedev approved a national security strategy.<sup>29</sup> The document introduced a change

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<sup>27</sup> Ibid., 60.

<sup>28</sup> Katarzyna Zysk, "Russia's Arctic Strategy: Ambitions and Constraints," *Joint Force Quarterly* 57 (2)(2010).

<sup>29</sup> Security Council of Russian Federation, *National Security Strategy of the Russian Federation until 2020* [СТРАТЕГИЯ национальной безопасности Российской Федерации до 2020 года], May 12, 2009, No. 537, accessed March 1, 2011, <http://www.scrf.gov.ru/documents/99.html>.

in the national security concept, which is defined in a more conciliatory manner compared to the previous one that was introduced in 1997 and relied on military approach. The new national security strategy among various issues identifies the necessity to direct attention of international policy focusing on the possession of energy resources. The Barents Sea and its resources are among the locations that are identified as being important to Russian foreign policy. What is significant to this thesis, is that Russia emphasizes the commitment to protect its national interest in adherence to the international law, which excludes the possibility of confrontation and fosters a conduct of a rational and pragmatic foreign policy. Meanwhile, Russia is determined to preserve its competitiveness and maintain its influence in the international arena.

Another important document which defines Russia's views on the Arctic is the "*Fundamentals of Public Policy of the Russian Federation in the Arctic for the period up to 2020 and Beyond.*"<sup>30</sup> This document reveals information about a strategy that was adopted in September 2008. It clearly states that Arctic is a region of great importance to Russia due to its potential for gas and oil resources, and profitable maritime transport through the Northern Sea Route (NSR). The NSR is a crucial element in the maritime connection between Asia and Europe. Among the interest of the Russian Federation in the Arctic is the preservation of peace and cooperation in the area. The expansion of the resource base in the Arctic through the use of advanced technologies to extract the resources is listed among the aims and priorities of Russia. One of the top priorities, listed in the Arctic strategy, is defining the limits of the continental shelf by 2015. Moreover, it identifies international cooperation as its

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<sup>30</sup> Security Council of Russian Federation, *Fundamentals of Public Policy of the Russian Federation in the Arctic for the Period up to 2020 and Beyond* [Основы государственной политики Российской Федерации в Арктике на период до 2020 года и дальнейшую перспективу], September 18, 2008, accessed March 1, 2011, <http://www.scrf.gov.ru/documents/98.html>.

priority in the region, which will be enforced through mutual bilateral and multilateral agreements among the Arctic states. Russia's Arctic strategy document suggests that its country does not believe in the military confrontation in the region. However, it speaks to the possibility of tensions that may develop due to the potential of resources in certain areas of the Arctic, specifically in the Barents Sea.<sup>31</sup> Interestingly, Russia is determined to establish a special Arctic military formation which would protect its country's interests in military and political situations should any arise. Russia's Arctic policy document targeted the presence of NATO in the Arctic region, as NATO identified the Arctic as an area of increasing strategic interest among the states. In general, Russia is focused on maintaining and strengthening its leading position in the Arctic.

K. Zysk in the article "Russia's Arctic Strategy: Ambitions and Constraints" identifies the difference in the perception of security in the region between the current Russian position in the region and the previous Arctic strategy, which was adopted in 2001. She indicates that the country's current position is more moderate and avoids assertive rhetoric which was commonly used by Russia in previous years. Various issues in the region, specifically related to military security, were perceived by Russia as a zero-sum game which claims that in general, states are prone to compete and are hostile to one another. Russia's confrontational position in the past was based on idea that Russian and the Western interest are incompatible and diverging. In particular, Russia still perceives NATO military presence and exercises within close proximity to Russia's borders as a threat to the country's national security. It creates a ground for mistrust and tension between the countries. However, Russia has begun to adopt a more constructive approach that demonstrates a willingness to claim territory in the

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<sup>31</sup> Zysk, "Russia's Arctic Strategy," 108.

Arctic in accordance to international law. This approach is more constructive and explicit in current foreign policy documents.<sup>32</sup>

I. Overland, in the article “Russia’s Arctic Energy Policy” offers a different view on Russia’s politics. She admits that Russia is often mentioned in the international arena as relying on expansionist and militarist policy. Nevertheless, Overland suggests a different interpretation of Russia’s current behavior.<sup>33</sup>

The belief about negative, imperialist image was strengthened in 2007 when two Russian scientists A. Sagalevich and A. Chilingarov planted the Russian flag in the North Pole.<sup>34</sup> However, Overland indicates that such flag planting act was not unique and is common among explores when they reach difficult targets as Mount Everest, North Pole, and Moon. Moreover, the aim of the expedition was to collect samples that would serve as evidence necessary for the recognition of prolongation of Russia’s continental shelf in accordance with the international law.<sup>35</sup> However, in my opinion, flag planting ceremony reminded the world how unpredictable and provocative can be Russians behavior.

While Overland was analyzing the Russian strategy in the Arctic, she noticed that the content and language of the strategy was strikingly similar to the western policy language in the Arctic. It emphasized all the politically correct points such as cooperation, increased Russia’s participation in international forums.<sup>36</sup> Even though the language of the current Russian strategy documents seemed to dismiss the possibility of military confrontation, the actual behavior of Russia did not change. For example, the flights over strategic bombers along the coast of Norway and the conduct

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<sup>32</sup> Ibid., 110.

<sup>33</sup> Indra Overland, “Russia’s Arctic Energy Policy,” *International Journal* (2010): 865-878.

<sup>34</sup> Howard, 2.

<sup>35</sup> Overland, 866-867.

<sup>36</sup> Ibid., 867.

of military drills continued in 2009.<sup>37</sup> K. Zysk indicates that current document clearly identifies priorities and areas of interest in the Arctic which helps to predict Russia's behavior. However, it lacks strategy to pursue the goals systematically within a certain time limit.<sup>38</sup>

### *Norwegian Arctic strategy*

Norwegian government released its *High North Strategy* (HNS) in December 2006.<sup>39</sup> It indicates the importance of the Arctic region for Norway's national interests. The strategy assures the continuation of good relations and active dialogue with neighboring countries and key allies such as the United States and the European Union.<sup>40</sup> In particular, determination to strengthen cooperation with Russia is evident throughout the entire strategy. Russia is important not only in its proximity to Norway, but also due to its claims in the Barents Sea. Norway admits the significance of Russia in the management of the resources, which only can be assured by cooperation between the countries.<sup>41</sup> Norwegian government calls for the assurance of sustainable development in the High North.<sup>42</sup> In addition, the strategy indicates the opportunity that the Barents Sea resources provide.<sup>43</sup> The Barents Sea and its riches are believed to be a perfect source of energy for Europe in the near future. Moreover, Norway is a stable and trustworthy energy supplier which offers secure and transparent conditions and predictability.<sup>44</sup>

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<sup>37</sup> Zysk, "Russia's Arctic Strategy," 108.

<sup>38</sup> *Ibid.*, 104-108.

<sup>39</sup> Norwegian Ministry of Foreign Affairs, *The Norwegian government's High north strategy* (HNS) (2006), accessed March 10, 2011, <http://www.regjeringen.no/upload/UD/Vedlegg/strategien.pdf>.

<sup>40</sup> Kristine Offerdal, "Arctic Energy in EU Policy: Arbitrary Interest in the Norwegian High North," *Arctic* 63(1) (2010), 31.

<sup>41</sup> HNS, 9, 27.

<sup>42</sup> *Ibid.*, 5.

<sup>43</sup> *Ibid.*, 34, 55-56.

<sup>44</sup> Offerdal, 31.

The message of the High North Strategy can be described in three words: presence, activity and knowledge.<sup>45</sup> Norway is determined to be a visible player in the Arctic. It will be active in exploring and protecting the region at national and international levels. It admits that energy supply and security issues are becoming increasingly important in international agendas. Norway seeks to gain more knowledge about the existing opportunities in the Arctic, as well as discover the new ones. However, Norway admits that there are some differences in opinions concerning specific questions and points of international law regarding exploration and exploitation of the resources. However, it claims that accessibility of resources in the Barents Sea will foster cooperation rather than conflict in the area.<sup>46</sup>

High North Strategy also includes the presence of Norwegian Armed forces. Its main objectives are to gather information, and exercise authority and sovereignty.<sup>47</sup> In general Norway's HNS assures that Norway is determined to act in transparent and predictable manner in the region.

#### *Canada's Arctic region policy*

Canada introduced its *Northern Strategy* (NS) in 2009.<sup>48</sup> It seeks to achieve international recognition of the country's presence and position in the Arctic. The NS emphasizes four priority areas: "...exercising our Arctic sovereignty; promoting social and economic development; protecting the North's environmental heritage; and improving and devolving northern governance."<sup>49</sup> In pursuing all these objectives Canada is committed to demonstrating and maintaining its sovereignty, rights, and jurisdiction in the Arctic region. In August 20, 2010, Lawrence Cannon, Canada's

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<sup>45</sup> HNS, 6.

<sup>46</sup> Ibid., 16.

<sup>47</sup> Ibid., 19; Huebert, 31.

<sup>48</sup> Government of Canada, *Canada's Northern Strategy: Our North, Our Heritage, Our Future*, released July 26, 2009, accessed March 20, 2011, <http://www.northernstrategy.ca/cns/cns.pdf>.

<sup>49</sup> Ibid., d.

Minister of Foreign Affairs, released the *Statement on Canada's Arctic Foreign Policy: Exercising Sovereignty and Promoting Canada's Northern Strategy*.<sup>50</sup> The statement defines the priorities in the Arctic and builds on the four pillars emphasized in the 2009 NS.

For Canada exercising Arctic sovereignty means demonstrating leadership in the international arena by promoting stability and transparency in accordance with international law. It its NS Canada commits to engagement in negotiations in order to resolve existing boundary issues with Denmark over Hans Island and with the United States over the Beaufort Sea, in accordance with international law. In addition, Canada is determined to seek international recognition in regards to Canada's extended continental shelf.<sup>51</sup>

K. Zysk indicates Canada has demonstrated willingness to strengthen its military presence and demonstrate authority regarding activities in the Arctic.<sup>52</sup> In 2009, Canada's performed an annual series of military activities known as Operation Nanook in the area.<sup>53</sup> The sea, land, and air force exercises, that took place in Canada's Arctic territory, proved the country's determination to show its presence in the area.

F. Griffith, in his paper "Towards a Canadian Arctic Strategy," argues that the Arctic became a region of strategic rivalry among the countries. There is no denying that cost and risk will be involved trying to defend each country's interests.<sup>54</sup> However, he assures that cooperation is vital in securing Canadian Arctic interests.

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<sup>50</sup> Government of Canada, *Statement on Canada's Arctic Foreign Policy*, released August 20, 2010, accessed April 2, 2011, [http://www.international.gc.ca/polar-polaire/assets/pdfs/CAFP\\_booklet-PECA\\_livret-eng.pdf](http://www.international.gc.ca/polar-polaire/assets/pdfs/CAFP_booklet-PECA_livret-eng.pdf).

<sup>51</sup> *Ibid.*, 12.

<sup>52</sup> Zysk, "Russia's Arctic Strategy," 110.

<sup>53</sup> Lee Carter, "Canada in Arctic show of strength," *BBC News*, August 16, 2009, accessed March 11, 2011, <http://news.bbc.co.uk/2/hi/8204531.stm>.

<sup>54</sup> Franklyn Griffiths, "Towards a Canadian Arctic Strategy," *Foreign Policy for Canada's Tomorrow* 1(2009): 3.

Griffith suggests three main objectives of Canada's strategy and active involvement in shaping the future of the Arctic.<sup>55</sup> Firstly, he points out that it is necessary to engage the highest political level in the conduct of international relations in the Arctic. Secondly, he suggests that an engagement of Arctic powers such as the United States and the Russian Federation is crucial in order to achieve a deeper and broader cooperation in the region. Finally, Griffith claims that invigoration of the Arctic Council is essential in regards to competence and better coordination of collective actions.<sup>56</sup>

Meanwhile, R. Huebert suggests that Canada should to be more engaged in the Arctic issues. The attention that the Arctic is receiving from decision makers is not sufficient, giving the rising international significance of the region.<sup>57</sup> He also proposes the increasing of surveillance and enforcement capabilities in the Arctic to ensure other countries of Canada's determination to be an active player in the region. Moreover, Huebert calls for closer cooperation with the Russian Federation and the United States in order to reach an agreement on the rules of engagement.<sup>58</sup>

In general, Canada's Arctic foreign policy emphasizes Canada's intension to exercise leadership and demonstrate responsibility. It is determined to respond to any actions, made by other countries, which might affect Canada's national interests. Canada's approach in the Arctic will be committed to collaboration, diplomacy and regard for the international law.

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<sup>55</sup> Ibid., 19.

<sup>56</sup> Ibid., 20.

<sup>57</sup> Rob Huebert, "Canadian Arctic Sovereignty and Security in a Transforming Circumpolar World," *Foreign Policy for Canada's Tomorrow* 4 (2009): 4.

<sup>58</sup> Ibid., 8.



## *United States and the Arctic*

The United States announced its *Arctic Region Policy* (ARP) in the National Security Presidential Directive and Homeland Security Presidential Directive on January 9, 2009.<sup>59</sup> This directive, signed by President George W. Bush, replaced 1994 Presidential Decision Directive/NSC-26 with respect to Arctic policy. The new document indicates increased United States interest in the Arctic and lists a number of issues in regards to the region and to U.S. priorities.<sup>60</sup> Among the interests of the United States are national policies on homeland security and defence, climate change increased activity in the region, the Arctic resources, boundary issues, energy and environmental protection, and the role of the Arctic Council, which the United States claims should continue to have the current general mandate without transforming it into a formal international organization.

The document indicates the United States willingness to act independently in the region, while emphasizing regional cooperation at the same time. The directive also encourages peaceful resolution of disputes in the Arctic. Moreover, paragraph C calls for the Senate to accede to the 1982 UNCLOS in order to protect and assure U.S. interest in the Arctic. The current U.S. administration, under President Barack Obama and the Secretary of State Hillary Clinton, encourages ratification of the treaty as the Arctic region is becoming very important in the international arena.<sup>61</sup>

Furthermore, the unresolved dispute in the Beaufort Sea is mentioned in paragraph D, suggesting that the United States has a strong position on the solution to the dispute based on the equidistance principle. The directive also mentions the

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<sup>59</sup> The White House, *The National Security Presidential Directive and Homeland Security Presidential Directive*, January 9, 2009, accessed March 13, 2011, <http://georgewbush-whitehouse.archives.gov>.

<sup>60</sup> Sven G. Holtmark and Brooke A. Smith-Windsor, eds., "Introduction" in *Security Prospects in the High North: Geostrategic Thaw or Freeze?* (Rome: NATO Defence College, May 2009): 21.

<sup>61</sup> *Ibid.*, 22.

maritime boundary treaty between the United States and Russian Federation dating back to 1990.<sup>62</sup> The United States is urging Russia to ratify the agreement.

