

MA Thesis: International Relations in Historical Perspective

Student: Kim K. Ménage, 0428523

Topic: The History and Future of Arctic International Relations

Title: **High Ideals in the High North,
Interdependence in a Territory *Sui Generis***



Index

1. Introduction

The Arctic Region..... p.4

Arctic International Relations..... p.5

2. Research Method and Thesis Question..... p.8

Research Method..... p.9

Thesis Question..... p.14

3. Focusing on Territorial disputes..... p.15

4. Sovereignty in the Arctic..... p.20

Before UNCLOS- Fictitious and Effective Occupation of the Arctic.. p.20

After UNCLOS- The Arctic Limit of Territorial and Sovereign
Understanding..... p.24

5. Case Studies..... p.31

Control Case: The Barents Sea..... p.32

The Lomonosov Ridge..... p.39

The Beaufort Sea..... p.48

6. Conclusion..... p.55

7. Further study..... p.61

8. Bibliography..... p.62

¹ Cover photo: Robert E. Peary's sledge party disputably reaches the North Pole, April 6, 1909. From Robert E. Peary, The North Pole, New York: Frederick A. Stokes Company, 1910. From left: Ooqueh with the Navy League flag; Ootah with the D.K.E. fraternity flag; Matthew Henson with the polar flag; Egingwah with the D.A.R. peace flag; and Seeglo with the Red Cross flag.

ARCTIC REGION



802916AI (R02112) 6-02

1. Introduction

The Arctic Region

The constellation of Ursa Major which rises in the Northern skies was known to the ancient Greeks as 'Artikos'. So it came that Arktikos would come to signify 'northern' and that we would apply it to the corresponding polar region.² Although the region encompasses a sixth of the world's total land mass sprawling over 24 time zones, no strict geographical or juridical definition of the term 'Arctic' has been adopted. The Arctic Circle is one of the five major circles of latitude that mark maps of the Earth. For epoch 2011, it was the parallel of the latitude that runs 66° 34" north of the Equator, which is the approximate limit of the midnight sun and the polar night. The region north of this circle is known as the Arctic. Alternatively, the Arctic can be defined as the region where the average temperature for the warmest month; July, is below 10° Celsius. The northernmost limit of arborescent growth (the tree or timber line) roughly follows the isotherm at the boundary of this region.

The Arctic consists of the Arctic Ocean and of land which is divided over eight countries, namely: Norway (including the Norwegian-administration of Spitsbergen), Sweden, Finland, Russia, the United States (i.e. Alaska), Canada, Denmark (i.e. Greenland), and Iceland (where it passes through the small offshore island of Grimsey). These countries are often referred to as the 'Arctic 8'. The Arctic Council forms the platform for discussions on all issues of relevance to the Arctic 8 and their inhabitants. The broad practice of the Arctic Council is to treat the Arctic as *"a circumpolar region encompassing both marine and terrestrial systems extending southward from the North Pole, covering about 8% of the Earth's surface, including areas located within the jurisdiction of eight States, providing a homeland for many indigenous peoples, and including altogether some 4 million residents."*³

The three largest communities above the Arctic Circle are situated in Russia: Murmansk (population 325,100), Norilsk (135,000), and Vorkuta (85,000). Tromsø in Norway has about 62,000 inhabitants. In contrast, the largest North American community north of the circle: Barrow, Alaska, has approximately 4,000 inhabitants. Rovaniemi lies slightly south of the line in Finland and has a population of approximately 58,000, making it the largest settlement in the immediate vicinity of the Arctic Circle. Indigenous peoples have lived within the region for thousands of years. They tended to live a fairly nomadic, isolated, subsistence existence and had minimal contact with the outside world until roving Norsemen, Pomor Russian hunters and Cossacks gradually expanded their territories Northwards from 870-890 AD to the 1500's.

The Arctic Ocean is the smallest of the world's five ocean regions. It is generally taken to include Baffin Bay, the Barents Sea, the Beaufort Sea, the Chukchi Sea, the East Siberian Sea, the Greenland Sea, Hudson Bay, Hudson Strait, the Kara Sea, the Laptev Sea, the White Sea and other tributary bodies of water.⁴ It is connected to the Pacific Ocean by the Bering Strait and to the Atlantic Ocean through the Greenland and Labrador Seas. Otherwise, it is a nearly landlocked ocean region. The Arctic is the only place on Earth where a number of different countries encircle an enclosed ocean. The Arctic Ocean is also the shallowest ocean region with an average depth of 1050 meters. Accurate maps of the undersea region are sparse and generally inaccurate. The centre of the Arctic Ocean is covered by a drifting persistent icepack that has an average thickness of about three meters. The decline of this Arctic sea-ice has been faster during the past ten years than in the previous 20 years. The area of sea ice persisting in summer (polar pack ice) has been at or near record low levels every year since 2001. It is now about one third smaller than the average summer sea-ice cover from 1979 to 2000.⁵ The lowering of the albedo of the Arctic Ocean is just one example of the positive feedback mechanisms which have triggered the transition of tundra ecosystems from 'sinks' to 'sources' of greenhouse gases, all of which will affect the Earth's climate system as a whole as well as accelerating changes occurring in the Arctic itself.⁶ The Arctic Ocean is projected to become nearly ice-free in summer within this century, likely within the next thirty to forty years.⁷

² Leonid D. Timchenko, Quo vadis, Arcticum?: the international law regime of the Arctic and trends in its development, State University Press "Osnova", 1996. p. 23.

³ Arctic Governance Project (AGP), 'Arctic Governance in an Era of Transformative Change: Critical Questions, Governance Principles, Forward', Report of the Arctic Governance Project, Norway, 2010, p. 3.

⁴ Physical Geography Website: Michael Pidwirny, 'Introduction to the Oceans', 2006.

⁵ Arctic Monitoring and Assessment Programme (AMAP) Secretariat, 'Snow, Water, Ice and Permafrost in the Arctic', Executive Summary of the 2011 SWIPA Assessment, Norway, 2011, p.6.

⁶ Arctic Governance Project (AGP), 'Arctic Governance in an Era of Transformative Change', p.2.

⁷ Arctic Monitoring and Assessment Programme (AMAP) Secretariat, 'Snow, Water, Ice and Permafrost in the Arctic', p.6.

The impacts of climate change have intensified interactions between the Arctic and other parts of the planet.⁸ A major consequence of these biophysical changes is a heightened interest in the Arctic coming from global actors motivated by political and economic opportunities involving commercial shipping, hydrocarbon development, mining, fishing, and tourism.

Arctic International Relations

The Arctic used to mainly be of relevance to science. Now, increasingly, it is a matter of economic, political and legal interest. The Arctic is experiencing a profound transformation, driven largely by the interacting forces of climate change and globalization. The impact of climate change is difficult to predict with any precision, but it is certain that the demand for Arctic resources will continue to climb. Countries are preparing to defend their commercial and territorial interests in *"a region whose strategic significance will boom in the next decade."*⁹ Natural and man-made change in the region will increasingly compel attention. Most significantly, climate change is challenging the notions of permanency and stability on which the ideal of the sovereign, territorial state has historically rested, gradually, literally uncovering an Arctic which stands at a crossroads of development and risk and of cooperation or discord.

The history of the Arctic is marked by seemingly oxymoronic extreme secrecy and diplomatic indifference, the geographical areas presenting strategic interests during the Cold War, but its international boundaries have, until recently, only been vaguely delineated on imprecise maps. Access to the region is improving, however, and this, along with a rising global energy demand, is again pushing gain seekers northwards in search of resources. Companies are hoping to tap into reserves in this remote area, which is currently free from the political instability which plagues many of the hydrocarbon-rich parts of the world. Exploiting Arctic resources is not only economically attractive, it is deemed to be of political and strategic importance. The United States sees its Arctic hydrocarbon production in Alaska as a vital project to help diversify its energy supply, Russia wants to develop new reserves to compensate for the depletion of its southern fields, and Greenland is linking a bid for independence from Denmark to Arctic exploration revenues.¹⁰ Together with Canada (*"The True North strong and free"*)¹¹ and Norway, these five coastal states comprise key national players in the Arctic, also known as the 'Arctic 5'. They are members of the Arctic Council, the most relevant high level intergovernmental forum providing a means for promoting cooperation and coordination among Arctic States, as are the non-littoral Arctic countries of Iceland, Sweden and Finland.

The military confrontation between East and West which constituted the Cold War reached its critical point in the Arctic. By the 1980's the Arctic had become the most probable bridgehead for WW III.¹² However with new Soviet leadership in the form of M.S. Gorbachev, tensions relaxed in 1985. Gorbachev proposed initiatives in his Murmansk Speech of 1987 aimed at creating a reformed legal regime in the Arctic based on the principle of mutually beneficial cooperation. Yet, unlike the Antarctic, there remains no comprehensive legal regime for the Arctic. With regard to its record on international-cooperation the Arctic lags far behind Antarctica, the oceans, and even outer space.¹³ However, the Arctic is not a blank slate when it comes to governance. Existing arrangements range from global frameworks, such as the United Nations Convention on the Law of the Sea (UNCLOS), and the United Nations Framework Convention on Climate Change (UNFCCC), the 1963 Nuclear Test Ban Treaty, the 1944 Chicago Convention on Civil Aviation, etc. to regional agreements, such as those which established the Arctic Council and the Barents Euro-Arctic Council and the 1973 Agreement on the Conservation of Polar Bears¹⁴ and on to functionally specific regimes, such as the guidelines for shipping developed under the auspices of the International Maritime Organization (IMO). Taken together, these arrangements provide substantial capacity to address challenges and opportunities relating to Arctic governance. The Arctic is, however, undergoing a transformation resulting in tighter economic and geopolitical links between the region and the rest of the world. There is reason to conclude that as we speak, the Arctic is in the midst of what academics refer to as a state change.¹⁵ This watershed change is unfolding in a geopolitical setting that is

⁸ Arctic Governance Project (AGP), 'Arctic Governance in an Era of Transformative Change', p.3.

⁹ National Defense University (NDU) Website: 'The Arctic Circle: Development and Risk', p. 3.

¹⁰ *One senior Greenlandic official commented recently that his country is "just one big oil strike away" from economic and political independence.* Source: Wikileaks Website 2007 cable (number 129049).

¹¹ *Excerpt from the National Anthem of Canada*

¹² *Quo vadis, Arcticum?*, p.xiii.

¹³ Oran R. Young, Arkady Cherkasov, Franklyn Griffiths ed., *International cooperation in the Arctic, Arctic Alternatives*, Dundurn Press Ltd., 1992, p.14.

¹⁴ *For an interesting account of the formation of this agreement, as well as all things Arctic, I strongly recommend Duncan Pryde's biography, Ten Years with the Eskimos.*

¹⁵ Arctic Governance Project (AGP), 'Arctic Governance in an Era of Transformative Change', p.3.

remarkably dynamic. Once dominated by the entrenched Soviet-American rivalry associated with the Cold War, the Arctic today is a region of growing interest to a variety of influential actors, such as China, Japan, and the European Union. This cascade of developments has stimulated media, policymakers and academics to assess the adequacy of existing Arctic governance systems.

Emerging popular and scholarly literature is alarmist, marked by expectations that the Arctic will become the scene of escalating jurisdictional conflicts, resource wars and a new 'Great Game' during the coming years. Although journalistic depictions of a 'gold-rush', reminiscent of the Scramble for Africa in the 19th century, and the prospect of armed clashes in the Arctic are deemed exaggerated, worldwide interest in the Arctic has indeed reached levels unprecedented since the 1800's and the development of whaling. On August 2, 2007, worldwide public attention was prompted by the Russian Arktika 2007 expedition's symbolic move to emphasize Russia's claim to the North Pole by planting a national flag on the deep sea floor. Concern was voiced that this dramatic action created an impression of a lawless, chaotic Arctic land grab. The media captured the attention of policy makers and triggered policy responses. Examples of this blooming of Arctic policy include the Ilulissat Declaration (May 2008), the 'Common concern for the Arctic' conference by the Nordic council of Ministers (September 2008), and the European Parliament resolution on Arctic governance (October 2008) as well as various European Commission papers spelling out the EU interests in the Arctic.

Everyone wants a piece of the thawing far north. But that does not mean that anarchy will reign at the top of the world. There is no lawless race for the Arctic. Although the resources of the Arctic seabed are likely to be partitioned among the five countries that could plausibly claim them, it won't be on a first-come-first-served basis.¹⁶ Economic activity is developing slowly. And fortunately, states have so far treated the sparsely populated Arctic as a virtual non-militarized zone, contributing to its common history of international cooperation and scientific exploration. In fact, the international community has maintained a relatively collegial atmosphere of negotiation in the region based on a framework of bilateral and multilateral agreements. There is, therefore, just as much to be said for the proposition that armed conflict is less likely to occur in the Arctic than in most other parts of the world anytime soon.¹⁷ However, whether this cooperative atmosphere will continue, remains an open question.¹⁸

Presently, some Arctic countries are increasing their military presence. Reasons given for this are to maintain stability, but also to *"exercise sovereignty and contribute to crisis management in the region."*¹⁹ Within the Arctic Circle, the aspects 'sovereignty' and 'crisis management' can be found in the questions concerning territorial disputes. Although the planting of a flag on the ocean floor is irrelevant under modern-day international law, it fuelled discussions on claims concerning the territories beyond the Arctic states' exclusive economic zones (EEZs) and reveals a political attitude that may make agreement and cooperation concerning the different prospectives that much more difficult.

The Arctic has been described as *"the last large piece of non-jurisdictional real estate on the planet - which went off the screen when the Cold War ended."*²⁰ As Arctic states now expand their sovereignty claims seawards in order to safeguard potential economic opportunities, they are being confronted with the region's exceptional territorial and legal indeterminacy. The most important legal framework affecting the sovereign jurisdiction of Arctic States is the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is the international agreement that defines the rights and responsibilities of nations in their use of the world's oceans. UNCLOS has met with international approval since it went into force in November of 1994. To date, 161 countries and the European Community have joined in the Convention and this marine regime has become a comprehensive and authoritative constitution of the sea, governing every aspect of maritime affairs, including limits of territorial sovereignty, navigation, natural resources in the seabed, rights of passage, and environmental safety.

UNCLOS is also called the Law of the Sea treaty, which critics abbreviate to the pejorative 'LOST'.²¹ Criticism is centred around the fact that disputes on the boundaries of the outer continental shelf cannot definitely be settled by its Commission on the Limits of the Continental Shelf (CLCS) or by dispute settlement under UNCLOS, which works on the basis of conflict resolution via compromise. The only remaining option is thus by agreement amongst the parties themselves, i.e. bilaterally. This leads to the possibility of either collaboration or competition. In the words of Norwegian Minister of Defence Grete Faramo: *"First, we have a solid international legal framework in place where the states bordering the*

¹⁶ Foreign Policy Website: Lawson Brigham, 'Think Again: The Arctic' Sept.-Oct. 2010.

¹⁷ *Renowned Arctic expert in the fields of international governance and environmental institutions.*

¹⁸ National Defense University (NDU) Website: 'The Arctic Circle: Development and Risk', p.8.

¹⁹ Roger Ingebrigtsen, 'Nordic Defence Cooperation – A mini-NATO to the North?' Ministry of Defence, Tromsø, June 24th 2011.

²⁰ Vanity Fair Website: Alex Shoumatoff, 'Dispatch: The Arctic Oil Rush', May 2008.

²¹ *Ibidem.*

Arctic have agreed that the Arctic Ocean is governed by the United Nations Convention on the Law of the Sea (2008 Ilulissat Declaration). Nevertheless we need to maintain a continued focus on strengthening legal regulations in areas where existing regulations might not be sufficient.

Second, many of the boundary issues in the region have been resolved. Norway has resolved all the outstanding delimitation issues with Denmark – with regard to the Faroe Islands and Greenland – and with Iceland. And, more importantly, in September this year, Norway signed an agreement with Russia, ending more than 40 years of negotiations over the delimitation line between our two countries in the Barents Sea. Only ratification remains. However, there are no guarantees for a positive development. We need to safeguard against negative developments with the potential for crisis and conflict.”²²

Faramo refers to the Arctic boundary issues which have been resolved, these are hopeful examples of cooperation but outstanding boundary disputes do remain. It seems that on this point the Arctic is pursuing a strategy of two vectors. States expect to create a win-win situation. ‘Soft’ measures are used for the resolution of problems, i.e. for the enforcement of the legal regime of UNCLOS, via scientific justification of claims to the continental shelf. If ‘soft’ measures prove insufficient, however, the ‘hard’ vector is on-hand. Militarisation of the North is taking pace and circles around Canada, Norway, Russia and the North Atlantic Treaty Organisation. Russia’s military activity in the region is considerable and has increased NATO’s interest in the region’s security; however, Russia has stated that it will consider active Alliance involvement in the region as a threat to security. This anti-NATO viewpoint is strongly contested by Norway²³, which shares a border with Russia, but supported by Canada, which has a good working relationship with Russia with respect to the Arctic, and fears that NATO presence could backfire by exacerbating tensions.²⁴

What is more, a comprehensive and legally binding Arctic Treaty or Charter has proven politically unfeasible. The European Parliament abandoned its attempts to compensate for the lack of a binding dispute settlement strategy in UNCLOS with an Arctic Treaty or Charter, following the announcement of the Ilulissat Declaration on May 28, 2008 by the Arctic 5. One of the main objectives of the Declaration was to block any new comprehensive international legal regime to govern the Arctic Ocean. Some members of the Arctic Council, including representatives of indigenous peoples, Finland, Iceland, and Sweden were not invited to the conference and not party to the declaration. However, the Arctic 8 as a whole is not more receptive, despite three of its members being EU members (Denmark, Finland and Sweden) and two having close ties (Iceland, Norway). We can assume therefore that the Arctic Council will remain limited to its generative role, and is not likely to evolve into a regulatory body. It would seem, however, that with its current weak institutional structure, soft law status and *ad hoc* funding system, the Arctic Council is unable to enforce sustainable, peaceful Arctic development.

²² Grete Faramo, ‘Speech for the Atlantic Council’, Washington DC, Oct. 28th 2010.

²³ Grete Faramo, ‘Norwegian defence and security policy speech at the Heads of State meeting’, Ministry of Foreign Affairs, Norway, Aug. 24th 2010.

²⁴ BBC News Website cites Wikileaks Website: ‘Premier Stephen Harper tells NATO to keep out of the Arctic’, 2010 cable (number 244500).

2. Research Method and Thesis Question

Throughout the post-war era, observers regarded the prospects for international cooperation in the Arctic as poor due to the combined effects of Cold War tension and a pattern of core-periphery relations within individual Arctic countries. The last ten to fifteen years, however, have witnessed dramatic changes in this situation with a surge of interest leading to a wide variety of cooperative initiatives.²⁵ These are related to climate change, management of resources, migration of fish stocks, pollution, search and rescue, etc. and can be described as soft security challenges, as can most of the identified challenges in the Arctic and the High North. They lead to new prospects for cooperation, both between nations bordering the Arctic and nations using the Arctic in various areas such as shipping and fisheries. However, climate conditions are tough and the required investments are high. The Arctic is an area where common interests are great and where the benefits of international cooperation are relatively easy to realise, but where ignorance of how to promote cooperation can lead to entrenched discord, conflict, and economic as well as ecological disaster. It is in the interest of global society, therefore, that Arctic nations continue to focus on stability and constructive cooperation.

As a general theoretical approach to international politics, one can assume goal-seeking behaviour in the absence of centralized, authoritative institutions (i.e. Realism). Indeed, because harmony can hardly be hoped for in such a situation, there is a need for constructions which foster and facilitate cooperation among states. International regimes contribute to cooperation not by implementing rules that states must follow, but by changing the context within which states make decisions based on self-interests.²⁶ International regimes are valuable to governments not because they enforce binding rules on others, but because they render it possible for governments to enter into mutually beneficial agreements with each other. They empower governments rather than shackle them.²⁷ The example referred to in this thesis is the lack of dispute solving authority within UNCLOS. Especially where uncertainty is great and actors have different access to information, (e.g. Arctic sea bed exploration) this creates obstacles to collective action. Strategic calculations arising in this setting may prevent states from realizing their mutual interests.²⁸ Institutes that reduce uncertainty and limit asymmetries in information exist for this reason (e.g. the Arctic Council).

The fact that UNCLOS lacks a binding solution in the likely event of overlapping territorial claims has led to discussions over whether institutional bonds are sufficient to safeguard cooperation, whether a binding clause should be inserted, or a supplementary multilateral treaty should be made containing hard-law conflict resolution settlements. *“Whether the patchy legal and institutional frameworks covering this region are sufficient to prevent a descent into chaos remains to be seen.”*²⁹ Some academics have therefore proposed interesting alternative dispute settlement mechanisms (DSM's). Various studies by the World Conservation Union (IUCN), WWF Arctic, UNEP Grid-Arendal and Arctic parliamentarians on the possibility of an Arctic treaty have ended up with *recommendations* containing two features: (1) an audit to assess the *effectiveness* and relevance of existing regimes and (2) a discussion concerning the possibility of developing an Arctic treaty.³⁰ Surprisingly, however, serious academic research concerning the first recommendation; the root-question of whether serious conflict over boundaries is *likely* to occur or not, is lacking. The introduction to a 2010 paper states that *“whether Moscow adopts an approach that favours cooperation or conflict in the Arctic is not yet clear.”*³¹

Why spend effort discussing possible solutions to a hypothetical problem, namely military conflict over outstanding boundary disputes, should two states not be able to come to a settlement via the soft-law guidelines provided in UNCLOS, without a more accurate definition of the probability of its occurrence? The formulation of normative guidelines or principles pertaining to Arctic governance is therefore without the scope of this thesis. This thesis will evaluate whether the tendency of current Arctic interactions is to steer human actions in the North toward collective outcomes that are beneficial to society and away from

²⁵ Oran R. Young, 'The Structure of Arctic Cooperation: Solving Problems/Seizing Opportunities', Fourth Conference of Parliamentarians of the Arctic Region, Rovaniemi, 27-29 Aug. 2000, p.1.

²⁶ Robert O. Keohane, After Hegemony: Cooperation and Discord in the World Political Economy, Princeton University Press, 1984, p. 13.

²⁷ After Hegemony: Cooperation and Discord in the World Political Economy, p.13.

²⁸ *Ibidem*, p.12.

²⁹ Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', *CEPS Policy Brief*, No. 205, Feb. 2010, p. 2.

³⁰ Timo Koivurov, 'Alternatives for an Arctic Treaty – Evaluation and a New Proposal', *Review of European Community & International Environmental Law*, Vol. 17, Issue 1, 2008, p.22.

³¹ Dmitri Trenin, Pavel K. Baev, 'The Arctic, A View From Moscow', *Carnegie Endowment for International Peace*, 2010, p. vi.

harmful outcomes, i.e. to steer away from discord and towards greater cooperation, or vice versa. More specifically, this thesis aims to discern to what degree conflicting Arctic sovereignty claims are emerging as a potential security threat. It will do so by subjecting case studies of actual territorial disputes to analyses in order to predict their course in the way of increased cooperation or discord within the common scenario where UNCLOS has proven unable to present a solution acceptable to both parties. The presence or absence of such a threat would hold consequences for the balance of power in the region, affecting patterns of innovation in governance in the Arctic today.

Research Method

As long as a world political economy persists, its central political dilemma will be how to organize cooperation without hegemony.³² "Without U.S. leadership to help develop diplomatic solutions to competing claims and potential conflicts," scholar Scott G. Borgerson wrote in *Foreign Affairs* in 2008, "the region could erupt in an armed mad dash for its resources."³³ The Cold War contributed to the creation of a fully integrated multidimensional security concept for the Arctic, lasting until the start of the 1980's.³⁴⁻³⁵ As today's world is moving away from the 'hegemonic model' in general and towards more balanced international power distribution, the discussion of the status of relations between states is pertinent. Non hegemonic cooperation is possible and can be facilitated by international regimes.³⁶ Stephen Krasner's definition of an international regime is as follows: "*Sets of implicit principles, norms and rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.*"³⁷ The Realist rationale that cooperation is solely possible in the presence of mutual interests is put into doubt by system-wide cooperation (institutionalist multilateral politics); UNCLOS and the Arctic Council are examples. Institutionalism relies on interdependence (shared economic interests represented by international institutions) as a solvent of conflict and creator of cooperation. Realist emphasis, however, lies on power as the creator of order.³⁸ These two visions are not as bipolar as they seem. Defining international political economy in terms of the pursuit of wealth and power leads us to perceive cooperation less as an effort to implement high ideals, and more as a means of attaining self-interested economic and political goals.³⁹ States seek power and wealth directly, as well as by striving to construct frameworks of rules and practices that will enable them to secure their objectives in the long run. Robert Keohane gives the academic, and coincidentally, leading expert on Arctic politics, Oran Young as an example of an institutionalist, claiming that he is naive about power and conflict, and overly optimistic about the role of political ideals. He admits, however, that Young also has a good deal to teach us, viewing institutions as recognized patterns of practice around which expectations converge.⁴⁰

Duncan Snidal asserts that it is important to remember that states have choices; but that the choices they make are determined to a greater or lesser extent by the exigencies of international politics.⁴¹ The structure of multilateral treaties and declarations, considered as the 'rules of the game', is thus distinguished from the behaviour of states within those rules. Indeed, even the definition of issues, actors, and choices depends on the pre-existing international order. For example, the treatment of issues of territory and sovereignty within the UNCLOS framework, the recognition of state rulers as the relevant decision makers on sovereign issues, and acceptance of restraint from force in deciding territorial claims disputes all reflect theoretical assumptions of which aspects of the existing claims assessment regime can be considered as 'given' for the analysis of the politics of Arctic territorial expansion. Summarizing, Duncan Snidal asserts that "*We need to go beyond Realism, not discard it.*"⁴² However, whether

³² After Hegemony: Cooperation and Discord in the World Political Economy, p.10.

³³ Foreign Affairs Website: Scott G. Borgerson, 'Arctic Meltdown, the Economic and Security Implications of Global Warming', March-April 2008.

³⁴ Quo vadis, Arcticum?, p. 200.

³⁵ Leonid Timtchenko describes the 1973 Agreement on the Conservation of Polar bears as one of the first "*swallows of [the] spring of détente*", in Quo vadis, Arcticum?, p. 202.

³⁶ After Hegemony: Cooperation and Discord in the World Political Economy, p.50.

³⁷ Stephen D. Krasner, *International Regimes*, Cornell University Press, 1983, p.2., in: After Hegemony: Cooperation and Discord in the World Political Economy, p.57.

³⁸ *Ibidem*, p. 9.

³⁹ Charles Barbour, George Pavlich eds., After Sovereignty. On the Question of Political Beginnings, Routledge, 2010, p. 25.

⁴⁰ After Hegemony: Cooperation and Discord in the World Political Economy, p.8.

⁴¹ Duncan Snidal, 'The Game Theory of International Politics', *World Politics*, Vol. 38, No. 1., Oct. 1985. p. 40.

⁴² After Hegemony: Cooperation and Discord in the World Political Economy, p.14.

international legal and/or Westphalian sovereignty are indeed honoured depends on a state's ruler.⁴³ Additionally, Westphalian sovereignty is constraining for powerful states and liberating for weak states. In any analysis, one should therefore not overemphasize the impact of international, as opposed to domestic roles and rules.

According to Keohane, particular actions cannot be used as units of analysis. 'Webs of significance,' or 'implicit standards for behaviour' should be consulted, some of which may emphasize the principle of sovereignty and legitimize the pursuit of self-interest, while others may rely on quite different principles.⁴⁴ In *After Sovereignty, On the Question of Political Beginnings*, Charles Barbour and George Pavlich assert that "[...] debate suggests another conceptualization that posits any sovereign as fully dependent upon the historical context from which it emerges. Here, various configurations of sovereignty may be possible depending on historical conditions. The logic implied is not so much internal to a given form of sovereignty; rather, the contours of given arrangements of sovereignty are shaped by historical circumstances [...]. In all cases, the contours and understandings of sovereignty are formulated in a given political context. In that sense sovereignty is a variable idea that adapts itself to circumstance. Swimming in such theoretical currents, Foucault (1978, 1979, 2005) approaches sovereignty not as an abstract, universal concept, but as the product of historically specific and local power relations. The latter contingently consolidate in strategic envelopes that coalesce transiently into diverse models of power that nominally may be described by such terms as sovereignty, discipline, governmentality, and biopower."⁴⁵ Historical and current indicators of discord and cooperation will help to enhance understanding of the driving forces that may cause Arctic boundaries to become a focus of discord or cooperation. Additionally, Peter J. May et al. state that "Any crossnational policy comparison must also be sensitive to institutional differences in policymaking."⁴⁶ Historic domestic perspectives will thus serve the analysis of case studies.