Although the United States suggested it has a solution to the dispute, Lieutenant Colonel Allan L. Kollien in his strategy research paper “Toward an Arctic Strategy”, indicates that the United States lacks a comprehensive Arctic strategy in order to secure its position and defend the interest in the region.<sup>63</sup> The paper analyzes the main objectives of the United States in the Arctic relying on the Arctic Policy Directive. Kollien urges the United States congressional leadership to adhere to the international legal regime in order to defend its Arctic interests. He indicates that strategy has to link three crucial points: ends, means, and ways.<sup>64</sup> Firstly, goals should be set and objectives should be reached in order for a strategy to be successful. Secondly, it is essential to define the means, which would be used to achieve the goals. Finally, the ways to reach the goals with the aid of the resources should be identified. As was clearly stated in the Arctic policy, the need for a framework for the effective pursue of policy is necessary.<sup>65</sup> The challenge that the United States encounters is a legal regime to ground its claims and meet its interest in accordance with national and homeland security objectives. The issue of the ratification of the UNCLOS arises.<sup>66</sup>

In addition, Kollien mentions the need for a united command that would control unified action and would be able to achieve a united effort in the Arctic region. Basically, Kollien offers to review a sphere of influence among three combatants – U.S. European Command, U.S. Pacific Command, and U.S. Northern Command – in order to ensure adequate management of the Arctic region.<sup>67</sup> Kollien suggests that

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<sup>62</sup> See footnote 4.

<sup>63</sup> Kollien, 1.

<sup>64</sup> Ibid., 8.

<sup>65</sup> Ibid., .9.

<sup>66</sup> This issue will be discussed in Chapter II.

<sup>67</sup> Ibid., 18.

U.S. Northern Command should be responsible for the majority of operations in the Arctic instead of coordinating three combat commands.<sup>68</sup> In general, Kollien calls for a rapid design for a comprehensive strategy in the Arctic, raising issues to be solved, and offering constructive solutions for the problem.<sup>69</sup>

R. Huebert observed that United States Arctic policy documents suggest that the Arctic is a strategically valuable region, where the possibility for tension between the United States and Canada could arise. He also observed that nowhere in the U.S. Arctic documents is there any mention of cooperation between the United States and Canada. On the contrary, the U.S. Arctic strategy document indicates the United States determination to act independently, if necessary, to defend its interests in the region.<sup>70</sup>

Furthermore, R. Huebert suggests that Arctic countries are improving their military capabilities in the High North. The countries claim that this is a natural reaction to the expected increase in activity in the region, as military presence is necessary to ensure the coasts are protected and guarded. However, it was noted that Norway's and Russia's increase in weaponry is designed for war as opposed the guarding of the coast.<sup>71</sup>

Growing global demand for gas and oil, along with depleting reserves in existing fields will create tensions and conflict scenarios that were not anticipated in the countries' strategies. As was indicated above, Arctic countries are interested in rebuilding their military capabilities which creates a possibility for tension and mistrust in the region. As the Arctic is rapidly changing, new economic opportunities

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<sup>68</sup> Ibid., 21.

<sup>69</sup> Ibid., 24.

<sup>70</sup> Huebert, 34.

<sup>71</sup> Ibid., 34.; Katarzyna Zysk, "Russia and the High-North: Security and Defence Perspectives," in *Security Prospects in the High North: Geostrategic Thaw or Freeze?*, ed. Sven G. Holtmark and Brooke A. Smith-Windsor (Rome: NATO Defence College, May 2009): 102-129.

are being discovered. Inevitably countries react to the changing situation and adapt to it. Obviously, countries feel a need to prepare to defend their sovereignty and interest should any risk arise.<sup>72</sup> The question is, whether publicly available access to the documents, concerning national strategic issues, may suggest the possibility of controversial elements being intentionally excluded from the documents? Thus, each country's real priorities and intentions may not be mirrored in the Arctic policy documents and are kept in secret. On the other hand, even though the formulation of the documents might be carefully compiled, they are still official statements that reflect each government's position on how to deal with sensitive issues in the Arctic.

### Cooperation in the Region

It is important to state that countries demonstrated willingness to cooperate in the region. In 1996, eight Arctic states – Canada, Denmark, Finland, Norway, Iceland, the Russian Federation, Sweden, and the United States – agreed upon the creation of the Arctic Council and signed the *Declaration on the Establishment of the Arctic Council*.<sup>73</sup> The aim of this intergovernmental forum is to promote cooperation, address important issues arising in the Arctic Circle, and develop new initiatives. The Council aims at protecting the environment and assuring sustainable development in the Arctic. Moreover, it acknowledges the importance of the Arctic region's indigenous people who are greatly involved in the Council's proceedings. However, the Council does not address the issues of military security in the region.<sup>74</sup>

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<sup>72</sup> Huebert, 30.

<sup>73</sup> Andrew Jenks, "Canada-Denmark-Finland-Iceland-Norway-Russian Federation-Sweden-United States: Joint Communiqué and Declaration on the Establishment of the Arctic Council," *International Legal Materials* 35 (6) (1996): 1382-1390.

<sup>74</sup> *Ibid.*, 1388.

Another important document indicating cooperation among five Arctic countries (Canada, Denmark, Norway, the Russian Federation, and the United States) is the Ilulissat Declaration, which was adopted in the Arctic Ocean Conference in Greenland in May 2008.<sup>75</sup> It aims to address the possibilities and challenges of the changing nature of the Arctic. In addition, the declaration indicates that countries see no need to create a new comprehensive international legal regime in the area.<sup>76</sup> The countries agreed to adhere to the United Nations' Convention on the Law of the Sea in solving the issues of the delineation of their overlapping maritime boundaries, the use of the sea, scientific research and the protection of the environment. Countries committed to the sharing of the information and data, to ensure a peaceful management of the Arctic Ocean.

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<sup>75</sup> "The Ilulissat Declaration," *Arctic Ocean Conference*. Greenland: Ilulissat, May 27-29 2008, accessed March 22, 2011, [http://www.oceanlaw.org/downloads/arctic/Ilulissat\\_Declaration.pdf](http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf).

<sup>76</sup> Alyson J.K. Bailes, "Options for Closer Cooperation in the High North: What is Needed?," in *Security Prospects in the High North: Geostrategic Thaw or Freeze?*, ed. Sven G. Holtsmark and Brooke A. Smith-Windsor, ( Rome: NATO Defence College, May 2009), 51.

## Chapter II: United Nations Convention on the Law of the Sea

### Introduction

As oceans started to generate a multitude of claims, counterclaims and sovereignty disputes, the need for a more stable order was evident. Rapid development of technology created an opportunity to exploit ocean resources that were previously inaccessible. This propelled countries to claim sovereignty beyond the traditional three mile limit. Interestingly, in 1945 the United States was the first country to question the seas doctrine claiming sovereignty to the outer continental shelf and its resources. This claim is known as Truman Proclamation.<sup>77</sup> Other nations followed the United States example to claim their continental shelf. As a result, the need for a comprehensive regime emerged.

### Law of the Sea Conferences

The General Assembly convened two conferences on the Law of the Sea (LOS). The goal of UNCLOS I was to develop and codify the law of the sea. The conference resulted in the adoption of four conventions regarding the territorial sea, the high seas, the continental shelf, and fishing and conservation of living resources on the high seas.<sup>78</sup> However, these conventions had a plethora of flaws. For instance, in the 1958 Convention on the Continental Shelf<sup>79</sup> a consensus was not reached with regards to a fixed limit for the territorial sea.<sup>80</sup> In 1960, the second conference (UNCLOS II) was

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<sup>77</sup> President Harry S. Truman, *Proclamation 2667 of September 28, 1945 Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf*, released September 28, 1945, accessed March 20, 2011, [http://www.oceancommission.gov/documents/gov\\_oceans/truman.pdf](http://www.oceancommission.gov/documents/gov_oceans/truman.pdf).

<sup>78</sup> Alex G. Oude Elferink and Donald R. Rothwell, eds., *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, (London: Martinus Nijhoff Publishers, 2001), 10.

<sup>79</sup> *1958 Convention on the Continental Shelf*, adopted in Geneva on April 29, 1958, entered into force on June 10, 1964, accessed March 22, 2011, [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1\\_1958\\_continental\\_shelf.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf).

<sup>80</sup> Oude Elferink, Rothwell, 11.

convened. However, it failed to resolve the outstanding issues emphasized after UNCLOS I. In 1967, Malta's Ambassador to the United Nations, Arvid Pardo, emphasized the critical situation concerning the pollution and devastation of the oceans and the seas due to the practices of countries. He called for an effective international regime that would go beyond national jurisdiction. Without an international regime, the degradation of the seas was inevitable. Even though the initiative started with the seabed, later it turned in to a global effort to regulate all ocean areas, seas, and its resources. These factors led to the convening of the Third United Nations Conference on the Law of the Sea. The aim of the conference was to write a comprehensive treaty for the oceans.<sup>81</sup>

The Third United Nations Conference on the Law of the Sea was convened in New York in 1973. It ended nine years later and the United Nations Convention on the Law of the Sea (UNCLOS) was adopted in December 1982. The UNCLOS (Convention) is a constitution for the seas, which was discussed, bargained and negotiated by the representatives from 160 sovereign countries.<sup>82</sup> The Convention was an unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean. It defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention is comprised of 320 articles and 9 annexes that indicate the codification of customary international law and its further development. On September 28, 2010, Malawi was the last country to ratify the Convention. To date, 161 countries, including Canada, Norway, and Russian Federation, are parties to the Convention. Until now the United

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<sup>81</sup> United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS). *Oceans and Law of the Sea*, accessed March 20, 2011, <http://www.un.org/Depts/los/index.htm>.

<sup>82</sup> *Ibid.*

States has neither signed nor ratified the treaty.<sup>83</sup> Ratification of, or accession to the Convention indicates a state's consent to be bound by its provisions. The UNCLOS came into force on November 16, 1994 after Guyana became the 60<sup>th</sup> country required to adhere to the treaty. It took twelve years from the day it was first signed for the treaty to come into force, due to Article 309 which prohibits countries to take any reservations to any part of the treaty.<sup>84</sup> This caused countries to doubt and hesitate.<sup>85</sup>

The UNCLOS is believed to bring order and harmony to the practices of states dealing with the oceans and the law of the sea. States are taking steps to exercise their rights over neighboring seas, to assess the resources in their waters and on the floor of the continental shelf in a manner consistent with the UNCLOS dictates.

However, Part XI of the Convention raised many concerns related to the interpretation of it. Part XI deals with mining of minerals in *the area*, which are "beyond the limits of national jurisdiction" and belong to international seabed area.<sup>86</sup> The Secretary-General initiated informal consultations among states in order to resolve those areas of concern and achieve universal participation in the Convention. Those consultations culminated in the "Agreement Relating to the Implementation of Part XI of the UNCLOS." It entered into force on July 28, 1996. The Agreement emphasizes that the provisions of the Agreement and Part XI of the UNCLOS will be interpreted and applied together as a single instrument. In addition, the provisions of the Agreement will prevail if any inconsistency between the Agreement and Part XI

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<sup>83</sup> UNCLOS, "Chronological lists of ratifications of, accessions, and successions to the Convention and the related Agreements as at 15 November 2010," accessed March 20, 2011, [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm).

<sup>84</sup> A reservation is a statement made by a nation when accepting a treaty, whereby it excludes or modifies the legal effect of certain provisions of a treaty as those terms apply to the nation accepting the treaty - Vienna Convention on the Law of Treaties, art. 2(1)(d).

<sup>85</sup> DOALOS.

<sup>86</sup> UNCLOS, Part I, Article 1.



appears.<sup>87</sup> On September 28, 2010 Malawi was again the last country to ratify the Agreement. At present, there are 140 countries, including Canada, Norway, and the Russian Federation, that are parties to this Agreement. The United States has signed, but not ratified the Agreement.<sup>88</sup>

### Division of the Ocean

In order to ensure stability across the global waters it was important to agree on a primary issue – the setting of limits and drawing the line between national and international waters, and the extent of national sovereignty over the seabed. Parts II, V, VI, and VII define the degree of sovereignty a nation may have over different regions of the oceans. Further paragraphs will concentrate on the division of the regions and the powers that countries may exercise in them. This thesis concentrates on those aspects of UNCLOS that are common to the Beaufort Sea and the Barents Sea case studies, with details to follow.

In the third Conference it was agreed that a country may measure its continental shelf from the baseline.<sup>89</sup> The definition of a *territorial sea* refers to a twelve nautical mile long area, where there are no restrictions; thus, states can enforce their law, regulate any use of that territory and exploit its resources.<sup>90</sup> However, the Convention retains the right of *innocent passage* through the states' territorial waters for naval and merchant ships; as such a continuous and expeditious passage would not threaten the

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<sup>87</sup> DOALOS, "Agreement relating to the Implementation of Part XI of the UNCLOS of 10 December 1982," accessed March 22, 2011, [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindxAgree.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindxAgree.htm).

<sup>88</sup> DOALOS, "Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks Table recapitulating the status of the Convention and of the related Agreements, as at 30 November 2010," accessed March 22, 2011, [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf).

<sup>89</sup> UNCLOS, Part II, Article 5.

<sup>90</sup> UNCLOS, Part II, Article 3.

security of the coastal state or violate its laws. However, the provisions of innocent passage indicate that in the territorial sea, submarines and other underwater vehicles are obliged to navigate on the surface and to show their flag in order to be identified.<sup>91</sup>

In addition to the state's right to enforce law within its territorial sea, coastal states also possess the rights that extend for twenty-four nautical miles from state shores. This area is called a *contiguous zone* where the coast guard may prevent certain violations and enforce police supervision.<sup>92</sup>

### *Navigation*

At the Conference negotiating the Law of the Sea, the issue, regarding the right to the passage, divided major naval powers and coastal states controlling them. The major naval powers such as the United States and the Soviet Union insisted that the straits should be considered as the international waters. Meanwhile, coastal states felt this would cause a threat to their national security due to the passage of foreign warship so close to their shore. Therefore, coastal states demanded that the straits be considered part of their territorial waters. Understandably, the major naval powers opposed this requirement.<sup>93</sup> The Convention introduced a new concept called "transit passage" that combined the provisions of innocent passage and the freedom of navigation on the high seas. Under this concept, straits are considered part of territorial sea, except in the matters related to the transit passage. In the case of transit passage, the strait is considered part of international waters. In addition, all ships and aircraft must sail through it without delays or stopping, and they have to refrain from

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<sup>91</sup> UNCLOS, Article 17 through 19.

<sup>92</sup> UNCLOS, Article 33.

<sup>93</sup> DOALOS, "A historical Perspective," accessed March 22, 2011, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Historical\\_Perspective](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical_Perspective).

doing anything that might threaten the coastal state.<sup>94</sup> The issue of the legal status of the Northwest Passage is in the center of the dispute between Canada and the United States. This issue will be discussed in Chapter IV.

### *Exclusive Economic Zone*

*Exclusive Economic Zone* (EEZ) recognizes the right of the coastal state to exercise jurisdiction over the exploitation, development, conservation, and management of all resources (the fish stocks, oil) to be found in the waters, on the ocean floor, and the subsoil of an area extending 200 nautical miles from its shore. Despite exclusive rights, coastal states also have some obligations according to the Convention. They are responsible for preventing overfishing, pollution and facilitating marine research in their EEZ.<sup>95</sup>

### *Continental Shelf*

According to the UNCLOS Part VI Article 76,

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured when the outer edge of the continental margin does not extend up to that distance.”<sup>96</sup>

However, states may claim jurisdiction up to 350 nautical miles if they prove that their continental shelf extends further than 200 nautical miles.<sup>97</sup> According to the UNCLOS, a coastal state has to submit claims to the Commission on the Limits of the Continental Shelf. As a result, the Commission makes recommendations to the coastal states regarding the establishment of the outer limits, which are final and binding.<sup>98</sup> In

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<sup>94</sup> UNCLOS, Article 34 through 39.

<sup>95</sup> UNCLOS, Part V.

<sup>96</sup> UNCLOS, Article 76.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

addition, coastal states have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources attached to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone.<sup>99</sup>

The Convention created three new international bodies: the International Tribunal for the Law of the Sea established in Hamburg, the International Seabed Authority located in Jamaica, and the Commission on the Limits of the Continental Shelf in New York.

ANNEX II of the Convention introduces the establishment of a Commission on the Limits of the Continental Shelf (CLCS) beyond 200 nautical miles.<sup>100</sup> The coastal states submit the data concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles. The Commission reviews and passes judgment on the technical and scientific merits of the country's submission. Moreover, the body provides with scientific and technical advice.<sup>101</sup>

Article 4 of ANNEX II indicates that each party to the Convention has ten years after signing up to formally submit their geological arguments to the UN Commission on Limits of the Continental Shelf. Currently, all five arctic countries, whose coast lines board the Arctic Ocean, are preparing claims to extend their continental shelf. There is no doubt that such claims are aimed at oil and gas resources to be found in the extended area. Canada may be the biggest beneficiary, in terms of new territory, due to the extension of its continental shelf.<sup>102</sup>

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<sup>99</sup> UNCLOS, Article 77.

<sup>100</sup> UNCLOS, Annex II.

<sup>101</sup> UNCLOS, Annex II, Article 3.

<sup>102</sup> Huebert, 19.

Russia sees the region as an important source of revenue. Its major interest is energy production and maritime transport.<sup>103</sup> During 2007 expedition, the Russians took some geological samples from the seabed which they hoped would be convincing evidence to support their claim of the natural prolongation of its submerged land mass to include both the Lomonosov and Mendeleev Ridges.<sup>104,105</sup> Convincing evidence has to be presented in order to warrant for a claim to be issued.<sup>106</sup> Russia acknowledges that the Arctic is a giant potential reserve of natural resources.<sup>107</sup> Therefore, Russians perceive the Arctic as a key to enhance its bargaining power while dealing with foreign companies and governments. Moreover, if Russia wins control over the Arctic's gas resources, it could pipe them straight to the European consumers bypassing transit countries (e.g. the Ukraine). The transit countries usually make the exporter less competitive due to their lucrative fees charges for the transit through their territory.<sup>108</sup>

In addition, Russia ratified the Convention on March 1997.<sup>109</sup> In 2001, Russia was the first of the countries in the Convention to submit a claim to extend its continental shelf, which they believe covers the Podvodnikov Depression, as well as the Lomonosov and Mendeleev Ridges.<sup>110</sup> However, Russia was advised to further develop its claim and was allowed to resubmit its case with more convincing geological data.<sup>111</sup>

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<sup>103</sup> Howard, 142-143.

<sup>104</sup> Howard, 1-4.

<sup>105</sup> Igor S. Zonn, "Social, Economic, Legal and Political Issues of the Russian Arctic," in *Influence of Climate Change on the Changing Arctic and Sub-Arctic Conditions*, eds. Jacques C.J. Nihoul and Andrey G. Kostianoy (Netherlands: Springer, 2009), 209, 218.

<sup>106</sup> UNCLOS, Article 76.

<sup>107</sup> Zonn, 210-211, 213.

<sup>108</sup> Howard, 148-149; Zonn, 212.

<sup>109</sup> See footnote 74.

<sup>110</sup> Zonn, 218-219.

<sup>111</sup> Howard, 167; Huebert, 22.

Russia is not the only country to be interested in the Arctic's natural resources. Norway has focused its interest towards north as well. There is no secret that Norway's economy is dependent on oil and gas exports. The North Sea oil and gas resources have provided Norway with vast revenues. However, it is rapidly depleting. One of the most promising areas is believed to be above the Arctic Circle: two-thirds of undiscovered natural resources are expected to be located in the Norwegian and the Barents Sea.<sup>112</sup> However, Norwegian politicians are divided. Some are opposing the exploration or drilling for oil while others are sympathetic to the idea.

Norway ratified the Convention in July 1996 and in 2006 it submitted its case to the UN Commission on Limits of the Continental Shelf, claiming the extension of its continental shelf. The claim includes an area of the Norwegian Sea (known as "Herring Loophole"), which lies beyond Iceland's EEZ. Moreover, it claims the right over territories in the Western Nansen Basin, an area in the Barents Sea, the Loophole, the area in "high seas" between Russia's and Norway's EEZ, and the "Grey Zone," the area adjacent to the coast of Russia and Norway.<sup>113</sup> In 2008, the Russian Federation reacted to the Norwegian claims by resuming Russian Navy activity and sailing in the region claimed by Norway as its extended continental shelf.<sup>114</sup> The Russians did not violate international law, as it permits sailing into the EEZ and over the continental shelf.

In 2009, the UN Commission's recommendations confirmed Norway's substantial rights and responsibilities to the outer continental shelf encompassing an area of 235,000 square kilometers.<sup>115</sup> The press release, issued by the Norwegian Ministry of Foreign Affairs, stated that the "outer limits that Norway establishes on

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<sup>112</sup> Howard, 201-202.

<sup>113</sup> DOALOS; Howard, 204; Zonn, 217.

<sup>114</sup> Huebert, 22.

<sup>115</sup> Howard, 204.

the basis of the recommendations will be final and binding.”<sup>116</sup> It also indicates the recommendations have no power over disputes related to delimitation between Norway and bordering countries.

Canada is also determined to prove the extension of its continental shelf in two underwater formations – the Lomonosov and Alpha Ridges, which lie in Canada’s offshore waters.<sup>117</sup> However, in order to claim them as the outer continental shelf, Canada has to present the evidence to the UN Commission on Limits of the Continental Shelf by November 2013, which means not more than ten years after ratifying the Convention.<sup>118</sup> Nevertheless, Canada’s claims toward the extension of continental shelf are likely to encounter some difficulties. The situation between Canada and the United States regarding the continental shelf in the Beaufort Sea is complicated.<sup>119</sup> As was indicated before, if the United States wants to claim the natural prolongation of its continental shelf, it needs to become a signatory member of the UNCLOS.

The possibility of extending the continental shelf presents the opportunities as well as challenges to the Arctic countries. The countries must gather sufficient data to prove their claims, and then prepare the diplomatic actions needed to deal with the other claimants. As a Realist would claim, the competition over specific territories is clearly evident.

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<sup>116</sup> Norwegian Ministry of Foreign Affairs, *Extent of Norway’s continental shelf in the High North clarified*, press release, April 15, 2009, accessed March 23, 2011, [http://www.regjeringen.no/en/dep/ud/press/news/2009/shelf\\_clarified.html?id=554718](http://www.regjeringen.no/en/dep/ud/press/news/2009/shelf_clarified.html?id=554718).

<sup>117</sup> Howard, 197.

<sup>118</sup> DOALOS, Zonn, 219.

<sup>119</sup> See Chapter IV.

### *The Exploitation Regime*

Resources of the seabed beyond the limits of national jurisdiction are the world's common heritage. The question arises: who has a right to mine the minerals and under what rules? Part XI of the agreement, which was already discussed, simplifies the exploitation system. The mining is regulated by the International Seabed Authority, which authorizes seabed exploration and mining, and collects and distributes the seabed mining royalties.<sup>120</sup>

The UNCLOS also defines the territory referred to as “high seas,” which is open to all states and is under jurisdiction of international law.<sup>121</sup> The Convention emphasizes the fundamental obligation of all states to protect and preserve the marine environment.<sup>122</sup> It urges states to cooperate in formulating rules and standards and to take measures for the preservation of the oceans' environment.<sup>123</sup> Moreover, the Convention defines the rules for marine scientific research and cooperation in conducting the research.<sup>124</sup>

### Resolving Arctic Boundary and Resource Disputes

International treaties and customary international law are the key sources to determine maritime boundaries.<sup>125</sup> As was indicated before, two international treaties – the UNCLOS and 1958 Convention on the Continental Shelf – can be relied upon settling the maritime disputes. The UNCLOS is important tool to determine sovereignty of the continental shelf. Article 280 of Section XV of the Convention urges countries to use “any peaceful means of their own choice” to resolve a dispute.

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<sup>120</sup> UNCLOS, Article 157.

<sup>121</sup> UNCLOS, Article 87.

<sup>122</sup> UNCLOS, Article 193.

<sup>123</sup> UNCLOS, Article 197.

<sup>124</sup> UNCLOS, Part XIII.

<sup>125</sup> Angelle C. Smith, “Frozen Assets: Ownership of Arctic Mineral Rights Must be Resolved to Prevent the Really Cold War,” *The George Washington International Law Review* 41 (2011): 661.



Moreover, the Convention indicates that countries must exhaust all avenues to settle the dispute before resorting to judicial procedures. There are three different types of issues in the Arctic: bilateral issues regarding maritime boundaries, issues related to the Arctic Ocean, and the status of straits<sup>126, 127</sup>.

The Convention on the Continental Shelf (CCS) preceded UNCLOS as authority for determining jurisdiction of coastal seabed. The authority of CCS was transferred to the UNCLOS, after the parties adopted (ratified) it. As indicated before, the United States is not a member of the UNCLOS; hence, the CCS is in effect for this country and may be relevant in the dispute of the Beaufort Sea. The CCS indicates that countries have to seek to agree on the boundary. If the agreement cannot be reached, the boundary is the median line (equals equidistance line). However, if there are any, special circumstances can be applied. In contrast to CCS, UNCLOS does not give significance to the equidistance principle delimiting continental shelves. The UNCLOS indicates that in a situation, when parties exhaust all the means to reach a solution, the ICJ may be an option to achieve equitable solution to the dispute.<sup>128</sup>

The Convention is unique in providing the mechanism for the settlement of disputes, which is incorporated into the document. It makes it obligatory for parties to go through the settlement procedure in case of a dispute with another party. Article 284 of the Convention suggests using the conciliation process established within Annex V of the Convention. If either of these procedures is not acceptable for the parties, Article 287 provides options for appeal. The first option suggests that parties may submit the dispute to the International Tribunal for the LOS.<sup>129</sup> The second

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<sup>126</sup> For the purpose of this paper all these issues will be discussed in detail in the Chapter III.

<sup>127</sup> Hoel, 87.

<sup>128</sup> UNCLOS, Article 83 (1).

<sup>129</sup> As the United States is not a party to the UNCLOS, this option cannot apply to the Beaufort Sea dispute.

option is the International Court of Justice (ICJ) which is a key body in customary international law. The ICJ ensures equitable solutions taking all the relevant circumstances (such as configuration of relevant coastlines, proportionality between the length of the coast and the area given for each party concerned from the new boundary line) into account. However, there are various issues related with reliance to the customary international law. The ICJ main critique is that it does not give enough credit to the natural resources in the disputed area, as mostly delimitation issues arise due to the access to the resource rich areas.<sup>130</sup>

The third option suggests that parties may choose to submit to binding international arbitration procedures constituted in accordance with Annex VII of the Convention. Finally, per Annex VIII, parties may decide to submit their case to special tribunals with expertise to interpret customary international law in specific types of disputes related to fisheries, protection and preservation of the marine environments, marine research, and navigation (including pollution).<sup>131</sup>

Decisions made pursuant to any of these procedures, except for sensitive cases involving national sovereignty, are binding and parties are committed in advance to respect them.<sup>132</sup> Moreover, at anytime, each party to the Convention can specify under the “optional exceptions” not to be bound by one or more of the mandatory procedures, if they involve existing maritime boundary disputes, military activities or issues under discussion in the UN Security Council.<sup>133</sup> If parties do not reach an agreement on the specific means of settlement, then the fourth mean is to be employed.<sup>134</sup> As was indicated in the preceding chapter, Arctic countries in the

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<sup>130</sup>Smith, 661-665.

<sup>131</sup> UNCLOS, Article 287; Annex VIII, Article 1.

<sup>132</sup> UNCLOS, Article 296.

<sup>133</sup> UNCLOS, Article 298.

<sup>134</sup> Huebert, 19.

Ilulissat Declaration agreed to solve any differences peacefully, through the mechanisms defined in the UNCLOS.<sup>135</sup> Since the United States is not yet party to the Convention, it is not clear how it will be able to use those mechanisms established by the Convention. Moreover, as the United States is not a signatory to the Convention, the United States is not obliged to follow UNCLOS bodies' decisions. These issues will be analyzed in the following section.

### The United States and UNCLOS

The United States is currently facing a legal challenge to enforce its Arctic's territorial claims as stated in its Arctic policy. As was indicated before, although the United States has signed the 1994 Agreement on Implementation, it has not yet ratified the Convention. Therefore, the provisions of the treaty are not applied to the United States. This section will analyze the reasons that prevented one of the most powerful and influential countries from ratifying Convention, and the risks and benefits that countries enjoy by being a party to the UNCLOS.

Since its drafting, the UNCLOS has been a contentious issue in United States policy. President R. Reagan refused to sign it in 1982, because he was not convinced that the accession to the Convention would serve U.S. interests. Specifically, the United States objected to previously analyzed provisions of Part XI of the Convention, which hindered U.S. economic and security interests.<sup>136</sup> Several U.S. presidents had pursued a goal to accede to the Convention; however those attempts were prevented by Republican senators.<sup>137</sup> According to the U.S. constitution, two-thirds of Senators

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<sup>135</sup> See footnote 69.

<sup>136</sup> Edwin Meese III, Baker Spring, and Brett D. Schaefer, "The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits," *The Heritage Foundation*, May 17, 2007, accessed March 25, 2011, <http://www.heritage.org/research/internationalorganizations/wm1459.cfm>.