Furthermore, Oran Young observes that: "The Arctic Council has an opportunity to move to the cutting edge in devising cooperative arrangements well-suited to the increasingly complex international/transnational landscape of the 21st century. But it cannot capitalize on this opportunity unless those steeped in traditional diplomatic practices exhibit the self-confidence needed to experiment with innovative procedures designed to open up the council to new players and to legitimize its claim to function as the voice of the Arctic."

This statement connotes the fact that we are not all there yet. Diplomatic dealings between autonomous states will thus remain the first –but far from exclusive– component of the international Relations system in the foreseeable future.⁴⁷ One scholar has noted that: "Diplomats are embedded in the world of sovereign territorial states,"⁴⁸ and this remains true despite the multiple non-state dimensions which have gained ground in international politics. Bilateral diplomacy systems are traditionally accustomed to isolation from public accountability, save in the formal settings of parliament and through measured doses of press notices. Normally, Wikileaks aside, it takes at least forty years for diplomatic records to become public. However, the emergence of multilateral negotiations on issues within a wide range of areas in the wake of growing globalization and interdependence has challenged the effectiveness of bilateral diplomacy. As more state and non-state actors are engaged in the conduct of negotiations, levels of secrecy have decreased, rendering negotiations more transparent and accountable. As stated earlier, however, disputes on the boundaries of the Arctic continental shelf cannot definitely be settled by UNCLOS' Commission on the Limits of the Continental Shelf (CLCS -the transparency of which is minimal) or by dispute settlement under the UNCLOS regime. The only remaining option is thus by agreement amongst the parties themselves, i.e. bilaterally and, most probably, silently. An evaluation of the degree of likelihood that Arctic sovereignty claims are degenerating bilateral relations, forming a potential security threat, shall therefore have to be based upon the diplomatic correspondence and behaviour between the claimant countries. In order to compensate for the 'blind spot' of silent diplomacy, supplementary sources such as policy documents will be consulted, as well as media sources.

Three case studies of disputes between two states will be chosen from the list of major outstanding boundary disputes in the High North. Concentrating the problem as much as possible, it can be said that each of the actors has only one of two strategies to their disposal: cooperation or discord. It should be clear that each of these strategies represents with a single point in what really is a continuum between favourable and unfavourable alternatives, between an outcome beneficial to society and one which is harmful. This thesis employs a combined measure of international conflict and cooperation as the core

⁴³ Ibidem, p. 7.

⁴⁴ Ibid. p. 56.

⁴⁵ *After Sovereignty, On the Question of Political Beginnings*, p.5 .

⁴⁶ Peter J. May, Bryan D. Jones et.al., 'Policy Coherence and Component-Driven Policymaking: Arctic Policy in Canada and the United States', *The Policy Studies Journal*, Vol. 33, No. 1, 2005, p. 44.

⁴⁷ See Kishan S. Rana, *Bilateral Diplomacy*, Manas Publications, 2008.

⁴⁸ Rickard Falk, 'Knowledge and Diplomacy', in: Kishan S. Rana, *Bilateral Diplomacy*, p. 4.

dependent variable. To quote a researcher who has employed similar rationale in the analysis of bilateral relationships in the Middle East: *"Either conflict or cooperation will predominate in a system in which interaction is rank dependent."*⁴⁹

The analysis of the possibility of increased cooperation or discord between Arctic nations involved in a boundary dispute will take place via the application of a set of indicators, derived from the model of McClelland's continuum of international events data analysis or coding (WEIS). In other words, by *"employing empirical indicators of interstate interaction with an analysis of dyadic interstate ~~fact.~~"*⁵⁰ The first attempts at aggregating daily diplomatic events into wider categories were developed by Azar and Sloan (1975)⁵¹ and Azar and Havenaar (1976)⁵². Their categorization differentiates events in terms of the degree of hostility and friendliness they entail by ordering them according to their 'intensity', from the most peaceful to the most warlike. This data collection was named the Conflict and Peace Data Bank (COPDAB) and ended in 1978. Unlike COPDAB, events in the World Events Interactions Survey (WEIS) developed by McClelland in 1976, are coded into 'nominal categories', i.e. where a word or group of words function as a description of the situation. An early paper by McClelland provides a general definition of international events, or indicators of interstate interaction: *"Event-interaction is meant to refer to something very discrete and simple—to the veritable building blocks of international politics. They are the specific elements of streams of exchange between nations. Here are a few examples for hypothetical Nations A and B: Nation A proposes a trade negotiation, Nation B rejects the proposal, Nation A accuses B of hostile intentions, Nation B denies the accusation, Nation B deploys troops along a disputed boundary, Nation A requests that the troops be withdrawn, [...] Each act undertaken by each actor in this illustration is regarded as an event-interaction."*⁵³

Event data record the interactions of political actors reported in sources such as the more reliable media (newspapers and news services) and are used in quantitative international relations research to reduce political interactions to categorical data that can be analyzed statistically and are one of the most common types of information used in quantitative international relations research.⁵⁴

Over the past twenty years, there has been a shift from coding event data by humans -typically university students- to using automated (computerised) event coding. The Kansas Event Data System (KEDS) was the first large-scale automated event coding programme in the academic community and despite the improved coder TABARI (Textual Analysis by Augmented Replacement Instructions), being developed in 2000, KEDS is still most widely used in published academic research in political science.⁵⁵ Machine-readable text relevant to political behaviour is now available the commercial efforts of Reuters, Agence France Press, and other news agencies and reports from hundreds of news sources can be accessed at most academic institutions through the NEXIS Academic Universe programme. The last major international relations event data project using human coding - the Global Event Data System (GEDS) project at the University of Maryland - abandoned their initial approach in December 2000 in preference of a fully-automated system. Through the analysis of manually selected texts relevant to political behaviour, such as diplomatic and policy documents, in addition to academic and media sources, this thesis hopes to provide a helpful addendum to the legacy of these student predecessors.

McClelland allowed categories to be grouped into conflicting, neutral and cooperative events, creating a categorical conflict-cooperation continuum. The assumption of an underlying conflict-cooperation continuum has been doubted by the scholars Havenaar and Peterson (1975), Vasquez and Mansbach (1984) and Beer and Ringer (1990).⁵⁶ Questions asked are: should aggregate conflict and cooperation be treated as reciprocal dimensions, as opposite ends of a single continuum? Or are cooperation and conflict even related? When independent conflict and cooperation dimensions are discerned some types of cooperation load heavily with conflict. According to James Lebovic these results are counterintuitive, and

⁴⁹ James H. Lebovic, *'Capabilities in Context: National Attributes and Foreign Policy in the Middle East'*, *Journal of Peace Research*, Vol. 22, No. 1, Mar. 1985, p.55.

⁵⁰ Mark J.C. Crescenzi, Andrew J. Enterline, Stephen B. Long, 'Bringing Cooperation Back In: A Dynamic Model of Interstate Interaction', *Conflict Management and Peace Science*, Vol. 25, 2008, p. 264.

⁵¹ Azar, Thomas J. Sloan, *Dimensions of interaction: A source book for the study of the behaviour of 31 nations from 1948 through 1973*, International Studies Association, 1975.

⁵² i.e.: Edward E. Azar, Thomas Havenaar, 'Discontinuities in the Symbolic Environment: A Problem in Scaling', *International Interactions* Vol. 2, Issue 2, 1976.

⁵³ Charles A. McClelland, *Event-interaction Analysis in the Setting of Quantitative International Relations Research*, 1967, p. 8.

⁵⁴ Philip A. Schrodt, 'Automated Coding of International event Data using Sparse Parsing Techniques', Paper presented at the annual meeting of the International Studies Association, Chicago, Feb. 2001, p.2.

⁵⁵ Ibidem, p. 4.

⁵⁶ Joshua S. Goldstein, 'A Conflict-Cooperation Scale for WEIS Events Data', *The Journal of Conflict Resolution*, Vol. 36, No. 2, June 1992, p. 370.

reveal our limited understanding of international behaviour.⁵⁷ However, this can be explained by the fact that cooperation solely on the basis of mutual interests is put into doubt by system-wide cooperation (i.e. Institutionalism). Instead of looking at cooperation as combining forces against adversaries; tensions in the Arctic can be considered as detrimental to the economy and development of the region. This is demonstrated by hydrocarbon companies which will not start drilling in an area where territory rights are unclear due to a protracted or frozen disagreement. In this way, discord stimulates demands for policy adjustments, which can either lead to cooperation or to continued, perhaps intensified, discord.⁵⁸

When one actor's policies automatically facilitate the attainment of the other's goals they are said to be in a state of 'harmony'. Where harmony reigns cooperation is unnecessary. Discord therefore tends to predominate over harmony as the initial result of independent governmental action.⁵⁹ Without the spectre of conflict, there is no need to cooperate. Cooperation should therefore be seen not as the absence of conflict, which is always at least a potentially important element of international relations, but as a process that involves the use of discord to stimulate mutual adjustment.⁶⁰ Discord can be described as a situation in which governments regard each other's policies as hindering the attainment of their goals and hold each other responsible for these constraints.⁶¹ Cooperation can be induced through a negative or positive approach. Cooperation need not involve bargaining or negotiation: adaptive as opposed to manipulative adjustment can take place. As can non-bargained manipulation (presenting the other with a *fait accompli*). In the past, the negative approach has proven more effective. Cooperation can therefore be seen as a possible positive outcome of conflict, or the outcome of successful efforts to deflect the potential for conflict. Intergovernmental cooperation requires that the actions of separate individuals or states -which are not in pre-existent harmony- be brought into conformity with one another through a process of negotiation, which is often referred to as 'policy coordination'.⁶² When shared interests are sufficient and other key conditions are met, cooperation can lead to harmony. In so far as actor's attempts at policy adjustment succeed in creating more compatibility between policies, cooperation ensues. However, when no attempts are made by actors to adjust their policies to each others' objectives, or efforts to induce the other to change their policies are met with resistance, policy conflict results and discord results, persists or deepens.

In any case, comparative foreign policy studies have tended to treat conflict and cooperation as separate dimensions, some combine them to produce a single indicator, argue on behalf of a single scale, or have sought a causal relationship between them. But even when conflict and cooperation are analysed separately, researchers assume that they are reciprocally related to the study's independent variables. This thesis will therefore employ a continuum as a method of aggregating different types of events into a single theoretically meaningful measure of the relationship between two nations, as the conversion of events into a measure of conflict or cooperation visualizes the affect or tension implicit in a series of diplomatic actions taken by one nation toward another during a period of time.

As shifting through thirty years worth of diplomatic correspondence is unfeasible at this stage of research, a significant diversion must be made from the methods employed in scales such as the WEIS and COPDAB: the periods of time selected within the case studies shall be restricted to the most noteworthy diplomatic moments in the relations between the state actors, and their relevant texts. Special attention shall be paid to attempts by the actors to adjust their policies, or whether efforts to induce the other to change their policies are met with resistance.

The colour-scheme represents the 'weight' given to events in each category. Weighing events was chosen over counting them, as the volume of external activity is not relevant when using such a restricted timescale. Vincent (1979) assigned weights from 1-5 to each of the 22 WEIS verbs. The Vincent scale appears to be the best weighing system available, despite the lack of differentiation along the scale.⁶³

Summarising, in this thesis a simple weighted colour-scheme was developed based on McClellands groups, consisting of 22 verbs to be employed as indicators in the continuum between cooperation and discord. These were sorted into categories sourced from Salmore and Munton's (1974) recategorisation of the WEIS verbs:

⁵⁷ James H. Lebovic, 'Capabilities in Context: National Attributes and Foreign Policy in the Middle East', *Journal of Peace Research*, Vol. 22, No. 1, Mar. 1985, p. 55.

⁵⁸ *After Hegemony: Cooperation and Discord in the World Political Economy*, p.63.

⁵⁹ *Ibidem*, p. 54.

⁶⁰ *Ibid.*, p. 46.

⁶¹ *Ibid.*, p. 52.

⁶² *Ibid.*, p. 51.

⁶³ 'A Conflict-Cooperation Scale for WEIS Events Data', p. 374.

Scale	Categories	McClelland's groups
+2	Verbal cooperation Results in positive cooperative action	approve, promise, agree, request, propose
+1	Cooperative action Stimulates positive reaction	yield, grant, reward
0	Conservative diplomatic exchange Maintains status quo	comment, consult
-1	Disruptive diplomatic exchange Challenges status quo	accuse*, reject, protest, deny
-2	Non-military conflict Stimulates negative reaction	demand, warn, threaten
-3	Military conflict Results in negative conflictive action	demonstrate, reduce relationship, expel, seize, force

***N.B.**

Deeming it misplaced, the author chose to move the indicator 'to accuse' from the 'Non-military conflict' category to the 'Defensive diplomatic exchange' category, on the basis that the action 'to accuse' should rationally provoke a reaction of a corresponding level, namely 'to deny', which was situated in the 'Defensive diplomatic exchange' category.

N.B.

Salmore and Munton's categorisation of the WEIS verbs (Cooperative action, Participation, Diplomatic exchange, Verbal conflict, Non-military conflict, and Military conflict) is deviated from by splitting Participation, Diplomatic exchange and Verbal conflict into the categories 'Conservative diplomatic exchange' and 'Disruptive diplomatic exchange' thus rendering the Participation category pointless. The explanations of the category headings are the author's own.