<sup>137</sup> Huebert, 20.

have to vote in favor for the international treaty to be passed. R. Huebert indicates that the main reason for the Republican senators to oppose the accession to the UNCLOS is due to an ideological opposition to the United Nations.<sup>138</sup>

It is important to note that the United States participated in the subsequent negotiations to modify the treaty. In 1994, the Agreement on Implementation was adopted. President Bill Clinton signed the agreement, recognizing the Convention as general international law. Nevertheless, the Senate did not ratify it. The Senate claimed it was concerned about the vulnerability of corruption, abuse, and mismanagement in many U.N. bodies (e.g. U.N. Human Rights Council). Until these imperfections are prevented, and transparency and accountability is assured, the United States will not consider acceding or ratifying any international treaties that relies on U.N. institutions to enforce its provisions. The UNCLOS is no exception. The United States is not willing to put at risk its freedom of action and limit its sovereignty in the certain areas defined by the UNCLOS. Some UNCLOS provisions empower anti-American environmental groups to impact on U.S. policies through domestic and international court actions.<sup>139</sup>

In 2007, the Bush administration expressed its support for the UNCLOS.<sup>140</sup> Bush indicated that the UNCLOS would benefit the Navy, as U.S ships would not need to obtain permission from some coastal states to enter their waters. Other authors contradicted this argument by indicating the reciprocal interest of coastal states to abstain from such demands.<sup>141</sup> The Bush administration also claimed that without adhering to the UNCLOS, the United States would be unable to enjoy advantages of

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<sup>138</sup> Ibid.

<sup>139</sup> Kollien, 18.

<sup>140</sup> Matt Stone, "International Law or *fait accompli*," in *Climate of Opinion: the Stockholm Network's Energy and Environment Update*, (Stockholm Network, Issue 12, March, 2009): 6.

<sup>141</sup> Meese, Spring, and Schaefer.

extraction of the resources in the deep seabed. However, the International Seabed Authority takes into account the interest of developing rather than developed countries concerning the exploitation of resources. Thus, it would hardly benefit the United States. The Bush administration further claimed that participation in the treaty would not undermine intelligence operations; nevertheless, intelligence activities are strictly classified and it is not clear how the United States can benefit from the Convention. Finally, the Bush administration insisted that the United States would prevent decisions being made that are not in the national interest of the country. Nevertheless, not all the Council decisions are based on consensus. Some of the actions are subject to a majority or two-thirds vote.

U.S. State Department Legal Adviser, John B. Bellinger III, indicated that the accession to the UNCLOS would bring a huge advantage to the national security of the United States due to the clearly defined legal rights of the use of world's oceans.<sup>142</sup> Furthermore, the ratification of the treaty would provide the United States with rights over Arctic's natural resources.<sup>143</sup> The Convention also offers a peaceful way to solve overlapping claims through the International Tribunal for the Law of the Sea. However, Lawrence A. Kogan points out that border disputes do not have to be resolved through the mechanisms of the UNCLOS. Disputes can also be settled by pursuing diplomatic bilateral negotiations or resorting to the mutually agreed upon international legal forums such as the Permanent Court of Arbitration. Kogan gave an example of Peru, which settled a border dispute with Chile without subjecting its local and regional affairs to the international regime of the UNCLOS.

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<sup>142</sup> Lawrence A. Kogan, "UNCLOS Alchemy," *The Minority Report*, November 2, 2007, accessed March 25, 2011, [http://www.theminorityreportblog.com/story/steven\\_foley/2007/11/02/unclos\\_alchemy\\_law\\_of\\_the\\_sea\\_treaty](http://www.theminorityreportblog.com/story/steven_foley/2007/11/02/unclos_alchemy_law_of_the_sea_treaty).

<sup>143</sup> Ibid.

In 2008, U.S. Senator James M. Inhofe voiced his traditional conservative Republican position to the accession to the UNCLOS and indicated the necessity to reject the treaty which he said not only does not benefit the United States, but also threatens the sovereignty of the country.<sup>144</sup> In short, the United States will gain too little and will pay a high price if it accessed to the UNCLOS.<sup>145</sup> Inhofe pointed out a few of the hazards to which members of a treaty are exposed. Firstly, Articles 224-227 need to be reviewed and modified as they limit the operations of the U.S. Navy and Coast Guard to an undesirable degree. Secondly, Articles 47-53 require clarification as they permit foreign ships navigation in the U.S. territorial waters, which can be perceived as a danger to the U.S. security. Thirdly, according to Article 82, parties to the UNCLOS are bound to the regulations and taxation by an international body, which funds its own research and distributes the world's wealth to the developing countries. Currently, U.S. companies can harvest resources from the seabed within the EEZ without paying a fee. If the treaty is ratified, and the United States extended its continental shelf, U.S. companies would have to pay a fee for the exploration of the resources in the extended area.<sup>146</sup> Fourthly, Articles 61-69 require changes to ensure U.S. sovereignty to manage resources in its EEZ. Moreover, Article 144 of UNCLOS indicates the responsibility of developed countries to share its intellectual knowledge with developing countries. This would put the United States in a position where it would be forced to share its technology and information with possible competitors and adversaries.<sup>147</sup> Finally, dispute settlements through international authorities, courts

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<sup>144</sup> James M. Inhofe, "Law of the Sea Treaty," *United States Senate*, September 25, 2008, accessed March 25, 2011, [http://inhofe.senate.gov/public/index.cfm?FuseAction=PressRoom.JimsJournal&ContentRecord\\_id=9a3ef095-802a-23ad-4378-0fd106a07c07&Region\\_id=&Issue\\_id=](http://inhofe.senate.gov/public/index.cfm?FuseAction=PressRoom.JimsJournal&ContentRecord_id=9a3ef095-802a-23ad-4378-0fd106a07c07&Region_id=&Issue_id=).

<sup>145</sup> Kollien, 18.

<sup>146</sup> Kollien, 18, 21.

<sup>147</sup> *Ibid.*, 18.

and tribunals pose a legal danger for U.S. businesses which would be held accountable for any violations. Therefore, opponents of the UNCLOS claim that Part XI of the Convention needs to be reviewed and modified to prevent undesirable outcomes that may impact upon U.S. sovereignty.<sup>148</sup>

Despite opposition to the UNCLOS, previously mentioned, a 2009 presidential directive from the Obama administration indicates necessity to consider enhanced or new international arrangements due to the increased activity in the Arctic region. The current U.S. President recognizes the necessity and benefits of the Convention and it is believed, that during his presidency, the United States may finally become a party to the Convention.<sup>149</sup> On the other hand, it is already the second half of Obama's presidency and the situation concerning the accession to the Convention has not changed. Interestingly, the United States already began preparing claims towards the extension of their continental shelf.<sup>150</sup> This indicates the anticipation of the accession to the UNCLOS. Full participation in the treaty provides countries with possibility to submit their dispute to the International Tribunal for the Law of the Sea for a peaceful resolution. Until the United States ratifies the treaty, it cannot be subjected to these dispute processes and authorities. In addition, it would lack representation in different U.N. committees that administer the treaty's extensive enterprises.<sup>151</sup>

Alan L. Kollien suggests that United States has three options related to the use of UNCLOS as the basis for a legal regime. Firstly, he indicates that United States might seek to modify the questionable provisions of the Convention and then to ratify

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<sup>148</sup> Ibid., 23.

<sup>149</sup> *Associated Foreign Press*, "U.S. 'Committed' to Ratifying the Law of Sea Convention: Clinton," April 6, 2009, accessed March 27, 2011, <http://www.google.com/hostednews/afp/article/ALeqM5gB1OPzPfiJu89sybtB66q9Sq4f6A>.

<sup>150</sup> Kollien, 19.

<sup>151</sup> Ibid.

it.<sup>152</sup> However, changes to the UNCLOS may be unacceptable to the members of this treaty. Even though this option is time consuming, it would help United States to achieve the objectives defined in the Arctic policy. Secondly, Kolliien predicts that United States might ratify the Convention without any changes in it, accepting its current form. It would benefit U.S. energy interests, but may hinder its sovereignty as defined in certain UNCLOS provisions.<sup>153</sup> Finally, the United States would have to identify and codify the provisions that it would treat as customary international law and which provisions would be rejected. This option would help the United States to pursue its goals within its EEZ and conduct operations abroad without a need to give up its sovereignty. However, this option would not conform to the legal regime. Furthermore, it reinforces a negative opinion among certain governments toward America and its desire to act unilaterally.<sup>154</sup> This thesis advocates adopting of the second option by the U.S. government. Certain concessions need to be made in order to enjoy the benefits that international legal regime brings. However, at present, the ratification of the Convention is unlikely to happen, for as to date, the Obama administration has not convinced the Senate. The United States government perceives this choice as politically unfavorable and requiring more costs than would be won in gains.

For almost thirty years, many members of the U.S. Senate have indicated that the ratification of the Convention would impair the ability of the United States to self-govern, leading to the diminished capacity of self-defence.<sup>155</sup> If the United States finally becomes a party to the Convention, this would strengthen the idea that Arctic disputes should be settled relying on international arrangements rather than individual

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<sup>152</sup> Ibid., 22.

<sup>153</sup> Ibid., 24.

<sup>154</sup> Ibid., 24-25.

<sup>155</sup> Ibid., 19.



country-based governance and possible military buildup. I believe that the ratification of the Convention would definitely benefit the United States. The United States is increasingly dependent on imported oil, particularly from the Middle East. If the United States could prove its entitlement to the region and natural resources beyond Alaska, then it would be less dependent on oil and gas imports from foreign countries.<sup>156</sup> Furthermore, the ratification of the Convention would help the United States in their claim regarding the Northwest Passage as an international strait rather than as Canada's internal waters.<sup>157</sup>

### The Law of the Sea Criticism

The UNCLOS is a huge achievement in international law. However, it has received some criticism. The implementation of the UNCLOS provisions relies on national legislation that sets certain provisions as priorities. This gives credit to national autonomy, but at the same time it proves to be risk and some nations may prefer different priorities from those set forth in the provisions of the UNCLOS. Moreover, it was previously indicated that seabed mining regime and the idea of profit sharing is highly criticized by nations and is viewed as opposite to free-market capitalism.<sup>158</sup>

In addition, it might be viewed as ineffective framework for border disputes in the Arctic, as not all Arctic states have ratified the Convention. Therefore, the decisions made by CLCS or any other method sanctioned by the UNCLOS for maritime boundary settlements may not be recognized by non-signatory party if it

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<sup>156</sup> Howard, 172.

<sup>157</sup> Ibid., 176.

<sup>158</sup> Daniel J. Hollis and Tatjana Rosen, "United Nations Convention on Law of the Sea (UNCLOS), 1982," in *Encyclopedia of Earth*, eds. Cutler J. Cleveland (Washington, D.C.: Environmental Information Coalition, National Council for Science and the Environment) June 22, 2010, revised in September 10, 2010, accessed March 28, 2011, [http://www.eoearth.org/article/United\\_Nations\\_Convention\\_on\\_Law\\_of\\_the\\_Sea\\_\(UNCLOS\),\\_1982](http://www.eoearth.org/article/United_Nations_Convention_on_Law_of_the_Sea_(UNCLOS),_1982).

finds the decision to be contrary to its national interests. Hence, such decisions would not be definitive.<sup>159</sup> On the other hand, for example, the United States has not yet ratified the Convention, but it had followed many provisions of the Convention in terms of customary international law.

Although the UNCLOS is a huge achievement, Donald Rothwell indicates a few flaws in the UNCLOS.<sup>160</sup> The UNCLOS does not make specific reference to the Arctic. It only mentions ice-covered waters that can be perceived as suitable for the Arctic region.<sup>161</sup> Rothwell refers to Article 76 of the UNCLOS as one of the major drawbacks in the Convention. He claims that some definitions and terms used in Article 76 are unclear or ambiguous. Moreover, members of the Convention lack information to understand the justification for decisions made by CLCS, thus, resulting in an inability to challenge those claims. In addition, he indicates that the UNCLOS is based on the willingness of nations to cooperate as there are no real sanctions to punish those who disrespect and violate the Convention.

Furthermore, the Convention also ignores some special issues that rise in the polar ocean such as the management of high seas areas, the status of ice in international law, the interaction and overlap of regional and global regimes, the assertion of maritime jurisdiction over ice-covered waters (which are often distant from populated areas), and fails to address the impact that this has on maritime regulation and enforcement.<sup>162</sup>

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<sup>159</sup> Smith, 669.

<sup>160</sup> Donald Rothwell, "The Arctic in International Law: Time for a New Regime?," *Brown Journal of World Affairs*, December 10, 2008, accessed March 28, 2011, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1314546](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1314546)

<sup>161</sup> UNCLOS, Article 234.

<sup>162</sup> Donald Rothwell and Christopher C. Joyner, "The Polar Oceans and the Law of the Sea," in *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*, eds. Alex G. Oude Elferink and Donald Rothwell (London: Martinus Nijhoff Publishers, 2001), 21.

All in all, it is impossible to imagine an international Convention that makes all parties fully satisfied. The UNCLOS will continue to confront nations with challenges regarding compliance and harmonization with national legislature. There is no doubt that the UNCLOS has contributed to better governance of the oceans and has clarified the areas in which countries can exercise their sovereignty. In addition, it includes dispute settlement provisions which peacefully resolve overlapping claims among nations. It is crucial to realize that every benefit to exercise the rights given by the Convention comes with obligations, which are necessary to fulfill.

### **Chapter III: Arctic Resources and Delimitation Issues**

#### Arctic Resources

The Arctic Circle is under siege by global warming. The sea ice there has lost its thickness and it has been further affected by rapid melting. Approximately 41 percent of permanent ice is estimated to have completely disappeared from the Arctic Circle over the last quarter century.<sup>163</sup> This leads to the increased attention to the region's natural resources and their accessibility.

In 2008, the U.S. Geological Survey (USGS), a leading governmental scientific research agency, released the first publicly available natural resource estimate for the entire Arctic Circle.<sup>164</sup> It intended to estimate the possible addition of gas and oil to the world's natural resources from the newly discovered fields in the Arctic. The Circum-Arctic Resource Appraisal (CARA) included assessments of oil, gas, and natural gas liquids in the region. According to CARA, the Arctic region is estimated to contain 90 billion barrels of undiscovered recoverable oil, 50 trillion cubic meters of recoverable gas, and 44 billion barrels of recoverable natural gas liquids.<sup>165</sup> This is equivalent to around 13 percent of world's total undiscovered oil, 30 percent of its undiscovered natural gas and 20 percent of world's undiscovered natural gas liquids.<sup>166</sup>

According to the CARA, more than 70 percent of the mean undiscovered oil resources are estimated to exist in Arctic Alaska, the Amerasia Basin, East Greenland Rift Basins, the East Barents Basins, and West Greenland–East Canada. More than 70 percent of the undiscovered natural gas is believed to be located in the West Siberian

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<sup>163</sup> Howard, 8.

<sup>164</sup> USGS World Assessment Team, "Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle," *USGS Fact Sheet 2008-3049*, 2008, accessed March 27, 2011, <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>.

<sup>165</sup> However, USGS indicates that the data reveals only probabilistic estimates. Moreover, economic considerations are excluded from the assessment, suggesting that the cost of exploration and development are not considered in these estimates.

<sup>166</sup> Howard, 63.