Emmerson states that *"A static vision of the Arctic is unsustainable in an era of rapid change and shifting climate,"*⁶⁴ this thesis aims to shed light on which way the Arctic is moving, thus clarifying whether the vagaries of continental shelf boundaries as defined in UNCLOS are fraught with much potential for conflict, or not. It is hoped that such information can contribute to the development of international approaches to enhance cooperation and mitigate potential conflict over Arctic territory. Following the analysis of the case studies, this study combines conflict and cooperation to form indicators. Issues concerning events data, such as source selection, coding rules and data management are subject to the researcher's judgment and are therefore always liable to criticism. While there is evidence to support the treatment of conflict and cooperation as a single dimension (Salmore & Munton 1974),⁶⁵ the combination of these behaviours is a theoretical rather than empirical issue.

James Lebovic defends this method by stating that *"While necessitated by theory, this strategy is further justified by a current inability to distinguish the determinants of conflict from those of cooperation, [...] and a belief that this study should be evaluated, in part, by its 'predictive validity'."*⁶⁶

In order to test the 'predictive validity' of the chosen methods, one of the three case-studies will serve as a control: the delimitation line between Norway and Russia in the Barents Sea, concerning which an agreement was signed on 15 September 2010, increasing the level of legal clarity and predictability in the area.

The expected outcome for this case study is for it to be located in the positive zone of the scale, furtively speaking for the ability of current institutional bonds to safeguard future Arctic cooperation sufficiently.* For the remaining two, if they balance in the neutral zone (green and yellow) one could advise alternative dispute settlement mechanisms (DSM's) as extra precautions arranging for a better solution to conflicts centred on territorial expansion and sovereignty issues. Finally, should the general balance tip toward the negative zone of the scale (orange to red), one may assume a relevant security threat and could make a stronger case for the need of a hard-law conflict resolution settlements. Conclusions attained through the analysis of case studies will provide a solid basis from which to hypothesize on how governance of the Arctic, a region fraught with geologic, climatic, technical, economic, and territorial uncertainties, will evolve.

* Not dismissing the fact that the conflict took 40 years to resolve.

⁶⁴ Charles Emmerson, *The Future History of the Arctic*, Random House, 2011, p.172.

⁶⁵ S.A. Salmore, D. Munton, 'An Empirically Based Typology of Foreign Policy Behaviours', In J.N. Rosenau ed., *Comparing Foreign Policies: Theories, Findings and Methods*, Wiley, 1974.

⁶⁶ James H. Lebovic, 'Capabilities in Context: National Attributes and Foreign Policy in the Middle East', p.55.

Thesis Question

The question posed in this thesis is:

To what degree are conflicting Arctic territorial sovereignty claims emerging as a potential security threat?

The question will be answered with the help for a number of sub-questions, namely:

- *Can territorial expansion be considered the prime source of disharmony in the Arctic?*
- *What role does sovereignty play in the Arctic?*
- *Does the combination of these two factors (territory and sovereignty) combine in such a way as to form a relevant security threat?*

The presence or absence of a security threat both hold substantial consequences for the balance of power in the region, affecting patterns of innovation in governance in the Arctic today and shedding light on the Arctic of tomorrow.

The following chapters will attempt to answer these questions and provide the reader with a basis of understanding concerning the Arctic status quo. They will introduce the jurisdiction pertaining to sovereignty and discuss the relevance of sovereignty as a basic and intriguing component of Arctic international relations. With this background it will be possible to make informed judgment concerning any trends in the way of increased cooperation or conflict concerning border disputes among Arctic states.

3. Focusing on Territorial Disputes

Three potential opportunities have gained attention due to the expectation that the Arctic will become accessible once the ice covering it melts, the first of which is the hence increased navigability of shipping routes through the northernmost latitudes. Arctic melt has raised the possibility that the region will become a prime trade route. New transportation lines through the Arctic will reduce the distance between Asia and the Western world by more than 7000 kilometres, allowing northern European shipping to get to the Far East a third quicker than via the Suez Canal. However we should be careful not to overstate the possible future number of merchant ships operating in the Arctic. Although several climate models predict an ice-free Arctic Ocean for a brief period each summer as early as 2030, they also project a mostly ice-clogged ocean in winter, spring, and autumn, throughout 21st century at least. No one predicts a yearlong ice-free Arctic Ocean. As Norwegian State Secretary Roger Ingebrigtsen reminds us:

*"We must take advantage of these prospects. But we should also be realistic. Sailing in the Arctic is difficult. We will have to invest in expensive ships that would probably be used only a few months every year. More frequent commercial activity implies enhanced risks for accidents that could harm both people and environment. Especially exploitation of oil and gas must be balanced against the need to preserve and protect the environment. The eco-systems in the Arctic are very fragile, and large spill-outs could have very grave and long lasting consequences. Last year's accident in the Gulf of Mexico was a serious reminder. There is a risk involved. To meet this risk we have increased our maritime presence, surveillance and our search and rescue capacity in the region."*⁶⁷

While critics maintain that, rather than fostering cooperation, heightened economic interdependence generates political discord, growing economic exchange has historically been considered to foster cooperative political relations.⁶⁸ This being said, the argument that economic exchange has no strong bearing on the high politics of national security is also widespread. The relationship between interdependence and conflict bears on a host of crucial issues within the debate over the merits of liberal and realist explanations of international relations, including the causes of war and the political economy of national security, regional integration, and international organization. It also bears on key foreign policy issues. Various Western governments –European member states of course, and recently the Clinton and Bush administrations- have argued that fostering international economic openness will promote both peace and prosperity.⁶⁹ Equally, enhanced commercial activity can be said to increase the need for military presence as a stabilising factor. Military assets are a central capacity with regard to surveillance and support to search and rescue operations. Military forces could therefore be considered as a natural actor in the High North, and as not a sign of tension.

As it stands, there is much to be said for the proposition that, at the level of the nation state, economic exchange is a substitute means of acquiring the resources needed to promote political security and economic growth (c.f. Eugene Staley, World Economy in Transition, 1939). As trade and foreign investment increase, there are fewer incentives to meet these needs through territorial expansion, imperialism, and foreign conquest (c.f. Richard Rosecrance, The Rise of the Trading State: Commerce and Conquest in the Modern World, 1986). Arguably, the countries that stand to be most transformed by the Arctic resource boom aren't in the Arctic at all; they're emerging, resource-hungry economies such as China and India whose future development is likely to be fuelled by the exports of the far north. A challenge to this liberal stance stresses that states have political reasons to minimise their dependence on foreign commerce. In the Arctic, territorial expansion offers a means to achieve this end.

This leads to the second Arctic opportunity arising from the great melt. In the summer of 2008, a United States Geological Survey (USGS) team under the management of Donald Gautier published the 'Circum-Arctic Resource Appraisal (CARA)' report, the first public estimation of the number of undiscovered hydrocarbon deposits in the Arctic. According to the study, the Arctic is the largest unexplored prospective area for petroleum remaining on Earth, accounting for an estimated 22 percent of the undiscovered oil and gas resources in the world.⁷⁰ Saudi Arabia, by comparison, has 21 percent of the world's proven oil. To swiftly debunk the vast majority of media coverage concerning the Arctic, estimates indicate that the bulk of anticipated oil- and gas reserves are located *within* the uncontested

⁶⁷ Roger Ingebrigtsen, 'Nordic Defence Cooperation – A mini-NATO to the North?' Ministry of Defence, Tromsø, June 24th 2011.

⁶⁸ *Justifying the formation of the European Economic Community, Richard Nixon's opening to China, Willy Brandt's Ostpolitik, and Henry Kissinger's conception of détente with the Soviet Union.*

⁶⁹ See: Edward D. Mansfield, Brian Pollins eds., Interdependence and Conflict. New Perspectives on an Enduring Debate, University of Michigan Press, 2003.

⁷⁰ Kenneth J. Bird, Ronald R. Charpentier et al., 'Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle', United States Geological Survey (USGS) Fact Sheet 2008, US Geological Survey, 2008.

EEZs of the Arctic littoral states,⁷¹ leaving only a small unclaimed area at the very top of the pole potentially available for open exploration.⁷² Furthermore, there is reason to be sceptical about the estimated percentages of the world's remaining unclaimed fossil fuel lying beneath the Arctic Ocean. The figures attributed to US Geological Survey seem to have taken on a life of its own in the media and even among scientists.⁷³ Oil reserve estimates tend to behave like *"a made-up number, and there's an incentive to make it as large as you can. If the oil price goes up, there are more reserves, because it becomes more economically worthwhile to drill for them."*⁷⁴ In an interview with *Der Spiegel* journalist Christoph Seidler, Gautier states: *"[...] the fact that many Arctic exploitation opportunities are now technically feasible does not necessarily mean they make economic sense [...] USGS will conduct additional surveys to find out which areas of the Arctic can be developed under which economic conditions. Only then can it be estimated how long Arctic oil can delay the end of the oil age."*⁷⁵ Maybe the only thing heating up faster than the Arctic Ocean is the hyperbole over what's under it. Regional warming has had little effect, positive or negative, on Norway and Russia's extraction plans, which have been driven by global prices of oil and gas.⁷⁶ Another important factor which brings nuance to the importance of Arctic energy resources is that the technology necessary for the eventual extraction thereof is evolving as slowly as the required legislation-process in UNCLOS. The countries which are already members of UNCLOS are currently engaged in a multi-year mapping effort of their national continental shelves, beyond the previous 200nm EEZ's. Once either UNCLOS rules on these claims or countries have resolved them bilaterally, resource development can be expected to increase. The importance of controlling sources of raw materials has provided a traditional justification for territorial expansion and imperialism, as well as extension of informal influence.⁷⁷ If economic issues are crucial enough to basic national values, they may become military-security issues as well.⁷⁸

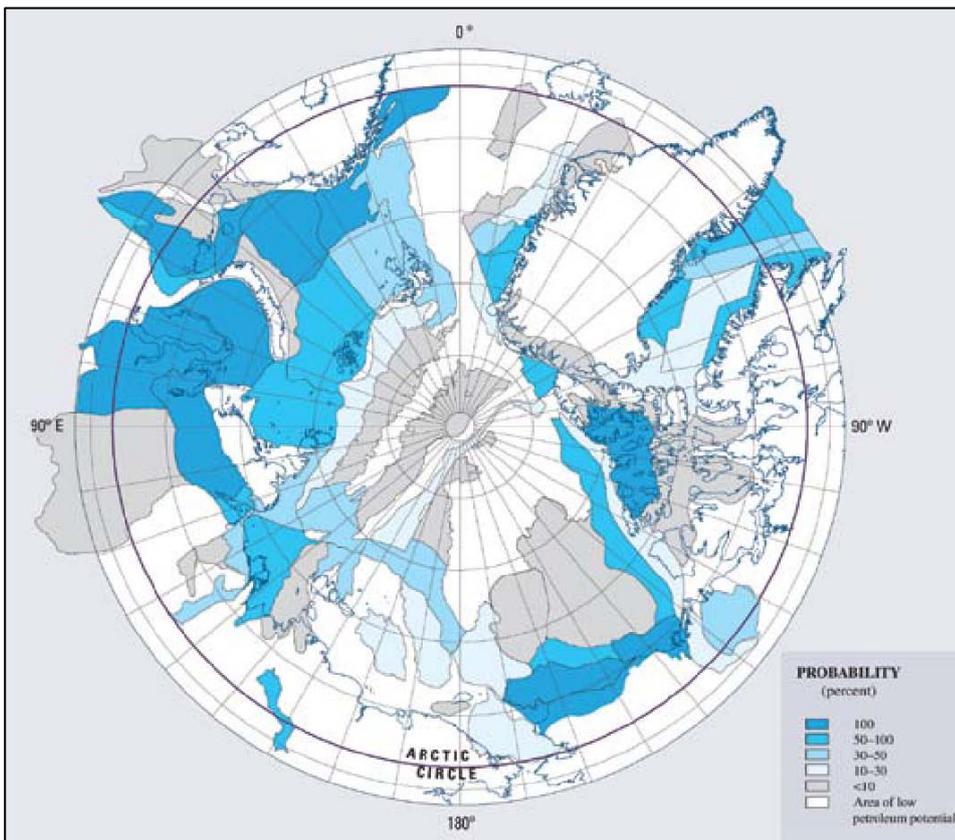


Figure 1. Prognosis of gas and oil reserves beyond EEZ borders ⁷⁹

⁷¹ Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', Danish Institute for International Studies (DIIS), 2009, p. 43.

⁷² Durham University International Boundaries Research Unit (IBRU) Website: 'Maritime Jurisdiction and Boundaries in the Arctic region'.

⁷³ Vanity Fair Website: Alex Shoumatoff, 'Dispatch: The Arctic Oil Rush', May 2008.

⁷⁴ Ibidem.

⁷⁵ Der Spiegel Website: Christoph Seidler, 'Taking Stock of North Pole Riches', 9th Oct. 2009.

⁷⁶ Foreign Policy Website: Lawson Brigham, 'Think Again: The Arctic' Sept.-Oct. 2010.

⁷⁷ *After Hegemony: Cooperation and Discord in the World Political Economy*, p.32.

⁷⁸ Ibidem, p. 39.

⁷⁹ Source: USGS Circum-Arctic Resource Appraisal (<http://energy.usgs.gov/acrtic/>).

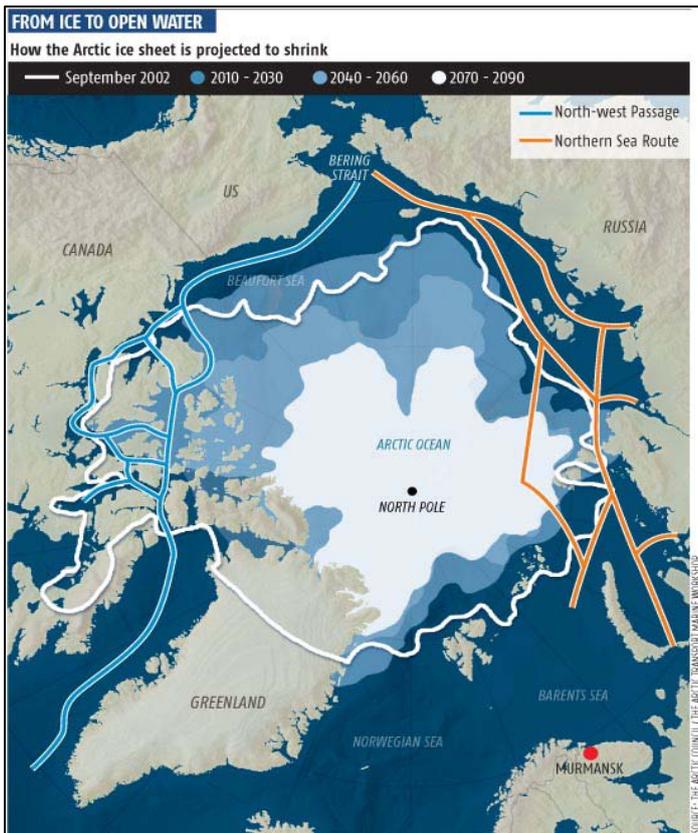


Figure 2. Opening of Northwest Passage and Northern Sea route

The third opportunity open to Arctic littoral states; the possibility of sovereign territorial expansion, overshadows the former two, quite simply because transgression of the Arctic's waterways and exploration of the Arctic Ocean's resources cannot take place peacefully without solving territorial issues and delimiting borders first. Upon ratification of the UNCLOS a country has ten years to make claims to extend its 200 nautical mile zone. Due to this, Norway (which ratified the convention in 1996), Russia (ratified in 1997), Canada (ratified in 2003) and Denmark (ratified in 2004) have launched projects to establish claims that certain Arctic sectors should belong to their territories. Although for some states this deadline is as close as 2013, conflicts over Arctic boundaries are unlikely to be resolved within the near future. With five major states making claims to extensive parts of the Arctic seabed, a significant amount of scientific and professional work is yet underway. The exploitation of Arctic resources is therefore economically attractive mostly in the *hypothetical* sense, and can presently be

deemed to be of more political and strategic importance – a major factor in the power play which takes place between states, irrespective of the material ends, in the name of the sovereignty principle. As T. Henriksen and G. Ulfstein confirm: *"The coastal states [Russia and Norway] needed to sort out their differences to meet these new challenges and to ensure consolidation of their sovereign rights over natural resources and jurisdiction over international shipping. The removal of overlapping claims has also clarified the rights and obligations of third states."*⁸⁰

The linkage between principles, norms and rules gives international regimes their legitimacy. A major function of regimes is to facilitate the making of specific cooperative agreements among the governments. However, the principle of sovereignty limits the degree of confidence that can be placed in international agreements. The Arctic states will not accept an international regime which settles their sovereignty disputes for them. Thus, international regimes can only *promote* cooperation. This was proven when Foreign Ministers and other officials representing Canada, Denmark, Norway, Russia, and the United States met in Ilulissat, Greenland in May 2008, at the Arctic Ocean Conference and announced the Ilulissat Declaration. The conference invitation originated in 2007, following several jurisdictional disputes, including those over Hans Island and the Russian Arktika expedition. The declaration stated that any demarcation issues in the Arctic should be resolved on a bilateral basis between contesting parties, not by any reinforced role of the Arctic Council, UNCLOS (nor NATO and the EU, for that matter). An additional pledge for the 'orderly settlement' of any possible overlapping claims was inserted.

François VI, Duc de La Rochefoucauld, once stated that *« Nous promettons selon nos espérances, et nous tenons selon nos craintes. »*⁸¹ This maxim is reflected by one of the basic assumptions of the realist approach to international relations, namely that nation-states are motivated only by their own interests. This school of thought emphasizes that states consider the needs and interests of other states only when the other states have the capability to enforce their demands by threatening or performing damaging actions. This means that, ultimately, nation-states are not guided by ethical or humanitarian considerations, and that international law and even treaties and similar formalized agreements do not really restrict their international activities.⁸² Considering that the importance of controlling sources of raw materials has provided a traditional justification for territorial expansion and imperialism, as well as

⁸⁰ Tore Henriksen, Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', *Ocean Development & International Law*, Vol. 42, 2011, p. 10.

⁸¹ François de La Rochefoucauld, *Réflexions: Ou Sentences Et Maximes Morales* (1748), Kessinger Publishing, 2010, Maxim nr. 38.

⁸² Hector Correa, 'Game Theory as an Instrument for the Analysis of International Relations', p. 3.

extension of informal influence⁸³, and that the greatest dangers for the world political economy as well as for world peace have their sources in political conflicts among nations,⁸⁴ territorial expansion can indeed be considered the prime source of disharmony in the Arctic and conflicting Arctic sovereignty claims definitely merit the attention of academics and policymakers.

When on August 2, 2007, the scientific Arktika expedition's submarine planted the Russian national flag on the seabed under the North Pole, claiming it as part of the north Russian continental shelf, this provoked the stern rebuke from Canadian defence minister, Peter MacKay: *"This isn't the 15th century. You can't go around the world and just plant flags and say: 'We're claiming this territory'."*⁸⁵ A few days later the Canadian Prime Minister Stephen Harper announced plans to construct two new military facilities in the High Arctic region, adjacent to the Northwest Passage sea route.

On March 27, 2009, Russia released an Arctic policy paper entitled, 'The Foundations of State Policy of the Russian Federation in the Arctic Area for the Period Up to 2020 and Beyond,' declaring its intent to develop Arctic military forces with the aim of protecting the extended continental shelf that would become the nation's leading resource base by 2020. In response Canadian officials announced similar plans to create a 500-strong army unit for Far North operations, followed by Denmark creating a new Arctic military command in June. In May of this year (2011) mass media carried details of Denmark's 'Strategy for the Arctic'. It follows from the document that Denmark claims the continental shelf in five areas around the Faroe Islands and Greenland (including the North Pole, which it sees as part of the Greenland shelf) and that Copenhagen plans to make a relevant submission to UNCLOS no later than 2014. As NATO Secretary General Anders Fogh Rasmussen confirms: *"When it comes to climate change, building security doesn't only mean with the military. But it also doesn't exclude the military either; on the contrary, our traditional security structures will have an important role to play."*⁸⁶

Emmerson observes that *"after the Cold War, [...] the scope for geopolitical friction in the Arctic [remains]. Several potential flashpoints have returned to prominence recently, i.e. the sea border between Norway & Russia [N.B. recently resolved], issues over the status of Svalbard are not completely resolved. New potential flashpoints are associated with the risk of overlapping claims to the Arctic sea bed and to [...] strategic realignment."*⁸⁷

In 2001, Russia submitted a corresponding application to the UN Commission on the Limits of the Continental Shelf, but Russia's claims were sent back due to insufficient evidence. The Arktika-2007 expedition's mission was to collect this evidence. *"It is an important geopolitical project,"* said Yulduz Halliulin, assistant director of the Oceanic Institute at the Russian Academy of Sciences, and the expedition's organizer.⁸⁸ Therefore, contrary to common perception, it is these factors' strategic consequences and not their immediate gains which have led to the recent international debates as to which nations can claim sovereignty or ownership over the Arctic. As one academic puts it, it is *"By virtue of their sovereign rights and jurisdiction [that] the five countries with claims to the Arctic region are presently at a critical juncture for addressing their current and future conflicts of interest."*⁸⁹

The current major outstanding border disputes in the North Pole region can be sub-divided into three categories:

1. Overlapping territorial claims pertaining to the acquisition of ocean bed:
Denmark, Canada / Russia: Southern and western parts of the Lomonosov Ridge
2. Legal disputes pertaining to sovereignty over bodies of water:
US / Canada: Dispute over ownership of the Northwest Passage
3. (Maritime) Boundary disputes:
Canada / Denmark: Boundary dispute in Lincoln Sea
Canada / Denmark: Hans Island
US / Canada: Maritime boundary in the Beaufort Sea.

⁸³ After Hegemony: Cooperation and Discord in the World Political Economy, p. 32.

⁸⁴ Ibidem, p.5.

⁸⁵ BBC News Website: Paul Reynolds, 'Trying to Head off an Arctic 'Gold Rush'', May 29th 2008.

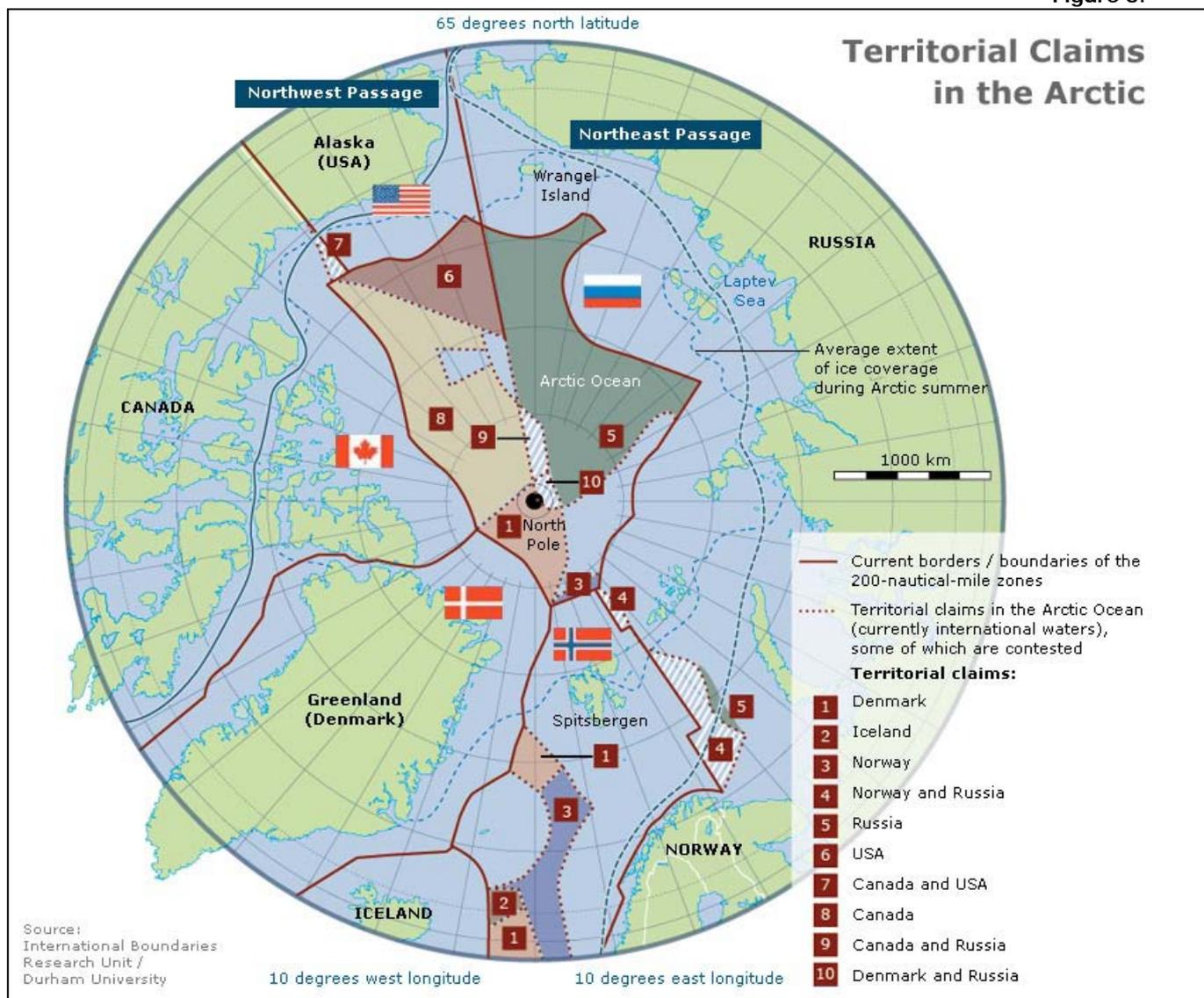
⁸⁶ Anders Fogh Rasmussen, 'Speech by NATO Secretary General Anders Fogh Rasmussen on Emerging Security Risks', Lloyd's of London, Oct. 1st, 2009.

⁸⁷ The Future History of the Arctic, p. 140.

⁸⁸ Kommersant Website: Alexander Gabuev, 'Cold War Goes North', Aug. 4th, 2007.

⁸⁹ Wei-en Tan, Yu-tai Tsai, 'After the Ice Melts: Conflict Resolution and the International Scramble for Natural Resources in the Arctic Circle', *Journal of Politics and Law*, Vol.3, No. 1, March 2010, p.91.

Figure 3.



4. Sovereignty in the Arctic

Climate change and globalisation are challenging the notions of permanency, stability and boundaries on which the ideal of the sovereign, territorial state has historically rested, gradually, literally uncovering an Arctic which stands at a crossroads of development and risk and of cooperation or discord. Cooperation is viewed by policy makers less as an end in itself than a means to a variety of other objectives. Defining international political economy in terms of the pursuit of wealth and power leads us to perceive cooperation less as an effort to implement high ideals, and more as a means of attaining self-interested economic and political goals.⁹⁰ States seek power and wealth directly, as well as by striving to construct frameworks of rules and practices that will enable them to secure their objectives in the long run. Very little of the polity in modern societies is untouched by the economy, and vice versa. Power is the necessary for plenty and vice versa, the pursuit of which is the flip-side of interdependence and realising common interests.⁹¹ Thus, deducing that territory is the necessary for power, and that power is the pursuit of nation-states, then the *property rights*, over the territory within which wealth is produced and distributed are essential. On the other hand, fluctuations in access to resources are known to affect relations of power in the short as well as long term. Ultimately, geographical factors are the basis on which definite international relations are formed.

The Encyclopaedia Britannica gives a definition for sovereignty as “*a right is possessed by a State (in addition to its proprietary rights as a legal entity) enabling it (and its agencies) to act (in the benefit of its citizens as it deems fit) within a geographic area, such as a territory.*”⁹² Seemingly elementary, the concept of sovereignty is one of the most controversial ideas in political science and international law. “*It is doubtful whether any single word has ever caused so much intellectual confusion and international lawlessness.*”⁹³ Having deduced that territorial expansion can indeed be considered the prime source of disharmony in the Arctic, and that power is sought through territorial property rights, it follows that one should develop an understanding of the role which sovereignty plays in the Arctic in order to be capable of further judgement. For centuries the Arctic was considered *terra nullius*, or no-man’s-land. That is why it is necessary to begin by reviewing the development of the doctrine and practice of international law concerning the acquisition of sovereignty over such territories. Different periods have offered different criteria for the legal acquisition of *terra* and *res nullius*.