Basin, the East Barents Basins, and Arctic Alaska. In addition, it is estimated that approximately 84 percent of the undiscovered resources are lying offshore.<sup>167</sup> The extensive Arctic continental shelves are believed to contain the largest unexplored prospective area for natural resources in the world.<sup>168</sup>

R. Huebert indicates another very promising source of energy – gas hydrates – that is found in Arctic waters. Currently, though, they are not being extracted due to the lack of technology to recover them and bring to surface. However, they are believed to be an important future energy source.<sup>169</sup> Apart from oil and natural gas resources in the region, there are numerous other natural resources such as deposits of coal, gold, diamonds, platinum, and other precious stones.<sup>170</sup> Furthermore, tensions among coastal states over the right to fish stocks have the potential to emerge.<sup>171</sup>

In addition, climate change and melting ice may also reshape the global transport system by creating the opportunity for new shipping routes such as the Northwest Passage (NWP) and Russia's Northern Sea Route (NSR).<sup>172</sup> These passages are crucial for freight shipping and adventure cruise tourism. Rising temperatures<sup>173</sup> increased the ability to ship through NP and NSR, for longer portions of each year, due to the seasonal ice melt.<sup>174</sup> Countries were soon to realize the benefits that these two paths would bring. Both passages offer a significant decrease in shipping time and distance compared to current shipping routes through the Suez and

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<sup>167</sup> USGS, 4.

<sup>168</sup> USGS, *see footnote* 51.

<sup>169</sup> Huebert, 13.

<sup>170</sup> Howard, 92, 94.

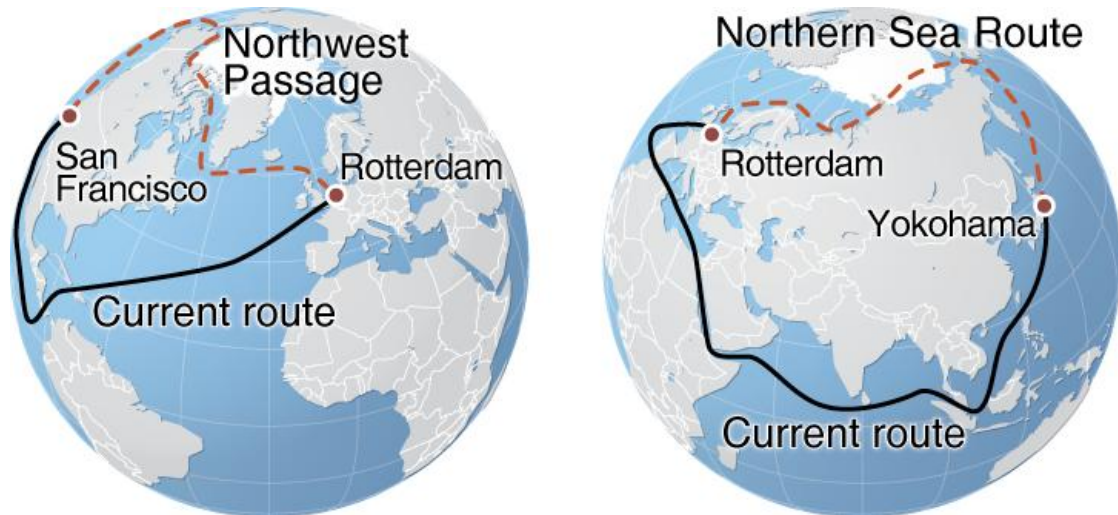
<sup>171</sup> Howard, 97.

<sup>172</sup> Howard, 9; Zonn, 214.

<sup>173</sup> According to the Arctic Council's Climate Impact Assessment, released in 2004, Arctic temperatures are rising at nearly twice the rate of the rest of the world and are forecast to increase by as much as 14 degrees Fahrenheit over the next century.

<sup>174</sup> Kollien, 4.

Panama Canal (Figure 2). Thus, it reduces the shipping cost as well.<sup>175</sup> While Russia has sovereignty over NSR, the right over NWP is in question. Canada claims that NWP belongs to its internal waters while the United States objects to such a claim and regards the passage as international waters.



**Figure 2. Northern Sea Route and the Northwest Passage compared with currently used shipping routes.** (2007). *UNEP/GRID-Arendal Maps and Graphics Library*. Retrieved March 29, 2011 from <http://maps.grida.no/go/graphic/northern-sea-route-and-the-northwest-passage-compared-with-currently-used-shipping-routes>.

All of this contention may lead to conflict. R. Howard argues that the issue of conflict over Arctic resources is exaggerated. He notes that most of the USGS estimated resources fields lay not in the disputed territories, but within established borders. Moreover, if the natural resources are in disputed areas,<sup>176</sup> the amicable relations between two countries would not be disrupted due to disagreements over one issue.<sup>177</sup> In addition, he indicates the statistical unreliability of estimates about the vast amount of resources in the area.<sup>178</sup> In disputes over the sophisticated methods used to measure undiscovered resources, there is always a likelihood of imprecision. For example, exploration of a few areas in the Barents Sea, believed to be rich in natural

<sup>175</sup> Ibid., 5-6.

<sup>176</sup> For instance, in Barents Sea and Beaufort Sea.

<sup>177</sup> Howard, 71.

<sup>178</sup> Ibid., 73.

resources, appeared to bring disappointing results and proved the assessments to be wrong.<sup>179</sup> As a result, uncertainty about the exact amounts of resources and the issue of their recoverability may well prevent countries from resorting to military actions.

However, Howard admits that countries will compete to claim territories in the Arctic due to secure availability to supply and export revenues that they may enjoy after claiming these areas rich in natural resources. Still, the lack of scientific proof does not guarantee that resource wars in the Arctic are unlikely. Governments may believe that the area is richer in resources than scientists claim.<sup>180</sup>

### Disputes in the Arctic

There are a number of jurisdictional boundary issues in the Arctic that remain unresolved. As was indicated in before, disputes fall into three categories: 1) the bilateral issues between countries (Figure 3), 2) the issues pertaining to the central Arctic Ocean concerning the expansion of the continental shelf, 3) and the question of straits: the Northwest Passage and Northern Sea Route.<sup>181</sup>

<b>Nr.</b>	<b>Disputes</b>	<b>Resolved/ Unresolved</b>	<b>Delimitation line</b>
<b>1.</b>	Unites States – Canada: Beaufort Sea	Unresolved	
<b>2.</b>	Russia – United States: Bering Sea	Unresolved*	Compromise between median line and sector line
<b>3.</b>	Canada – Denmark: Davis Strait	1973  (minor dispute remains over Hans Island)	Median line

<sup>179</sup> Ibid., 75.

<sup>180</sup> Ibid., 64, 70, 76.

<sup>181</sup> Kollien, 87-93.

4.	Denmark – Iceland: Farm Strait	1997	Median line
5.	Denmark – Norway: Jan Mayen	1993 (decision by ICJ), 1995 (bilateral agreement)	Median line, but takes geographical circumstances into account.
6.	Denmark – Norway: Svalbard	2006	Median line
7.	Iceland – Norway: Jan Mayen	1980, 1981	Iceland gets a full EEZ and defined seabed area is subject to joint development and sharing of benefits.
8.	Norway – Russia: Barents Sea	2010	Compromise between median line and sector line

**Figure 3. Arctic EEZ boundaries.** Resolved indicates the ratification of final agreement.<sup>182</sup>

\*The United States and Russia agreed on delimitation line in 1990. However, Russia still has to ratify the treaty. Thus, the treaty has not yet entered into force.<sup>183</sup>

For the purpose of this thesis this chapter will concentrate on recently resolved bilateral issues between Russia and Norway, and unresolved dispute between the United States and Canada. Figure 3 indicates that currently there are two bilateral boundary issues in the Arctic. One is in the Beaufort Sea between the United States and Canada, and the other in the Bering Sea between the United States and Russia. In most of the cases the median (or equidistance) principle was applied in the final agreements.

### Delimitation Methods

The basic rule regarding delimitation of marine boundaries between countries is that delimitation should be based on agreement between the countries in dispute. The issue is how the areas of overlapping claims should be divided. The overlap of claims can be in countries' territorial waters, the EEZ and continental shelf, and also inland

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<sup>182</sup> Kollien, 90.

<sup>183</sup> See *Chapter I*.



waters, when states share a bay.<sup>184</sup> In all these cases, the states face the challenge of dividing jurisdiction over the resource.

As was indicated in the Figure 3, many states resolve their disagreements using the equidistance (or median) principle. The equidistance rule can simply be described as drawing a line across the area in question. This means that any point that is closer to one coastal state is perceived to fall under that state's jurisdiction and control. This rule is not expressly mentioned in the UNCLOS, except with regard to the territorial sea. Despite that, it is usually used in practice and is increasingly relied on in judicial and arbitral decisions regarding delimitation of the EEZ and the continental shelf under the UNCLOS.<sup>185</sup>

In general, the median line principle favors states with convex coasts or small islands; therefore states with concave coasts can see the equidistance rule as disadvantaging them. However, the equidistance rule can be justified due to its efficiency, as the line's location is easy to determine. It is logical that a state's proximity to the sea defines its right to the control over that portion of the sea. As a result, the closer the state is to the sea, the cheaper and more efficiently it can govern and regulate that territory.<sup>186</sup>

In the selected cases of the Barents Sea and Beaufort Sea, the United States (Beaufort) and Norway (Barents) favor the median line method. Territorially, both countries would benefit most from it. Nevertheless, countries can still apply for a historic title or other special circumstances (respective lengths of coastline, the size of the area to be delimited, and the previous conduct and attitude of the parties over a

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<sup>184</sup> Eric A. Posner and Alan O. Sykes, "Economic Foundations of the Law of the Sea," *The American Journal of International Law* 104(4) (2010): 586.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid., 587.

period of time) that would give it a right to claim a territory exceeding the median line.<sup>187</sup>

Another delimitation approach, which is preferred by Russia (Barents) and Canada (Beaufort), is the sectoral principal as legal grounds to claim territory in the Arctic.<sup>188</sup> The sector rule, in which the line is justified by the special circumstances, allows countries to claim a pie-shaped area. The area is formed by drawing straight lines from country's coast to the North Pole.<sup>189</sup> As Igor S. Zonn indicates, "the borders of polar sectors are linked to the state borders, while the establishment of a polar sector does not predetermine the legal status of the marine space in this sector."<sup>190</sup> This means it does not refer to either the bottom, or fish resources.

Interestingly, the sector theory has no legal validity as a source of title or any state jurisdiction in the High North.<sup>191</sup> This conclusion was reached after examining three possible legal bases for a sector theory: the two boundary treaties of 1825 and 1867, and the doctrine of contiguity and custom.<sup>192</sup> Since the sector approach did not result from state practice, it cannot be considered legally binding in regards to the control of territorial or maritime areas. Norway rejects the sector principle as a departing point for the division of the continental shelf, emphasizing its controversial status in international law. The Norwegian government insists that the term "special circumstances" refers only to geographical factors regarding the configuration of the

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<sup>187</sup> Howard, 53; Edgar J. Dosman, ed., *Sovereignty and Security in the Arctic* (London & New York: Routledge, 1989), 149-150.

<sup>188</sup> Howard, 59.

<sup>189</sup> *Ibid.*, 60.

<sup>190</sup> Zonn, 216.

<sup>191</sup> Donat Pharand, *Canada's Arctic Waters in International Law* (Cambridge & New York: Cambridge University Press, 1988), 249.

<sup>192</sup> *Boundary treaties of 1825* (between Great Britain and Russia) and *1867* (between the United States and Russia) used sector principle as a convenient geographical device to delimit territorial land possessions. *The Doctrine of Contiguity* does not constitute an adequate legal base for the acquisition of sovereignty over land or maritime areas; therefore, it cannot serve as a root of the sector theory. *The Doctrine of Custom*: an examination of states practice in Arctic showed that sector theory has not developed into a principle of customary law. Thus, it cannot serve as a cause of the theory.

coastline or the existence of islands.<sup>193</sup> The sector approach is often referred to in dividing the Polar Regions; however it has neither been tested nor generally recognized in international law.

Nevertheless, the sector method can be a convenient approach to divide various forms of state jurisdiction in the Arctic.<sup>194</sup> It can be useful sharing the areas of responsibility in implementing obligations defined in the UNCLOS such as to protect and preserve the marine environment, and/or coordinate scientific research policies in the Arctic Ocean. The different approaches to the demarking of borders show the challenge that disputes in the Arctic pose.

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<sup>193</sup> Willy Ostreng, "Soviet-Norwegian Relations in the Arctic," *International Journal* 39 (4) (1984): 871.

<sup>194</sup> Pharand, 250.

## **Chapter IV: Case Studies: the Barents and Beaufort Sea Disputes**

### The Barents Sea Dispute

A boundary issue between Norway and Russia in the Barents Sea was resolved in 2010. Therefore, I intend to analyze how this agreement was reached and whether or not it can be applied to the United States - Canada dispute in the Beaufort Sea.

The Barents Sea dispute began in 1974 and encompassed sharp disagreements in three areas.<sup>195</sup> As indicated in the Figure 4,<sup>196</sup> the first issue was related to the Spitsbergen (Svalbard) archipelago (a cluster of islands that lie 300 miles off Norway's north coast). The second issue was a disputed section of Barents Sea, known as the "Grey Zone," which covers 19,475 square nautical miles. The third issue was over the status of the "Loophole," which covers 60,000 square miles.

The dispute over the Spitsbergen derives from the Spitsbergen treaty of 1920.<sup>197</sup> Article 1 of the treaty recognized Norway's full and unrestricted sovereignty over the archipelago. However, the agreement included an unusual clause, which granted equal rights for other countries to any natural resources found on the land and in the territorial waters.<sup>198</sup> Norway and Russia disagreed on the geographical reach of the 1920 Treaty. The question was whether the rights of equal treatment applied to the maritime zones. Norway argued that the agreement did not include its territorial waters and did not apply to the offshore deposits of oil or natural gas. Therefore, the restrictions on Norwegian sovereignty set out in the Spitsbergen Treaty could not be given a broader interpretation.

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<sup>195</sup> Dosman, 149.

<sup>196</sup> See page 55.

<sup>197</sup> The treaty among Norway, the United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden Concerning Spitsbergen signed in Paris in February 9, 1920. The text of the Treaty available at *Governor of Svalbard*: <http://www.sysselmannen.no/hovedEnkel.aspx?m=45301>.

<sup>198</sup> Howard, 55.



**Figure 4. Agreed schematic chart illustrating the sector line, the median line, the disputed area, and the delimitation line according to the Treaty of September 15, 2010.<sup>199</sup>**

However, Russians refuse to accept Norway's position due to the valuable natural resources in the area. Another question was the status of the Spitsbergen continental shelf. Norway insisted it was part of the Norwegian continental shelf, while Russia claimed Spitsbergen has its own continental shelf.<sup>200</sup> The agreement on this was crucial to the management of marine and petroleum resources around the archipelago.