Before UNCLOS: Fictitious and Effective Occupation of the Arctic

During the ‘Age of Discovery’, a period in history starting in the early 15th century and continuing into the early 17th century, also known as the ‘Age of Exploration’ or the ‘Great Navigations’, Europeans engaged in intensive exploration of the globe, establishing direct contact with the continents and mapping the earth. In the 15th and 16th centuries international law adhered to the position that discovery, combined with the deposition of a specific sign of its belonging to the state-discoverer (the flag, a cross, a monument) were sufficient to obtain a valid entitlement to the land. International law has named this mode of acquisition of *terra nullius* ‘fictitious occupation’. Papal grants regulated the relations connected with the discovery of *terra nullius*, the most famous document being Pope Alexander VI’s *Inter Caetera* bull, dated May 4, 1493. The *Inter Caetera* assigned Spain the exclusive rights for lands both discovered and yet to be discovered to the west and south of a pole-to-pole line, apart from the lands possessed by any Christian king or prince until Christmas of 1492. Although the unbiased nature of papal grants was disputed, they were considered the ultimate source of recognition of the lawfulness of claims, meaning that they have been referred to in modern claims cases in the name of inter-temporal law.⁹⁴ Soon however, international disputes concerning conflicting claims began to break out. Thus, from the 17th century, in addition to discovery, an effective act of inhabitation became necessary in order to prevent other states from claiming the same piece of land and for the inchoate sovereign title to be redeemed, giving birth to the principle of ‘effective occupation’ as the legal grounds for acquisition of *terra nullius*. By the 18th century international law doctrine had dismissed fictitious occupation, with international practice adapting gradually.

The 19th century saw the sculpting of effective occupational jurisdiction, with effective occupation going further than the simple presence of settlements and communities (although one does flow from the other)

⁹⁰ After Hegemony: Cooperation and Discord in the World Political Economy, p. 25.

⁹¹ After Hegemony: Cooperation and Discord in the World Political Economy, p.22.

⁹² Encyclopaedia Britannica Website: ‘Sovereignty in political theory’.

⁹³ Peter Malanczuk, Akehurst’s Modern Introduction to International Law, Routledge 1997, p. 17.

⁹⁴ *In a dispute the claim in situation has to be examined according to the contemporary conditions and rules.*

and being described as the exercise of control and government, i.e. the existence of jurisdiction of a "continuous and non-intermittent kind."⁹⁵ This mode of occupation was given conventional confirmation in the Berlin Conference of 1884-1885 (the main task of which was to solve conflicts in the Congo) with the additional confirmation of the rule concerning the notification of newly possessed lands to the signatory parties.⁹⁶ In 1888 the meeting of the *Institut de Droit International* in Lausanne adopted a declaration that the rules fixed in Berlin should apply to all cases of occupation regardless of their geographic location. At the meeting, a proposal was offered to consider all territory falling outside of the sovereignty of one of the members of the 'civilised community of nations' as *terra nullius*. Said proposal was rejected. However, it is interesting to note that such colonial standpoints, which should be seen in the light of intertemporal cases, were retained in some form or other right up to the 20th century when the principle of self-determination of all peoples was recognised in international law.

Emphasis has thus shifted from the taking of physical possession of the land to the exclusion of others, towards the manifestation and exercise of functions of government in the area. This change is a natural consequence of the recognition that in modern international law occupation is the acquisition of *sovereignty* rather than of property per se. In the bafflingly detailed work *Quo Vadis Arcticum?*, Leonid Timchenko elaborates that: "It is hardly possible to imagine that a state will spend big sums of money to maintain high levels of control and government in the occupied lands without the intention to use them in economic and scientific purposes. [However] In some cases taking into consideration the great strategic significance of the occupied land a state can demonstrate rather a high level of control without the aim of exploiting the territory."⁹⁷

The demonstration of a states authority over its territory is also required to maintain the acquired rights, a.k.a. the 'use it or lose it' principle. The voluntary withdrawal of military and police forces and of law-enforcement bodies is a *de facto* relinquishment of the territory, accompaniment by an affirming act issued by the state would make it *de jure*.⁹⁸ In reverse fashion the expansion of military and police forces can be seen as an affirmation, or display of sovereignty. Canada, Norway, and Russia have conducted military and naval operations in the region to showcase their capabilities and demonstrate their sovereignty. The US has been more modest in this regard, though the US Navy did release a 'roadmap' for the Arctic, emphasizing the need for military readiness in the far north in 2009.

If a state does not undertake the necessary measures to occupy territory effectively and the citizens of other states gradually settle there with the aims of its development and exploitation such territory will lose the status of *terra nullius* and transform into international territory for the common use, i.e. *terra communis*.⁹⁹ Only international agreement can grant sovereignty over *terra communis*. The best examples of this phenomenon are, of course, the Arctic archipelago of Svalbard and the Antarctic.

The main northern geographical discoveries were made by Norsemen and Russians in the 11-18th centuries, English, Dutch and Danish subjects also played an active role in the colonisation of *terra nullius*. However, the sea expanse which makes up the preponderance of the Arctic is not *terra nullius*, but rather a *res* (thing/space) *communis omnium* (belonging to everyone). Considered by Roman Law of Nature to be common to all mankind, the sea did not become subject to acquisition in the same way as land until later. Initially, the Spanish, Portuguese and English made pretensions to large parts of the ocean, which many important maritime nations refused to recognise. In reaction, one of the most famous fighters of the theoretical battle that was the sovereignty of the seas, the Dutchman Hugo Grotius, published *Mare Liberum*¹⁰⁰ in November 1608. Despite the Roman approach having been confirmed in charters granted by the English and Dutch governments to their East India Companies in 1600 and 1602,¹⁰¹ Grotius' opponent, Englishman John Seldon, also seized his quill and wrote *Mare Clausum* in 1618. Published in 1635 under royal patronage, it aimed to prove that "the King of Great Britain is Lord of the Sea flowing about, as an inseparable and perpetual appendant of the British Empire."¹⁰² However, the reigning view was that while the effective control of the shore-belt was perfectly feasible, the occupation of open sea was physically impossible. Grotius brought nuance to this view regarding the open character of the sea as the legal result of people's consent upon the matter, as opposed to being based on a natural phenomenon.¹⁰³ Lindley also writes: "It does not [...] appear that the difference between the rules for the

⁹⁵ *Quo vadis, Arcticum?*, p.3.

⁹⁶ GB, Ger., Aus-Hun., Bel., Den., Esp., US (not ratified), Fr., Ital., NL, Port., Rus., Swe-Nor., Tur.

⁹⁷ *Quo vadis, Arcticum?*, p. 14.

⁹⁸ Ibidem, p. 9.

⁹⁹ Ibid., p. 11.

¹⁰⁰ Which was published anonymously and addressed to 'the rulers and free and independent nations of the Christian World.'

¹⁰¹ Hugo Grotius, *The Freedom of the Sea or the Right which Belongs to the Dutch to Take Part in the East Indian Trade*. Oxford University Press, 1916, p.28-29.

¹⁰² John Selden, *Of the Dominion or, Ownership of the Sea (Mare Clausum)*, Arno Press, 1972, p.27-41.

¹⁰³ *The Freedom of the Sea*, p.28.

open sea and the marginal belt is due to the fact that one cannot be effectively occupied while the other can. The broad principle that underlies the rules is not physical necessity. It is rather to be found in the consent of nations based upon mutual convenience."¹⁰⁴

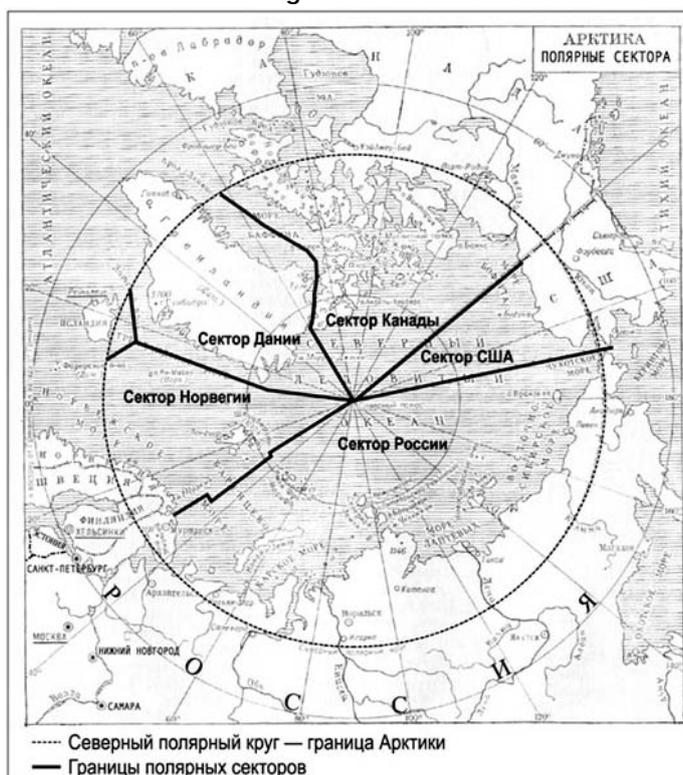
By the beginning of the 19th century maritime nations had accepted the regulation of the sea adjacent to the coast. The 'cannon shot' rule developed by the Dutch jurist Cornelius van Bynkershoek designated a 3nm (5.6km) limit based on the average distance of a cannon-shot from the shore, within which merchant ships of all nations were subject to the right (actually a duty) of innocent passage.¹⁰⁵ This limit was continually pushed further out: Iceland claimed 2nm; Norway and Sweden claimed 4nm; and Spain claimed 6 during this period, until eventually, from the late 20th century the '12 mile limit' became the accepted limit.

During the 19th century primarily Great British, Russian, American, Swedo-Norwegian and Austrian representatives were active in Arctic exploration and exploitation. The second half of the 19th century saw the tendency to spread sovereignty, especially over land, become more insistent. Canada would protest over 'American Imperialism' to the United States and Great British governments, after losing the Alaskan boundary dispute and facing problems put by foreign states concerning the Canadian Arctic Archipelago, considered by foreigners as *terra nullius* thus open to exploration. It was at this point in time that Roald Amundsen sailed the first successful traverse of the Northwest Passage, between 1903 and 1906, and the question over the passage status as an international waterway, as opposed to Canadian internal waters, was opened. From 1902 numerous Canadian expeditions to the North Pole were undertaken, with the intention of securing territorial rights, and in 1907 Canadian Senator Poirier made a speech in which he proposed that Canada "will have a right, or should have a right, or has a right to all lands that are to be found in the waters between a line extending from its eastern extremity north, and another line extending from the western extremity north. All lands between the two lines up to the North Pole should belong and do belong to the country whose territory abuts there."¹⁰⁶ This laid the foundation for the concept of a sectoral division of the Arctic, which slices the Arctic into five national sectors from the centre (the Pole) proportional to the outermost state borders, as one would a pie chart.

At the beginning of the 20th century Russia was significantly active in Arctic exploration, pioneering the use of ice-breakers, as was Denmark. Both regarded the Canadian Arctic Archipelago *terra nullius*, rejecting Canadian jurisdiction and sending expeditions to the area. In response, Canada established numerous Royal Canadian Mounted Police (RCMP) posts from 1921, employing the concept of effective occupation alongside the sector concept. The Canadian sector concept was employed in the Northwest Territories Act of 1925, and the USSR followed suit, issuing a decree in 1926 claiming all lands and islands between meridians 0°32' 30" Eastern longitude and 168°49' 30" Western longitude.

The Arctic poses special obstacles to the principle of sovereignty due to its geographical and climatic conditions. The preamble of the Saint Germain Convention of 1919 states that territories should be provided with administrative institutions 'suitable to local conditions'.¹⁰⁷ This has caused controversy over the degree of year-long supervision required in the Arctic. Hyde observes that, in

Figure 4. Sectoral division of the Arctic



¹⁰⁴ F.M. Lindley, The Acquisition and Government of Backward Territory in International Law, Begin a Treatise on the Law and Practice relating to Colonial Expansion, London, Longmans, Green & Co., 1926, p. 60.

¹⁰⁵ Article 19(2) of UNCLOS defines innocent passage as opposed to prejudicial passage, the first example of which is "any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State [...]."

¹⁰⁶ Canada, Senate Debates, 20 February 1907, p.271, as reprinted in Donat Pharand, Canada's Arctic Waters in International Law, Cambridge University Press, 1988, p.10.

¹⁰⁷ Quo vadis, Arcticum?, Note 65.

the 20th century, "some states rely upon less vigorous modes of acquiring rights of sovereignty over Polar areas, than would be deemed requisite [had] the regions sought to be acquired [been] located within the temperate zones."¹⁰⁸ The sector theory relaxes these obligations to the extreme, going against all previously recognised methods of acquisition of territorial sovereignty. The basic element of the sector theory is contiguity, which readily associates territories in physical contact with each other. The sector theory's greatest legal consequence is the possibility of spreading sovereignty over the entire 'space' claimed within the slices. This includes not only islands, but the seas along with the seabed, as well as the airspace, and even icebergs (used extensively as drifting scientific stations), and was thus dubbed the 'General Sector Theory'. The sector theory has never developed into a principle of customary law, and is neither a generally accepted doctrine nor a recognised method of acquisition of territorial sovereignty. However, its effects can still be seen in Arctic territorial claims today.

The greatest support for the sector theory was provided by the Soviet scientists. Publications in the USSR on international public law such as monographs, textbooks and articles devoted to the Arctic legal regime for the 1960's, 1970's and early 1980's up until the *perestroika* all adhere to the sector theory. Modern-day Russia still feels that this principle constitutes a historic precedence which should be taken into account. Canadian officials have not disaffirmed the sector theory in unequivocal terms. It seems that they have not completely abandoned the theory and that it remains "very tightly intertwined with Canadian legislation."¹⁰⁹ The United States, however, has consequently rejected the notion of dividing the Arctic into sectors or spheres of influence, preferring to consider the region as high seas, not included in the territorial sea or in the internal waters of a state.¹¹⁰ Proof of this can be found in President William Howard Taft's response to Peary's telegraph on disputably becoming the first man to have reached the North Pole in 1909: "I have the honour to place the North Pole at your disposal"¹¹¹ Whereupon Taft answered "Thanks for your interesting and generous offer. I do not know exactly what I could do with it." Also, the fact that the United States Senate has failed to ratify UNCLOS speaks for the American propinquity to the principle of *res communis omnium* and Grotius' *Mare Liberum*. Norway rejected the sector concept as well, insisting on an equidistance method for delimitation. Finally, Denmark has never employed the sector theory.

Prior to UNCLOS, a state could legally advance its national interests to the extent that it was able to enforce its jurisdiction. However, the high seas—the area beyond national jurisdiction—have long been considered *res communis*, governed by the 'law of the commons,' and 'belonging' to everyone. For all intents and purposes, the exploitation and use of ocean resources functioned entirely independently from claims of national sovereignty. By the mid 20th century, however, there was an impetus to extend national claims over offshore resources. Ironically, the first major challenge to the freedom of the seas doctrine was formed by claims to the adjacent seabed by the United States government, immediately following WWII. On September 28, 1945, President Harry S. Truman, responding in part to pressure from domestic oil interests, issued proclamations which established government control of natural resources in areas adjacent to the coastline, thereby unilaterally extending US jurisdiction over all natural resources on that nation's continental shelf. One of the proclamations was titled 'Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf', and stipulated in its operative clause that: "the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control."¹¹² Other nations soon followed suit, with a tangle of claims clearly departing from the traditional three to 12 mile limit.

Another motivation to reassess the freedom of the high seas stemmed from a growing concern over the toll taken on coastal fish stocks by long-distance fishing fleets and by the hazards of pollution. The increased presence of maritime powers, competing to maintain a presence across the globe, and the effects of long-distance navigation resulted in tension between coastal nations' rights to resources and those of distant-water fishermen. The Cod Wars formed a series of confrontations in the 1950s and 1970s between the United Kingdom and Iceland regarding fishing rights in the North Atlantic, and the prospects of a rich harvest of sea resources contrasted with a seemingly outdated, if not inherently conflicting,

¹⁰⁸ Charles Cheney Hyde, 'Acquisition of Sovereignty over Polar Areas', *Iowa Law review*, Vol. 19. No 2. Jan. 1934, p. 287.

¹⁰⁹ *Quo vadis, Arcticum?*, p. 81.

¹¹⁰ *Akehurst's Modern Introduction to International Law*, p. 184.

¹¹¹ *Listen to Peary himself via <http://www.eyewitnessstohistory.com/vopeary.htm>!*

¹¹² Charles B. Selak, Jr., 'Recent Developments in High Seas Fisheries Jurisdiction Under the Presidential Proclamation of 1945', *The American Journal of International Law*, Vol. 44, No. 4, Oct. 1950, p. 485.

freedom of the seas doctrine - threatening to transform the oceans into another arena for conflict and instability.¹¹³

Recognizing the international concerns over sovereignty over parts of the oceans, as well as the need for peaceful and communal exploitation of certain resources, in 1958 the United Nations General Assembly issued a resolution that convened the first United Nations Conference on the Law of the Sea (UNCLOS I). A regime for the control of the ocean, a.k.a. 'Pardo's Plan', was first proposed by the Maltese ambassador to the United Nations, Arvid Pardo, in the General Assembly in August 1967.¹¹⁴ Arvid Pardo is known as the 'Father of the Law of the Sea Conference'. Four multilateral conventions were negotiated: regarding the Territorial Sea and Contiguous Zones; on the High Seas; on the Continental Shelf and on Fisheries and Conservation of Living Resources of the Sea. The topic delighted less developed nations with the idea of benefiting from the exploitation of ocean resources, while developed nations voiced worry about their vital interests such as military capabilities, energy supplies and mineral resources.¹¹⁵ Despite attempts to delay the process, a resolution was passed in December of 1969 reserving the seabed and its resources beyond the limit of national jurisdiction 'exclusively for peaceful purposes and in the interest of mankind'¹¹⁶, thus reinforcing Grotius' freedom of the seas doctrine. The Convention on the High Seas is an international treaty created to codify the rules of international law relating to the high seas: bodies of water more than 200 metres deep, making up 90 percent of the world's oceans, otherwise known as international waters. The Convention on the High Seas provided that no state may validly subject any part of the high seas to its sovereignty, again defining it as a *res communis omnium*, just like outer space.

Despite the progressive development of the law of the sea by the 1958 Conventions, some issues remained unresolved, such as the exact status of ice, and of the seabed beyond the limits of national jurisdiction. Two years later, UNCLOS II sought to address a number of issues relating to the breadth of the territorial sea and the classification of international straits, but finally proved fruitless. By late 1967 the tranquillity of the sea was further disrupted by technological breakthroughs, intensifying usage, and an overarching super-Power rivalry. Nuclear submarines were charting deep waters never before explored, designs were made for antiballistic missile systems to be placed on the seabed, super tankers were ferrying oil through congested straits and leaving behind a trail of oil spills and tensions over conflicting claims to ocean space and resources rose. Despite the oceans generating a multitude of claims, counterclaims and sovereignty disputes, the Cold War created a structure of thought and behaviour with made collaboration impossible, even holding arctic science hostage to its militarised politics.¹¹⁷ UNCLOS III was delayed until 1974 and was not passed until December 10, 1982. Since then, one unified international maritime legal regime has been in effect.

After UNCLOS: The Arctic Limit of Territorial and Sovereign Understanding

Antarctica is often considered a model of international cooperation in the administration of fragile Polar Regions. It was the scene of a similar situation between Britain, France, Argentina, Chile, Norway, New Zealand, and Australia, each of which had asserted claims to the continent. It ended with the division of the continent into sectors belonging to the seven states, plus five others, including the US. All of the states had signed a treaty forbidding nuclear tests, the dumping of radioactive waste, military deployment, and the exploitation of any resources until the year 2048. Part of the North Polar Region's political complexity, however, stems from the fact that, unlike the Antarctic, the Arctic is not a single landmass. The Arctic has unstable geophysical characteristics. This brings the basic elemental distinction between land and water as an epistemological principle into play.¹¹⁸

The most distinguishable characteristic of the Arctic Ocean is a perennial ice sheet. Article 234 of UNCLOS is devoted to ice-covered areas where coastal states have the right to enforce stricter marine pollution controls. UNCLOS reinforced the historical political-jurisdictional separation of water and land, and the conventions do not distinguish the Arctic Ocean in any specific way, filing it under the same category as other semi-enclosed seas. However it does establish a special regime for areas with 'particularly severe climatic conditions.' The IMO spent years negotiating an Arctic Code for shipping, but ultimately

¹¹³ UN Website: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, 'The United Nations Convention on the Law of the Sea (A historical perspective)', United Nations 2011.

¹¹⁴ Jeffrey Hart, 'Comparative Cognition: Politics of International Control of the Oceans', in Robert Axelrod ed., Structure of Decision, p.181.

¹¹⁵ Ibidem.

¹¹⁶ *Resolution No. 2574 (XXIV) was passed by a vote of 62 in favour, 28 against, and 28 abstaining.*

¹¹⁷ Quo vadis, Arcticum? p. 200.

¹¹⁸ Hannes Gerhardt, Philip E. Steinberg, et al., 'Contested Sovereignty in a Changing Arctic', *Annals of the Association of American Geographers*, Vol. 100, Issue 4, 2010, p.993.

downgraded the Code to a set of voluntary 'Guidelines for Ships Operating in Arctic Ice-Covered Waters' (adopted 2002). There are no bilateral or multilateral agreements in international law regulating the matter of ice floes or sea waters which take a frozen form for a significant part of the year, and thus might be considered an extension of territory. In the past, Soviet scholars have defended the 'ice-is-land' theory, as have modern Canadian politicians. Canadian scholars have referred to the concept of effective occupation of shelf-ice, calling it *glacies firma*, similar to *terra firma*. The significance of coastal ice formations for measuring the breadth of the territorial sea is most relevant in the Canadian Arctic Archipelago. If the above seems quite uncontroversial, let me illustrate the problem by using the following examples:

- The case of the establishment of a casino near Cape Nome in Alaska: the coastal state was deemed to have no jurisdiction over the casino, as the pack ice it stood upon lay beyond the state's territorial sea...¹¹⁹ In Canada, citizens treat ice in wintertime exactly as they do land, making traditional ways of defining and delimiting sovereignty jurisdiction unrealistic considering the increasing instability due to climate change. Claims via Article 76 of UNCLOS, that the North Pole is an extension of a landmass uphold the static nature of state sovereignty despite a changing world.¹²⁰
- The first 'extraterrestrial' crime: constituted the murder of an American research team member in the summer of 1970 and occurred on an ice floe named T-3, or Fletchers Island. The 'Escamilla incident', took place at 84° 47' North latitude and 106° 28' West longitude, within the Canadian sector. The legal question which arose was whether ice floes such as T-3 could be considered as floating pieces of territory belonging to the occupier, regardless of the drift path which it follows. States usually refrain from exercising jurisdiction over their nationals in respect of acts committed on the territory of another State and, in case of conflict, territorial jurisdiction is generally recognized as taking precedence over personal jurisdiction. Canada, however, chose to refrain from interfering in the matter. A spokesman from the US Department of External Affairs is reported to have stated that they wanted to avoid putting Canada in a position of seeming to interfere with the course of justice for the sake of clarifying a very complicated point of international law.¹²¹ It was unclear who had jurisdiction over offences committed by nationals in places which do not fall under the sovereignty of any state, such as on an inhabited floating object on the high seas. In the case of ships, jurisdiction over criminal offences generally belongs to the State of the flag. Since the Escamilla incident, the principle of personal jurisdiction¹²² has been extended to apply to places such as the Antarctic and outer space. As a general rule, a ship on the high seas is subject only to international law and to the laws of the flag state.¹²³

The past ambiguity and inaccessibility of the Arctic can no longer be relied on, so how to classify such dynamic materiality? Is the Arctic claimable land, unclaimable water, or a special category of space? The Arctic as a *claimable* space, notwithstanding that its central feature is the Ocean and that it is not possible to assimilate the pack ice and loose floes of the Arctic Ocean to 'territory', is placed within the judicial classification system codified in UNCLOS. UNCLOS set out substantial new sovereign rights over various parts of the ocean, most of which were secured at the expense of the traditional concept of universal freedom of the seas. In this way the Arctic waters and coastlines can be deemed territory *sui generis*: unlike any other.

Modern political and technological developments have begun to foment a paradigm shift in the approach to UNCLOS, which was framed by exclusive territorial sovereignty issues rather than the traditional principles of the High Seas. UNCLOS stipulates that any coastal state can claim territory within its 200nm EEZ and exploit the natural resources within that zone. According to the provisions of Article 76, nations can extend that limit to up to 350nm *if* they can provide scientific proof that the undersea continental plate is a natural extension of their territory. The outer limit of the shelf is derived through the application of two formulae described in UNCLOS Article 76: *"From the foot of the slope, the outer limit line must not extend beyond 60 nm or beyond the point where the sediment thickness is less than 1% of the distance measured back to the foot of the slope. As maximum constraints, the outer limit shall not exceed 350 nm from the territorial baseline or 100 nm from the 2500-m isobath, whichever one is further. These formulae and constraint lines are applied in different circumstances, depending on the characteristics of*

¹¹⁹ Quo vadis, Arcticum?, p.119.

¹²⁰ Hannes Gerhardt, Philip E. Steinberg, et al., 'Contested Sovereignty in a Changing Arctic', p. 996.

¹²¹ Donat Pharand, 'State Jurisdiction over Ice Island T-3: The Escamilla Case', *ARCTIC*, Vol. 24, Issue 2, p. 84.

¹²² *I.e. personal jurisdiction is the power of the court to decide a dispute, as against a particular person. The concept of personal jurisdiction finds its origin in the idea that the power of the King vests in his Sceptre. The King could not possibly exercise power over persons or property situate outside of his kingdom. Slowly this was adopted in law. In the United Kingdom, the exercise of personal jurisdiction does not need a statutory basis, since the United Kingdom does not have a written constitution.*

¹²³ Akehurst's Modern Introduction to International Law, p. 185.

the margin, namely its shape (morphology) and structure (geology).¹²⁴ After ratification of UNCLOS a country has ten years to collect the appropriate information and submit a claim for an extended continental shelf to the United Nations Commission on the Limits of the Continental Shelf (CLCS).