Russia clearly emphasized the importance of the Spitsbergen archipelago in the High North. It was seen as crucial in securing military and economic interest in the Arctic. Russia's Sergei Naryshkin, the former Deputy Prime Minister, and the former Deputy Secretary of the Security Council, Nikolai Spasskii, indicated that a less

<sup>199</sup> Norwegian Ministry of Foreign Affairs. Accessed March 23, 2011, at: <http://www.regjeringen.no/en/dep/ud/campaign/delimitation/chart.html?id=614287>

<sup>200</sup> Zysk, 2009, 114.

visible Russian presence in Spitsbergen would have a negative impact on the country's position in the Arctic in general. Therefore, it was important to preserve their presence in there.<sup>201</sup>

The dispute over the "Grey Zone" was related to the delimitation of the maritime boundary of waters between the adjacent coasts. As indicated before, Norway relied on the median approach, while Russia favored the sectoral principle. The fish stocks in the "Grey Zone" area are significant as they constitute nearly 4 per cent of the total annual global fish catch, and accounts for 50 per cent of the Norwegian, and 12 per cent of the Russians annual catch.<sup>202</sup>

The third issue – "Loophole" – was more complicated. This was because both countries wanted to prove that their outer continental shelf (seabed and subsoil of the submarine area, which is a natural prolongation of country's land territory) reached beyond 200 nautical miles, which is the limit that is indicated in the UNCLOS.<sup>203</sup>

Norway and Russia had different views on how the three issues had to be handled. Norway perceived outstanding issues as a cluster of problems. Russians regarded the three issues as a cluster-problem.<sup>204</sup> Norwegian authorities insisted that the issues are distinct problems which need to be dealt with separately. Meanwhile, Russia favored a package deal, which would encompass all unresolved issues of security policy, international law, economic issues, research and environmental questions, and offer one solution for all of them. In order for Russia and Norway to reach an agreement, both countries' policies had to be revised and changed to come up with a compromise between the median line and sectoral principle.<sup>205</sup>

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<sup>201</sup> Ibid., 113.

<sup>202</sup> Archer and Scrivener, 164.

<sup>203</sup> Howard, 57.

<sup>204</sup> Ostreng, 884.

<sup>205</sup> Archer and Scrivener, 167, 170.

### *Years of Negotiations*

On February 15, 1957, the Royal Norwegian Government and the Government of the Soviet Union reached their first agreement (concerning Varangerfjord) on maritime boundaries in the Arctic.<sup>206</sup> However, it did not extend into the Barents Sea.<sup>207</sup> In 1970, both countries began informal negotiations regarding the Barents Sea on the basis of Article 6 of the 1958 Convention on the Continental Shelf. However, divergent views on the delimitation approach brought the talks to a halt.

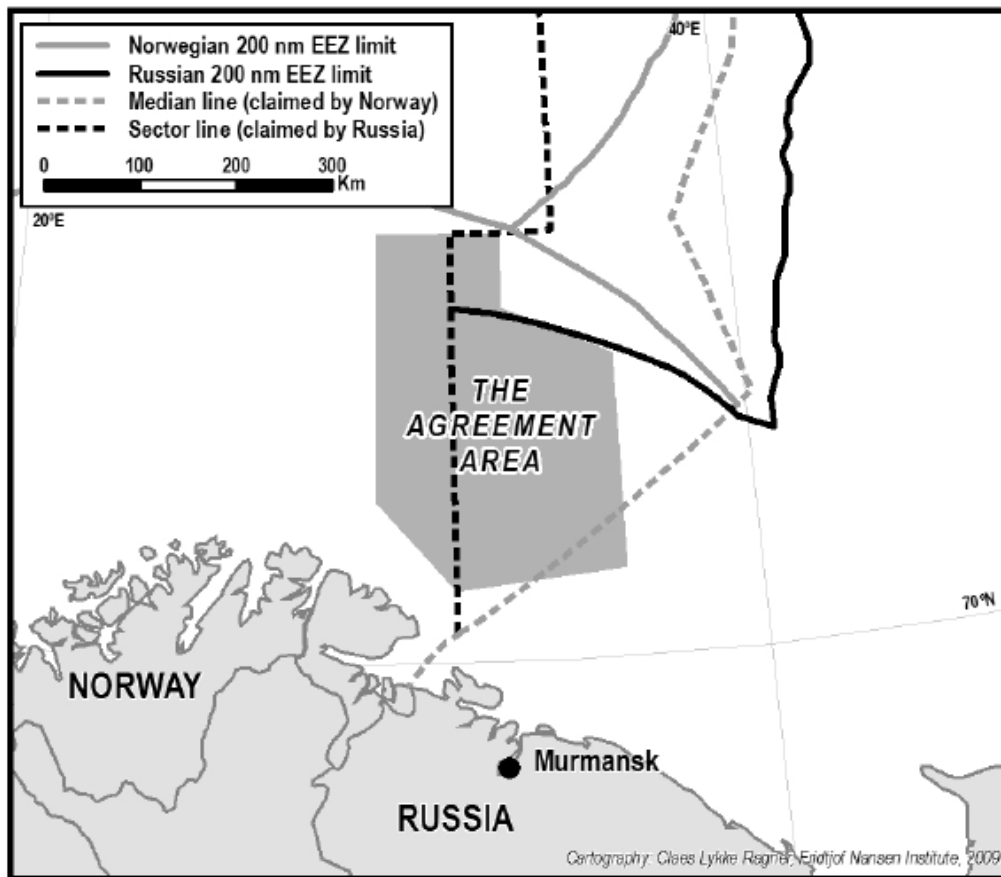
In 1977, the negotiations became even more complicated when both countries established an EEZ of 200 nautical miles. The parties admitted they needed to draw a boundary line in their continental shelf and EEZ, but could not reach an agreement on the delimitation line again. Nevertheless, in 1978, following Norway's initiative to negotiate, both parties agreed on a *Grey Zone Agreement* – a provisional practical arrangement for control over fisheries and enforcement in a defined area of the Barents Sea (Figure 5).<sup>208</sup> The Agreement included a provision indicating that it should not affect either party's position in the border negotiations.<sup>209</sup> The Agreement was limited to one year. However, the parties kept the Agreement subject to annual renewal.

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<sup>206</sup> The text of the *1957 Agreement* accessed March 27, 2011, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS1957SF.PDF>.

<sup>208</sup> For more information: Kristoffer Stabrun, "The Grey Zone Agreement of 1978: Fishery Concerns, Security Challenges and Territorial Interests," *Fridtjof Nansen Institute*, December 2009, accessed March 16, 2011, <http://www.fni.no/doc&pdf/FNI-R1309.pdf>.

<sup>209</sup> Ostreng, 873.



**Figure 5. 1978 Grey Zone Agreement.** The Agreement Area’s geographical scope is not identical to that of the previously disputed area, nor it was it geographically balanced between the median line and sector line. It was an ‘adjacent area’ considerably extended in the western direction, so that to some extent in geographical terms accommodated Soviet demands.<sup>210</sup>

It is believed that Norway made some concessions to the Soviet Union in order to avoid rising tensions in the area, fueled by the fear of Soviet determination to impose the sector line unilaterally if no agreement was immediately reached.<sup>211</sup> During the following years, the parties announced both the resumption and suspension of formal talks. However, no agreement was reached.<sup>212</sup>

In 2007, Norway and Russia revised the 1977 agreement, by updating and clarifying the 1957 Agreement. It extended the maritime boundary in the Varangerfjord. The area, covered by the revised agreement, lies to the South of the Barents Sea. It also defined the delimitation line for the territorial sea, EEZ, and the

<sup>210</sup> Map and explanation are taken from Stabrun, 5.

<sup>211</sup> Ibid., 36.

<sup>212</sup> Thilo Neumann, “Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean,” *The American Society of International Law* 14 (34) (2010).



continental shelf further north of the Varangerfjord.<sup>213</sup> This revision was perceived as a positive contribution towards agreeing upon furthering the delimitation line in the Barents Sea.

In September 2008, the Russian Secretary of the Security Council and former Chief of the Federal Security Service, Nikolai Patrushev, stated that the attention to the Arctic was increasing. As a result, the increase of competition among the Arctic countries for the control over the resources was evident. In addition, he indicated the growing presence of military bases in the Arctic. He urged Russia to take action if it wanted to preserve its influence in the region. If no immediate decisions were made, there was a possibility of being excluded from the Arctic in general.<sup>214</sup>

#### *Treaty between Norway and Russia*

In 2010, Russia decided to take action and prove to the world its ability to cooperate and manage the disputes peacefully. In September 15, 2010 Russia and Norway finally ended their forty year dispute and in Murmansk (Russia) signed the “Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean.”<sup>215</sup> The treaty ensures continuation of the parties’ close cooperation in the sphere of fisheries and contains provisions on cooperation regarding exploration of trans-boundary hydrocarbon (oil and gas) deposits. Moreover, it clarifies the limits of sovereignty, the rights and jurisdiction of both states. Thus, it will provide stability

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<sup>213</sup> Norwegian Ministry of Foreign Affairs, *Press release No. 083/07*, July 11, 2007, accessed March 29, 2011, <http://www.regjeringen.no/mobil/en/dep/ud/press/news/2007/Agreement-signed-between-Norway-and-Russ.html?id=476347>.

<sup>214</sup> More on the meeting of the Security Council of the Russian Federation in September 2008 and an interview with Patrushev, see *Vesti Nedeli*, September 14, 2008, <http://www.vesti7.ru/news?id=12619>.

<sup>215</sup> Norwegian Prime Minister Office, *Press release No.118/10*, September 12, 2010, accessed March 29, 2011, [http://www.regjeringen.no/upload/SMK/Vedlegg/2010/avtale\\_engelsk.pdf](http://www.regjeringen.no/upload/SMK/Vedlegg/2010/avtale_engelsk.pdf).

and predictability of Russian - Norwegian relations and foster cooperation between the two countries.

According to the treaty, Norway and Russia got approximately equal parts<sup>216</sup> of the disputed territory.<sup>217</sup> A compromise between the median line and sector approach was reached. The underlying calculation relied on a longer Russian coastline. However, the other factors that Russia sought to influence in the delimitation did not affect the boundary line.<sup>218</sup> Once an agreement went into force,<sup>219</sup> it terminated the *1978 Grey Zone Agreement*.

For the treaty to come into force, both countries had to ratify it. In February 8 2011, Norway's parliament (Stortinget) ratified the agreement.<sup>220</sup> Subsequently, on March 25, Russia's State Duma ratified the treaty, as did the Federation Council, Russia's upper house of parliament, five days later. On April 8, the President of Russian Federation, Dmitry Medvedev, signed the Federal Law on the ratification of this treaty.<sup>221</sup> This completed the process of establishing the maritime boundary that divides both states' continental shelves and EEZ in the Barents Sea and the Arctic Ocean.

#### *The reasons and implication for the agreement on the Barents Sea*

One of the most significant reasons that drove Norway and Russia to cooperate was their economic interest in the area. Both countries needed to exploit the resources of the Arctic. Norway's North Sea production is reaching its limits and Russia's Siberian fields are close to depletion. Therefore, without the resources from the

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<sup>216</sup> See Figure 4 in page 55.

<sup>217</sup> Weather. "Race for the Arctic."

<sup>218</sup> Neumann, "The 2010 Agreement."

<sup>219</sup> Article 8 of the 2010 Treaty states "This Treaty shall be subject to ratification and shall enter into force on the 30th day after the exchange of instruments of ratification."

<sup>220</sup> Norwegian Ministry of Foreign Affairs, *Press release*, February 8, 2011, accessed March 29, 2011, [http://www.regjeringen.no/en/dep/ud/press/news/2011/delimitation\\_treaty\\_approved.html?id=633135](http://www.regjeringen.no/en/dep/ud/press/news/2011/delimitation_treaty_approved.html?id=633135).

<sup>221</sup> President of Russia, *Press release*, April 8, 2011, accessed April 15, 2011, <http://eng.kremlin.ru/acts/2040>.

Arctic, both countries could no longer maintain the levels of oil and gas production on which the rest of Europe increasingly depends.<sup>222</sup>

A second reason for ratifying an agreement on the maritime border was that it will attract the investment in offshore development. Already, Russian scientists have started a one year mission to explore the natural resources and their recoverability in the Arctic Ocean.<sup>223</sup> In addition, on August 2007, the official newspaper of the Russian Ministry of Defence *Krasnaja zvezda* (Red Star) emphasized the importance of finding a solution to the delimitation disputes with NATO countries. Furthermore, if the agreement between Norway and Russia was not reached soon, NATO presence in the region would increase. Undoubtedly, Russia had no interest in providing NATO with an excuse to preserve its defensive position in the Arctic and views all NATO activity with suspicion.<sup>224</sup>

The 2010 Agreement ensured predictability and legal certainty for Norway, as it finally clarified its maritime boundary within 200 nautical miles off the coast. From the geopolitical perspective, the agreement proves that Russia is pursuing a new and softer foreign policy, which concentrates on interests rather than friends or foes, as seen in the Cold War. The softer foreign policy was also reflected in the previously analyzed Russian Arctic strategy. Moreover, Russia seeks to improve its image and investment credentials internationally; these were damaged after the tensions with Ukraine and Poland regarding the sales of natural gas, as well as the invasion to Georgia.<sup>225</sup> Another factor is energy. Because the agreement was reached, both countries are now expected to cooperate on a natural resources exploration and

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<sup>222</sup> Emmerson, "Our Friends in the North."

<sup>223</sup> Derek Andersen, "The Arctic: Laboratory for Cooperation," *Russia Beyond the Headlines*, October 20, 2010, accessed April 10, 2011, [http://rbth.ru/articles/2010/10/20/the\\_arctic\\_laboratory\\_for\\_cooperation05042.html](http://rbth.ru/articles/2010/10/20/the_arctic_laboratory_for_cooperation05042.html).

<sup>224</sup> Andrew Diev, "Srazhenie za Arktiku [Battle for the Arctic]," *Krasnaja zvezda*, August 8, 2007, accessed April 10, 2011, [http://www.redstar.ru/2007/08/08\\_08/3\\_03.html](http://www.redstar.ru/2007/08/08_08/3_03.html).

<sup>225</sup> Huebert, 23.

exploitation program. This will either encourage or mitigate the race for the Arctic riches.<sup>226</sup>

The 2010 agreement certainly demonstrated cooperation between the Arctic states and the commitment to follow the rules of the UNCLOS. It confirmed that the Law of the Sea applies to the Arctic Ocean. In addition, it proved to be efficient in solving outstanding maritime issues through bilateral agreements with regards to geographical factors, without resorting to dispute settlement bodies which rely on geological and geomorphologic factors.<sup>227</sup> Furthermore, the 2010 Agreement demonstrates a step forward in global governance and sends a strong message to other nations involved in the maritime boundary disputes.

### The Beaufort Sea Dispute

The focuses of this thesis is an ongoing controversy in the southern Arctic – the Beaufort Sea, where the boundary line between the Canadian territory of Yukon and the U.S. state of Alaska has not yet been settled. Currently, Canada and the United States share three maritime boundaries delimitation disputes: the Dixon Entrance, the Strait of Juan de Fuca, and the Beaufort Sea. The dispute in the Beaufort Sea encompasses a triangle-shaped area north of Alaska, the Yukon Territory, and the Northwest Territories which is considered to be the most significant dispute due to the potential of tremendous natural deposits (Figure 6).<sup>228</sup>

The Arctic as a whole has been a source of controversy between Canada and the United States ever since the 1969 Manhattan crisis,<sup>229</sup> when the U.S. oil tanker *S.S. Manhattan* navigated through the Northwest Passage (NWP) without permission from

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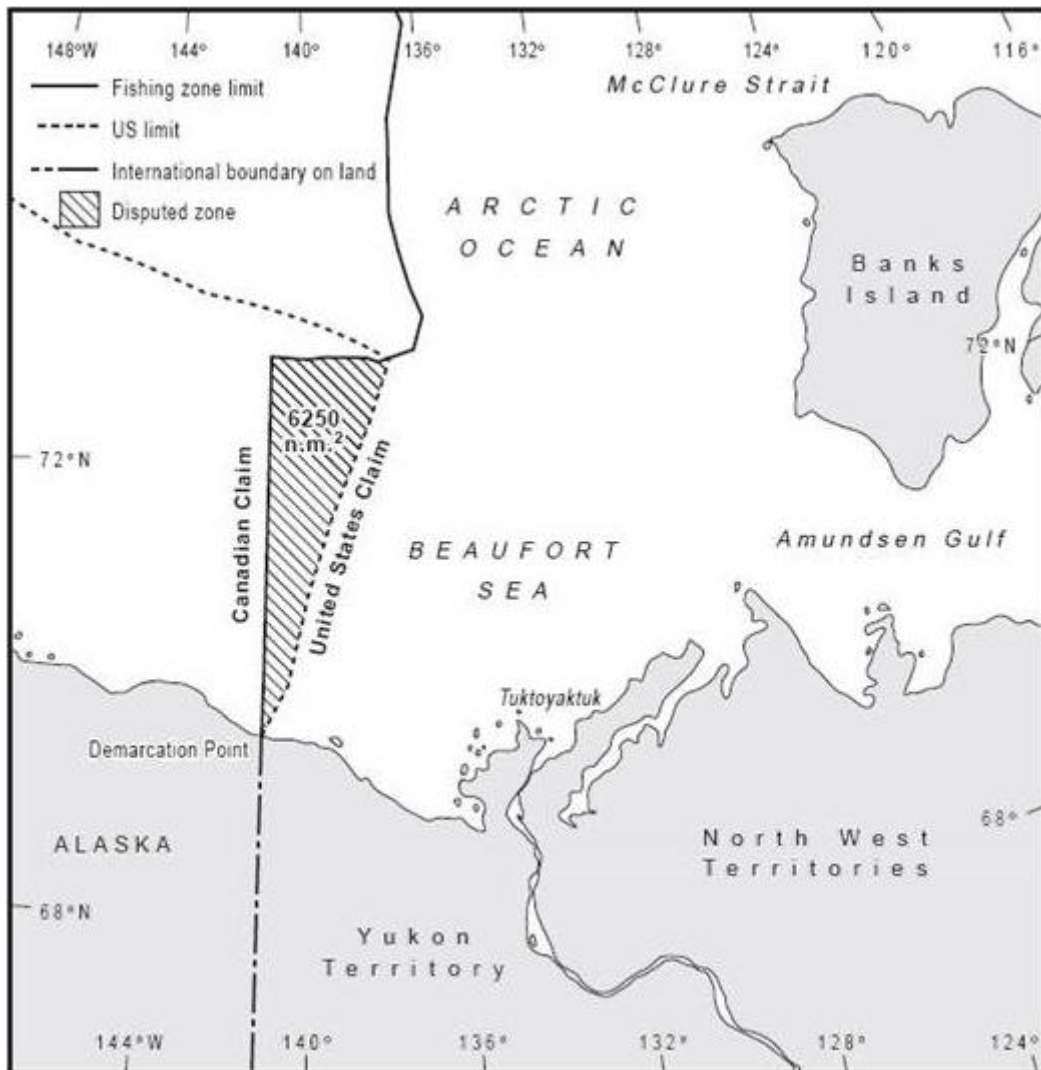
<sup>226</sup> Weather, “Race for the Arctic.”

<sup>227</sup> Neumann, “Conclusion.”

<sup>228</sup> Betsy Baker, “Filling an Arctic Gap: Legal and Regulatory Possibilities for Canadian-U.S. Cooperation in the Beaufort Sea,” *Vermont Law Review* 34 (1) (2009): 57.

<sup>229</sup> Nathaniel F. Caldwell Jr., *Arctic Leverage: Canadian Sovereignty and Security* (New York: Praeger, 1990), 45.

the Canada's government. Canada reacted by passing the *Arctic Waters Pollution Prevention Act* in 1970.<sup>230</sup>



**Figure 6. Border dispute between the United States and Canada in the Beaufort Sea.**<sup>231</sup>

It allowed Canada to claim some legal jurisdiction over the vessels navigating in the Arctic Archipelago and discouraged tanker transits through the area. However, only the USSR recognized this right. In 1985, the *Polar Sea*, the American ice-breaker, sailed through the area. This caused tension between both countries.

<sup>230</sup> Ibid., 45.

<sup>231</sup> *Arctic Economics*, "Where is the Beaufort Sea Boundary between the U.S. and Canada," August 26, 2009, accessed April 16, 2011, [http://benmuse.typepad.com/arctic\\_economics/2009/08/us\\_canada\\_beaufort\\_sea\\_boundary.html](http://benmuse.typepad.com/arctic_economics/2009/08/us_canada_beaufort_sea_boundary.html).

The status of the NWP is a serious question in the bilateral relations between the United States and Canada. The United States claims the international status of the passage which would give them the right to navigate through it without permission from Canada. Meanwhile, Canada argues that it belongs to its territorial waters. However, neither country can enjoy the benefits that the NWP can bring until the status of the passage is established. Once it is established, the UNCLOS determine different rights in regards to international and internal waters.

As Arctic Ocean became more navigable, both countries had to defend their common interests. This encouraged bilateral sectoral initiatives regarding shipping, oil and gas, and fisheries. In 1974, Canada and the United States agreed on the establishment of a *Joint Marine Pollution Contingency Plan*<sup>232</sup> in order to deal with oil spills and other harmful substances leaked from vessels.<sup>233</sup> It provided a coordinated system for planning, preparing, and responding to the incidents in the contiguous waters of both states. This Plan also contained an annex regarding the Beaufort Sea in which the jurisdiction, roles, response procedures were defined.<sup>234</sup> In 2003, the Plan's operational aspects were updated by a memorandum of understanding.

In January 11, 1988, Canada and the United States signed an Arctic cooperation agreement in Ottawa.<sup>235</sup> The Agreement was a product of several years of negotiation and personal contributions by Prime Minister Mulroney and President Reagan. The Agreement indicated a pledge by the United States that all navigation by the U.S.

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<sup>232</sup> Canadian and U.S. Coast Guard, *Canada-U.S. Joint Marine Pollution Contingency Plan (JCP)*, May 22, 2003, accessed April 5, 2011,

[http://www.nrt.org/production/NRT/NRTWeb.nsf/AllAttachmentsByTitle/A-403CANUSJCPEnglish/\\$File/CANUS%20JCP%20English.pdf?OpenElement](http://www.nrt.org/production/NRT/NRTWeb.nsf/AllAttachmentsByTitle/A-403CANUSJCPEnglish/$File/CANUS%20JCP%20English.pdf?OpenElement).

<sup>233</sup> Ted L. McDorman, "Canada-United States Bilateral Ocean Law Relations in the Arctic," *Southwestern Journal of International Law* 15 (2008): 296-297.

<sup>234</sup> *Ibid.*, 297.

<sup>235</sup> The text of the 1988 Agreement accessed April 15, 2011, [http://untreaty.un.org/unts/60001\\_120000/30/4/00058175.pdf](http://untreaty.un.org/unts/60001_120000/30/4/00058175.pdf).

icebreakers, within waters claimed by Canada, would be internal and could be performed with the consent of the Canadian government.<sup>236</sup> Moreover, the agreement allowed for practical cooperation regarding matters related to the NWP, while affirming that both countries would agree to disagree about the status of the passage. This Agreement demonstrated a possibility of functional cooperation without settling legal differences. However, the 1988 Agreement did not eliminate the possibility of confrontation. It simply postponed it.<sup>237</sup>

In 1990, both parties signed an agreement that calls for improvement in the enforcing of fisheries laws and regulations in internal waters, territorial seas, and the 200 miles coastal marine zone.<sup>238</sup> However, there still is an absence of bilateral arrangements for shared fish stocks between the two countries regarding the Beaufort Sea.<sup>239</sup>

#### *The United States and Canada's positions regarding the Beaufort Sea*

The core of the current United States - Canada dispute is the line that goes between the Alaska/Yukon land frontiers into the Beaufort Sea (Figure 6). The dispute involves two related issues: the interpretation of the language describing the boundary in the 1825 treaty, and the international rules of continental shelf delimitation and application. The maritime boundary line is critical for both claimants, as they disagree as to whether the median line or sector approach should determine the border. The United States seeks the equidistance principle as a solution to the issue because it reflects the direction of the coastlines. Moreover, the United States claims itself and Canada to be bound by the 1958 Convention on the Continental Shelf, and by customary international law. The United States insists that international law does not

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<sup>236</sup> Baker, 73.

<sup>237</sup> Dosman, 172.

<sup>238</sup> The text of 1990 Agreement accessed April 17, 2011, [http://www.lexum.com/ca\\_us/en/cts.1991.36.en.html](http://www.lexum.com/ca_us/en/cts.1991.36.en.html).

<sup>239</sup> Ibid., 78.

provide detailed description of how the continental shelf should be determined; therefore, Article 6 of the Convention on the Continental Shelf should be applied – relying on the equitable principle.<sup>240</sup> However, Canada objects to it and insists that equidistance rule does not apply because it is contrary to the UNCLOS provision of the “special circumstances”.

Canada claims the 141<sup>st</sup> meridian into the Arctic Ocean. Canada’s position stems from the 1825 Boundary Treaty<sup>241</sup> between the United Kingdom and The Russian Empire that sets the 141<sup>st</sup> meridian line in the Beaufort Sea.<sup>242</sup> Canada is the successor state to the United Kingdom in terms of applicability of this treaty. The United States, in turn, is in charge of Alaska.<sup>243</sup> Canada claims that the 1825 Treaty provides a boundary which divides both land and sea. The United States questions the terms used in the treaty and does not accept that it applies to the maritime boundary in the disputed area.<sup>244</sup> Undoubtedly, it will be difficult for Canada to prove that when the Treaty was negotiated, the negotiations included the delimitation of a maritime boundary. In addition, Canada’s position is complicated by the fact that concept of “territorial sea” was accepted only in 19<sup>th</sup> century – after the 1825 Treaty was adopted. Moreover, the particular wording (for example: “as far as the Frozen ocean”) used in the treaty may not contribute to the Canada’s position as it has expected.<sup>245</sup>

The United States has never formally disputed the Canadian use of the 141<sup>st</sup> meridian line when exercising jurisdiction in the area. The United States has not responded to the 1970 Canadian Arctic Waters Pollution Prevention Act, which aimed

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<sup>240</sup> Karin L. Lawson, “Delimiting Continental Shelf Boundaries in the Arctic: The United States-Canada Beaufort Sea Boundary,” *Virginia Journal of International Law* 22(1981): 242.

<sup>241</sup> The text of the 1825 Convention accessed April 17, 2011, <http://explorenorth.com/library/history/bl-ruseng1825.htm>.

<sup>242</sup> Baker, 70.

<sup>243</sup> The United States purchased Alaska in 1867.

<sup>244</sup> Rothwell, “Maritime Boundaries,” 31.

<sup>245</sup> *Ibid.*, 32.



at claiming the jurisdiction over disputed waters. However, in 1976, reacting to the Canada's claim of a 200 miles fishing zone in the area, the United States declared its own Beaufort Sea fishing zones that overlapped with Canada's claim. Thus, Canada may argue that in general, U.S. silence meant acceptance.

Canada may also claim a historical usage of the area by Canadian natives (Inuit population) of the MacKenzie Delta for hunting and living.<sup>246</sup> Nevertheless, the United States may object to the historical usage by indicating that it is irrelevant to the issues of the continental shelf, where non-renewable resources are at the center of the dispute. Historical usage could be more convincing in the disputes over EEZ and the rights to the fish stocks.<sup>247</sup>

Both countries agree on adhering to the 1958 Convention on the Continental Shelf and admit the boundary line to be equitable. However, Canada insists that median line is not an equitable boundary and would result in a significant benefit to the United States.<sup>248</sup> The notion of "special circumstances," with particular attention to the concave coast of Canada, might be an effective argument suitable to Canada's position. The equidistance principle would not ensure proportionality between Canada's coastline and its share of the continental shelf.

The United States objection to Canada's position and sector theory can be explained by the general United States position on the Law of the Sea in the Arctic Ocean. As was indicated in Chapter I analyzing the U.S. Arctic policy, the United States favors free and unrestricted mobility in the High North. Therefore, any attempts to limit its mobility would provoke the United States to reject it. In addition, the United States does not see any "special circumstances" that can be used in order to

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<sup>246</sup> Ibid., 37.

<sup>247</sup> Ibid.

<sup>248</sup> The coast of Yukon is concave and the coast of Alaska is convex.

draw a maritime boundary in the Beaufort Sea. Therefore, it claims the equidistance line to be the most appropriate solution to the issue.

However, Rothwell indicates that reliance on the equidistance principle might not ensure an equitable solution. It is more common that maritime boundaries are drawn with a particular respect to the geographic configuration or other special circumstances, where the median line was applied just in part, adopting it to the lengths of the coast of the states.<sup>249</sup> This has proved to be the case in the Gulf of Maine<sup>250</sup> and in the Barents Sea dispute, where a modified equidistance line was adopted.

The different interpretation of the 1825 treaty and the ambiguity in its meaning makes it unlikely to be considered in solving the Beaufort Sea dispute. Even though the disputed area of approximately 7,000 square nautical miles might look insignificant, it proves to be crucial in the area, which is rich in natural resources.

#### *The Gulf of Maine case*

Given the resource potential of the Beaufort Sea and the history of Canada – United States disputes in the Arctic, there is no guarantee that the agreement between the countries can be easily reached. The need for Canada and the United States to settle maritime boundary delimitation issues is not a unique situation. In 1984, after fifteen years of negotiations, Canada and the United States settled the boundary dispute of the Gulf of Maine with the help of the International Court of Justice (ICJ). For the purpose of this paper it is important to mention the Gulf of Maine case because it illustrates one of the dispute settlement options – reliance on the ICJ. Moreover, it suggests a strong argument as to why the ICJ may not be an option to

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<sup>249</sup> Rothwell, “Maritime Boundaries,” 42.

<sup>250</sup> See page 69.

settle the dispute in the Beaufort Sea. The Gulf of the Maine case is, in a way, similar to the Beaufort Sea dispute, as the settlement of the boundary has a direct impact on access to the region's natural resources.<sup>251</sup> In the Gulf of Maine case, the issue at stake was renewable natural resources – fish stocks. In the Beaufort Sea dispute, non-renewable resources such as gas and oil are at the center of the conflict.

The ICJ decision was based on both coastal and political geographical factors to ensure the equitable result. Nevertheless, both countries, especially their fishing industries, remain dissatisfied with the Court's decision. The Gulf of Maine case and the dissatisfaction that was caused by the ICJ decision indicate an important point for both countries, and that is they should try to reach a mutually acceptable agreement without relying on an independent adjudicative body. When the negotiations fail and parties decide to settle disputes with the help of others, they have to be aware of dangers that may arise. Independent bodies, such as the ICJ, rely on the law, and some important factors indicated by both parties might be interpreted as irrelevant and rejected. Thus, the final decision might be completely adverse to the interests of one or both countries involved in the dispute.<sup>252</sup> Therefore, the case of the Gulf of Maine emphasized that parties must carefully weigh the risks and benefits before letting a third party settle a dispute.

#### *Recent developments regarding the Beaufort Sea*

Even though serious conflicts over jurisdiction of the disputed territory in the Beaufort Sea have been avoided, it seems inevitable that tensions will arise due to overlapping exploration permits. Interestingly, the United States had leased areas of

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<sup>251</sup> Rothwell, "Maritime Boundaries," 10.

<sup>252</sup> Rothwell, 21-22.

terrain below the water in order to search for and possibly exploit natural resources.<sup>253</sup> Canada immediately responded with a diplomatic protest. In August 20, 2009, the U.S. Secretary of Commerce, Gary Locke, announced an Arctic Fishery Management Plan, which bans commercial fishing in the warming Arctic.<sup>254</sup> This included disputed waters in the Beaufort Sea. Canada quickly reacted with a diplomatic protest over the United States unilateral imposition of a fishing ban in the disputed area.<sup>255</sup>

Based on this, the question arises, “why countries that maintain diplomatic relations still struggle to resolve the dispute in the Beaufort Sea?” This is a complicated issue, and one of the complicating factors is the constitutionally protected, 1984 Inuvialuit Final Agreement, which is based on Canada’s perception of the maritime boundary.<sup>256</sup> Baker indicates that both parties perceive this dispute as well-managed and do not see competing claims in this area as extremely contentious. Moreover, neither Canada nor the United States expressed interest towards joint management of the area. In addition, both countries have agreed on a moratorium on hydrocarbon exploration in the Beaufort triangle.<sup>257</sup> This indicates willingness to cooperate.

Despite overlapping claims in the Beaufort Sea, scientists from Canada and the United States initiated a joint geological survey that will include the disputed area. The purpose of the joint mission is data gathering for national submissions to the

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<sup>253</sup> *State of Alaska, Department of Natural Resources, Division of Oil and Gas*, “North Slope Oil and Gas Activity 2011,” March 2011, accessed April 18, 2011, [http://www.dog.dnr.alaska.gov/oil/products/maps/northslope/2011/NS\\_OG%20Activity%20Map\\_2011\\_0323.pdf](http://www.dog.dnr.alaska.gov/oil/products/maps/northslope/2011/NS_OG%20Activity%20Map_2011_0323.pdf).

<sup>254</sup> *National Oceanic and Atmospheric Administration (NOAA)/United States Department of Commerce*, “Secretary of Commerce Gary Locke Approves Fisheries Plan for Arctic,” August 20, 2009, accessed April 18, 2011, [http://www.noanews.noaa.gov/stories2009/20090820\\_arctic.html](http://www.noanews.noaa.gov/stories2009/20090820_arctic.html).

<sup>255</sup> Randy Boswell, “Canada Protests U.S. Arctic Fishing Ban,” *CanWest News Service*, September 4, 2009, accessed April 18, 2011, <http://www.webcitation.org/query?url=http%3A%2F%2Fwww.canada.com%2FCanada%2Bprotests%2BArctic%2Bfishing%2F1962264%2Fstory.html&date=2009-09-15>.

<sup>256</sup> *Canada Senate, Standing Senate Committee on Fisheries and Oceans*, “The Coast Guard in Canada’s Arctic: Interim Report,” Fourth Report, June 2008, 12.

<sup>257</sup> Baker, 70.

Commission on the Limits of the Continental Shelf.<sup>258</sup> The bi-national study of the area and data gathering are necessary for both delineation of the continental shelf and eventual resolution of the maritime boundary dispute in the Beaufort Sea.<sup>259</sup>

Baker indicates that the method used by Canada and the United States is joint seabed mapping, and scientific cooperation, in accordance with international law and international institutions, can be applied to the dispute in the Beaufort Sea. He further claims that cooperation in gathering and expanding the data about the region is valuable.<sup>260</sup> Both countries have shared an interest; however they cannot reach a consensus on the maritime boundaries. Joint efforts to explore the region can strengthen Canadian and U.S. national security, economic potential, and environmental protection. Both countries should be interested in better exploration of the resources in the sea, thus, dividing responsibilities and benefits that the exploration and protection can bring. Moreover, it would provide an excellent example of how national legal systems can improve the governance and regulation of the Arctic by relying on the interplay between law, policy, science, and technology.<sup>261</sup> Intelligent political decisions should be based on a scientific foundation in order to define the standards, implement, and enforce them.

This thesis claims that the time is ripe for the renewal of the diplomatic discussions regarding the settlement of the Beaufort Sea dispute. In July 2010, experts from both countries entered into negotiations in Ottawa with the approval of Canada's Foreign Affairs Minister, Lawrence Cannon, and the U.S. Secretary of State, Hillary Clinton. The second meeting was planned to be held in Washington, in 2011.<sup>262</sup>

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<sup>258</sup> Griffiths, "Towards a Canadian Arctic Strategy."

<sup>259</sup> Ibid.

<sup>260</sup> Baker., 58, 64.

<sup>261</sup> Ibid., 62.

<sup>262</sup> Sian Griffiths, "U.S.-Canada Arctic Border Dispute Key to Maritime Riches," *BBC News*, August 2, 2010, accessed April 18, 2011, <http://www.bbc.co.uk/news/world-us-canada-10834006>.

In February 4, 2011, Prime Minister Stephen Harper and U.S. President Barack Obama officially announced continental partnership negotiations. The aim of the negotiations is to establish bi-national security and trade perimeters.<sup>263</sup> Both parties admitted divergent views on certain measures, but were determined to seek balance. No timetable to reach a deal was announced. Moreover, Harper and Obama “...recognized the sovereign right of each country to act independently in its own interest.”<sup>264</sup> Negotiations on the security perimeter are also to include the challenges that both countries face in the Arctic waters.<sup>265</sup>

*Analysis: possible Beaufort Sea dispute settlement solutions*

It is common in maritime boundary disputes for both parties to advocate the use of completely different methods regarding division of the area. It complicates the dispute settlement process, as both parties are unwilling to accept each other's proposals. Therefore, a need for alternative delimitation criteria arises. This thesis claims that the United States and Canada would benefit the most by settling the dispute bilaterally. The case of the Gulf of the Maine proved that relying on the third party to resolve the dispute can result in an outcome that is not totally satisfactory for either party. Taking into consideration the uncertainty about the techniques that the ICJ or an arbitrator might use in dividing a resource rich area, it is highly unlikely that both parties would leave the final say on the Beaufort Sea boundary to an adjudication process. As a result, the United States and Canada should analyze the negotiations that led Russia and Norway to cooperate and finally sign an agreement. Parties have to realize that without making concessions, it is impossible to reap benefits. A flexible

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<sup>263</sup> Sheldon Alberts, “Harper, Obama announce ‘new vision’ for border,” *Global News*, February 4, 2011, accessed April 25, 2011, <http://www.globalnews.ca/Harper+Obama+announce+vision+border/4225227/story.html>.

<sup>264</sup> *Ibid.*

<sup>265</sup> Colin Robertson, “‘Now for the Hard Part’: a User’s Guide to Renewing the Canadian-American Partnership,” *Canadian International Council (CIC)*, February 2011: 9.

approach and concessions made by both countries are needed when the issue of the natural resources is at stake.

One possible solution to end the dispute is to adopt a modified equidistance line, which will be based on a “median line” but adjusted so that an equitable result would be reached.<sup>266</sup> It would acknowledge both parties’ claims: the equidistance line favored by the United States and the nature of Canada’s coastline as a “special circumstance” preferred by Canada. Both countries will be neither clear beneficiaries nor significant losers. This type of delimitation was used solving the Barents Sea dispute, where both parties were granted approximately equal areas.

The “joint development” concept may also be an option. Claimant countries would jointly explore, exploit, and have shared jurisdiction over adjacent borders.<sup>267</sup> This solution would allow both countries to share benefits equally and explore the region more systematically. Later this may lead to the final delimitation boundary as the resources deposits are explored, and mined. This option is mostly considered in the disputes involving natural resources, because in such cases parties to the dispute tend to be less flexible in defining the border line.<sup>268</sup> Canada and the United States have a similar culture and legal system; therefore, the option of joint exploration and exploitation might work for them. As was indicated before, Canada and the United States have already started a joint mission aiming at exploration. If both parties find this option acceptable, there would be several issues that will need to be resolved.<sup>269</sup> The parties will need to negotiate the boundary of the joint-development zone, define how the mining will be undertaken, and how it will be administered? Moreover, the issues of funding and profits or minerals division will need to be addressed. There

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<sup>266</sup> Rothwell, “Maritime Boundaries,” 44.

<sup>267</sup> *Ibid.*, 45.

<sup>268</sup> *Ibid.*, 45-46.

<sup>269</sup> Rothwell, “Maritime Boundaries,” 55.

might be some disagreements and tensions, but a step forward on cooperation would already have been taken.

One more option available for the Beaufort Sea might be a “common petroleum deposits regime.”<sup>270</sup> It would deal with the issue of resource exploitation in the areas where parties to the dispute find it complicated to reach an agreement on the maritime boundary. Thus, the issue of sovereignty over the disputed seabed is avoided, as a single operator would be exploiting the area and distributing benefits for all parties in the dispute. Hence, similar issues, as indicated in the joint-development zone regime, will arise and will need to be settled. However, taking into consideration the fact that the precise amount of the resources is not available, the option of a common petroleum deposits regime would be difficult to implement.

This thesis states that if countries are interested in preserving their interests and positions by deciding upon the future border of the Beaufort Sea, bilateral negotiations are the best option. The Barents Sea case demonstrated that satisfactory results can be enjoyed only through comprehensive negotiations that consider both parties’ preferences. As was indicated by both parties’ Arctic strategies, willingness to cooperate, while defending their national interest, may be the key to the negotiations that would benefit both their individual and regional goals. Drawing a clear maritime border line, will promote and ensure stability in the Arctic region. In addition, it would oppose realists’ claims that the benefits of cooperation can be easily overcome by each country’s desire to preserve its presence and dominance in the region.

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<sup>270</sup> Ibid., 49-51.



## **Chapter V: Conclusion**

The Arctic can no more be described as a peripheral region that is absent from the international agenda. The region has become economically attractive as a result of accessibility, exploration and possible exploitation of the Arctic's riches such as oil, natural gas, fish stocks, and minerals. The Arctic countries have become greatly involved in the region's geopolitics. The predicted prosperity of the Arctic has propelled countries to compete over territory and natural resources lying beneath the water.

In the current study I analyzed whether countries in the Arctic are prone to cooperation or conflict. There is no doubt that a huge amount of potential natural resources in the disputed areas can cause significant tensions between the countries. As the current oil reserves are rapidly depleting, the potential for conflict and tensions arise. On the other hand, we live in the increasingly interdependent world, where cooperation is not an option, but rather an obligation. Moreover, none of the claimants to Arctic resources can be absolutely sure that there are sufficient resources lying in the disputed areas that are worth fighting over. Thus, further exploration of the area is crucial to reveal the potential lying under the water.

In order to evaluate the cooperation or confrontation dilemma, it was important to draw attention to the Arctic strategy documents issued by all Arctic states, and analyze the message they conveyed. Even though the documents reflect each country's determination to protect their sovereignty and interest in the Arctic, they indicate a willingness and necessity to cooperate.

Moreover, this thesis analyzed the significance of the United Nations Convention on the Law of the Sea (UNCLOS) and whether or not it facilitates cooperation between the countries in the region. The Arctic States are spending

considerable amounts of money trying to obtain the necessary evidence to prove the extension of their continental shelf. The melting ice, accessibility to the natural resources, and availability of advanced technology contribute to the proliferation of new boundary issues between the states which require delimitation. All these factors also made many potential boundaries more important to the states concerned. Economic opportunities brought new perceptions to the current disputes involving sovereignty rights in the Arctic. Regarding delimitation of the disputed waters, the UNCLOS only indicates a necessity to reach an equitable solution without giving concrete measures as to how the final maritime boundaries should be settled.

Next, I analyzed the Barents Sea dispute that lasted for four decades. In particular, I intended to examine how Russia and Norway found a means to cooperate and eventually sign an agreement. This thesis claims that lessons learned from the negotiations and peaceful settlement of the Barents Sea dispute between Russia and Norway should have a positive influence on the Beaufort Sea dispute between Canada and the United States.

Some possible solutions for the Beaufort Sea dispute were analyzed, and it was found that the most suitable option is to adopt the modified equidistance line approach, which would indicate neither a huge loss nor a significant gain to any of the parties involved. This delimitation concept also proved to be successful in settling the Barents Sea dispute. Another possible solution is the “joint development” concept, which leaves the sovereignty issue aside and is based on mutual exploration and exploitation of the resources. Canada and the United States have a history of cooperation – NATO, 1988 Arctic Cooperation Agreement, and Arctic Council – which indicates that there is a good possibility of settling the dispute, although it is impossible without concessions from both parties involved.

In the Arctic, the uncertainty about the exact amount of resources and the issue of recoverability will prevent the countries from confronting each other. However, as long as final dividing lines have not been drawn and accepted, the potential for conflict remains. In addition, the proper exploration and exploitation of the resources is not possible until the agreements between the countries are reached and the territories are divided or shared. It is evident that countries, especially the United State, are becoming increasingly interested in the access of secure energy in their territory, particularly given the instability caused by the “Arab Spring” of 2011. The uncertain current situation and continued United States dependence on imported oil might stimulate some concessions that would bring parties closer to a solution to the Beaufort Sea conflict.

I believe that the Arctic region can bring states together to confront shared challenges, solve common problems, and enjoy the benefits that the improved access to the region’s resources will bring. The positive lessons learned from the experience of other nations should be analyzed, understood, and applied to the ongoing disputes.

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