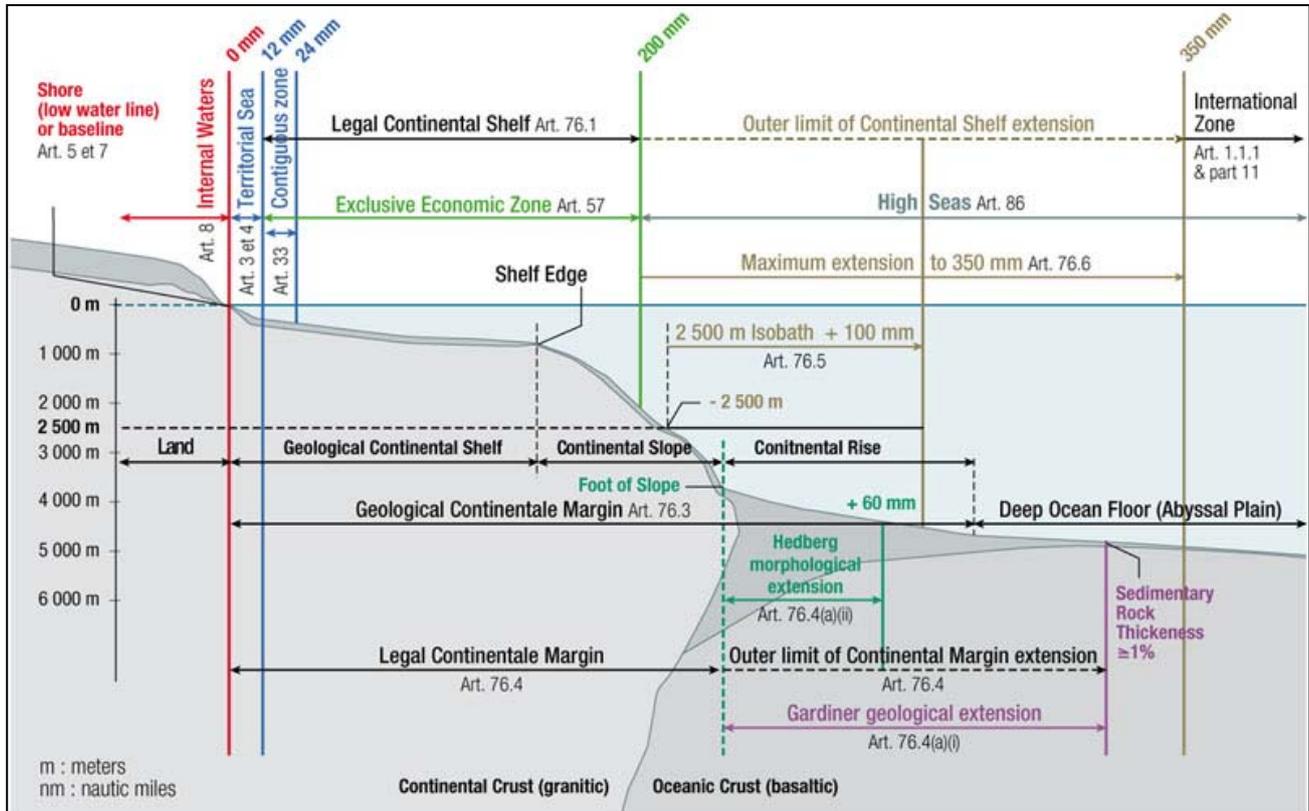


Figure 5. Categories of Marine Territory per Art. 76 of UNCLOS III

The origin of the problem stems from these submissions, and becomes apparent in two aspects:

1) **The criteria for the extension of the continental shelf:** An exception was made for 'submarine elevations that are natural components of the continental margin'.¹²⁵ The implementation of Article 76 rests fundamentally upon the analysis and interpretation of bathymetric and geological information. The floor of the Arctic Ocean is characterized by the existence of at least four large submarine mountain ranges that could be considered to be submerged prolongations of the continental margins beyond 200 nautical miles: the Chukchi Plateau, the Mendeleev Ridge, the Lomonosov Ridge, and the Alpha Ridge. Their origins (i.e. continental, cross-continental or oceanic) are in the process of being defined by scientists, however, presuming they are continental in origin, overlapping claims have come from Russia and Canada over the Alpha Ridge, from Russia and Canada and Denmark on the Lomonosov Ridge. Adequate sets of geological and geophysical data, together with bathymetric and morphological information, are seen as critical to establishing that such elevations are indeed natural components of the continental margin.

2) **The lateral delimitation of the continental shelf and the EEZ between states with adjacent coasts:** Article 6 of the 1958 Geneva Convention on the Continental Shelf provides as follows: "Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other the boundary or the continental shelf appertaining to such states shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial sea is measured."

The equidistance principle was, however, downgraded by Article 83 of the 1982 Convention which provides that the delimitation of the continental shelf between States with opposite or adjacent coasts

¹²⁴ Mel Weber, 'Defining the Outer Limits of the Continental Shelf across the Arctic Basin: the Russian Submission, States' Rights, Boundary Delimitation and Arctic Regional Cooperation', *The International Journal of Marine and Coastal Law*, Volume 24, 2009, p. 655.

¹²⁵ E.g. Geologists talk of such as 'plateaux', 'rises', 'caps', 'banks' and 'spurs'.

shall be affected by agreement 'on the basis of international law'. The median line is therefore no longer obligatory. The vagueness of this article was inevitable due to the amount of controversy it generated at UNCLOS III.¹²⁶ States refusing arbitration by the International Court of Justice have referred to the sector principle as well as perpendicular and equidistance lines, leading to stagnant and conflicting positions. E.g.: US vs. Russia: Maritime boundary in the Bering Sea, US vs. Canada: Maritime boundary in the Beaufort Sea and Canada vs. Denmark: Boundary dispute in Lincoln Sea.

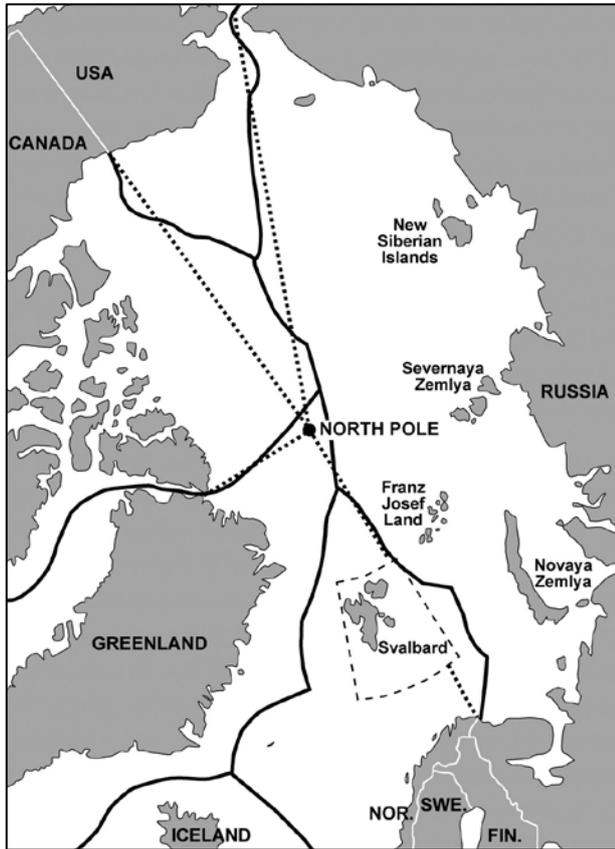


Figure 6. Arctic delimitation possibilities based on equidistance (dotted lines) or the sector theory (solid lines) from the geographical North Pole, depicting the potential overlap in jurisdiction in the central Arctic.¹²⁷

All five coastal states have valid grounds for developing continental shelf claims beyond their 200nm limits, and the likelihood of overlapping claims between neighbouring states was apparent from conception: because the Arctic Ocean is semi-enclosed, the coastal states are either adjacent to and/or opposite one another. To date, Norway and Russia are the only countries that have filed a legal claim to extend their continental shelf into a portion of the Arctic Ocean, based on geophysical data, international law considerations and historical involvement in the area. Denmark and Canada are known to be drawing up claims. It is apparent that while Article 76 of UNCLOS provides a legal framework for solving Arctic disputes, it is unable to adjudicate any claims of sovereignty based on an extended continental shelf.

The CLCS does not have the authority to settle continental shelf disputes; it is restricted to an advisory role, and its recommendations are binding only if this intention is incorporated into a member state's official submission.¹²⁸ For disputes that cannot be settled amicably, however UNCLOS Article 287 states the four acceptable mediation

alternatives: the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany; the International Court of Justice, in The Hague, The Netherlands; ad hoc arbitration by the Permanent Court of Arbitration (part of the International Court of Justice); or a 'special arbitral tribunal' constituted for disputes concerning prospecting, exploration and exploitation in the high-seas. The Permanent court of Arbitration website states that: *"the default means of dispute settlement if a State has not expressed any preference [...] (and has not expressed any reservation or optional exceptions pursuant to Article 298 of UNCLOS). Likewise, [...] if the parties have not accepted the same procedure for the settlement of the dispute, arbitration under Annex VII is the default means of dispute settlement (again subject to same exceptions or reservations pursuant to Article 298)."*

The Article 298 referred to reads:

"1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:

(a)

(i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of

¹²⁶ Akehurst's *Modern Introduction to International Law*, p.196.

¹²⁷ Source: Mel Weber, 'Defining the Outer Limits of the Continental Shelf across the Arctic Basin', p. 662.

¹²⁸ Wei-en Tan, Yu-tai Tsai, 'After the Ice Melts', Note 52.

any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

(ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;

(iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties; [...].¹²⁹

However, of the Arctic 8, only Norway has indicated that it would accept only of the procedures if conflicting claims of jurisdiction arose in the Arctic, i.e. the rest have declared that they do not accept any of the procedures!¹³⁰ It is understandable, therefore that commentators have been skeptical concerning the method of international dispute resolution through UNCLOS. Disputes involving jurisdiction in extended maritime zones, such as overlapping continental shelves, are very likely exempted from the compulsory choice of a resolution-procedure and remain to be settled through traditional consent-based methods. Shigeru Oda has argued that the exceptions and ambiguities render the mechanism comparable to traditional consent-based methods of dispute settlement.¹³¹ Thus, despite these drastic changes in the High Seas, nations have *“sacrificed certainty in order to preserve a vestigial element of the freedom of the seas in extended maritime zones. Although each resolution procedure is straightforward, the result will always depend on whether or not opposing states have agreed to be bound by the same measures.”*¹³²

The US has not even ratified UNCLOS. Its ratification has been blocked by conservative Republican senators. John B. Bellinger III, former legal adviser to the secretary of state states that *“The misconception is that signing UNCLOS would be a vast giveaway of American sovereignty.”*¹³³ The exercise of international legal sovereignty undermines Westphalian sovereignty when the rulers of a state enter into an agreement that recognises external authority structures, such as multilateral agreements, as has been the case for Arctic States which have ratified UNCLOS. Ratifying the treaty could give the US a large increase in territory; however any extension of the shelf must go hand-in-hand with international approval, because no bank would be willing to invest in excavation ventures in such legally murky waters. International legal sovereignty deals with the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence. Westphalian sovereignty refers to the exclusion of external actors from authority structures within given boundaries. Krasner argues that sovereignty has *“clear logics of appropriateness [i.e. international relations norms and rules, but these logics are sometimes inconsistent with a logic of consequences [i.e. Realist rationale]. Given the absence of authoritative institutions and presence of [power] asymmetries, rulers can follow a logic of consequences and reject a logic of appropriateness. Principles have been enduring but violated.”*¹³⁴ Game theory can further elucidate this statement, by showing that nations rationalise their positions on the basis of connections between issues.¹³⁵ Positions of actors may be inconsistent with causal beliefs about linkages between goals when the actor is a nation-state, because of domestic pressures, bargaining behaviour, compromises within the government, and the differential ability of individuals to tolerate ambiguity.¹³⁶ According to Krasner different uses of the term ‘sovereignty’ reveal *“the failure to recognise that the norms and rules of any international institutional system, including the sovereign state system, will have limited influence and anyways be subject to challenge because of logical contradictions, the absence of any institutional arrangement for authoritatively resolving conflicts, power asymmetries among principle actors, notably states, and the differing incentives confronting individual rulers.”*¹³⁷ He adds that *“the absence of any institutional arrangement for authoritatively resolving conflicts”* is the definition of an international system and that international legal sovereignty is the necessary condition for rulers to voluntarily compromise aspects of their Westphalian sovereignty.¹³⁸ As stated previously, the linkage

¹²⁹ UN Website: - Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, ‘Declarations made upon signature, ratification, accession or succession or anytime thereafter’, up to: July 12th 2011.

¹³⁰ Wei-en Tan, Yu-tai Tsai, ‘After the Ice Melts’, p. 99, Note 59.

¹³¹ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea*, Cambridge University Press, 2005 cites Shigeru Oda, ‘Some Reflections on the Dispute Settlement Clauses in the United Nations Convention on the Law of the Sea,’ in Jerzy Makarczyk ed., *Essays in International Law in Honour of Judge Manfred Lachs*, M. Nijhoff, 1984.

¹³² Wei-en Tan, Yu-tai Tsai, ‘After the Ice Melts’, p. 94.

¹³³ Vanity Fair Website: Alex Shoumatoff, ‘Dispatch: The Arctic Oil Rush’, May 2008

¹³⁴ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton University Press, 1999, p. 40.

¹³⁵ Jeffrey Hart, ‘Comparative cognition: Politics of International Control of the Oceans’, in Robert Axelrod ed., *Structure of Decision*, Princeton University Press, 1976, p. 215.

¹³⁶ Ibidem. p. 216.

¹³⁷ *Sovereignty: Organized Hypocrisy*, p.3.

¹³⁸ *Sovereignty: Organized Hypocrisy*, p. 19.

between principles, norms and rules gives international regimes their legitimacy. However, the principle of Westphalian sovereignty also limits the degree of confidence that can be placed in international agreements. Ultimately, nation-states can choose to be guided by a logic of appropriateness (institutionalist, ethical or humanitarian considerations), or by a realist logic of consequences which renders international law, treaties and similar formalized agreements unrestrictive to the international activities of nation-states.¹³⁹

K. Traavik and W. Østrem point out that *"the lack of [hard-law] international regulatory measures may pave the way for unilateral, illegal – or at least extra legal – action on the part of states, private enterprises or individuals, increasing tension and enhancing the problems of reaching international solutions."*¹⁴⁰ The highly vulnerable nature of the arctic ecosystems demands a high degree of regional supervision and control based on international law for the region as a whole and for the Arctic Ocean in particular. The world currently needs the combined undivided efforts of all states in political, economic, social, scientific and ecological spheres if it wishes to produce sustainable development. Krasner warns, however, that conflicting logics of appropriateness, the absence of mechanisms for deciding among competing rules, and power asymmetries among states make norms less constraining in the international setting.¹⁴¹ The freedom of the seas doctrine was violated through mutual agreement in UNCLOS, however recognition in cases of International legal sovereignty still depend on the voluntary acceptance of the other states.¹⁴²

As a result of globalisation and climate change in the Arctic, the norm of autonomy, the core of Westphalian sovereignty, has been challenged by alternatives meant to ensure the maintenance of international stability. The principles associated with Westphalian and international legal sovereignty have always been violated,¹⁴³ either through voluntary agreements, or through the use of coercion. By sacrificing certainty to preserve a vestigial element of the freedom of the seas in extended maritime zones, 'control' has been placed beneath 'authority'. Yet control may be acquired without sovereignty whereas legal history has rendered the opposite impossible. As Grotius asserted, international law is based on the consent of states. UNCLOS merely provides states with the *option* to invite external constraints to their internal authority structures, such as by hardening the ruling of the International Court of Justice in territorial claims disputes. UNCLOS, an external authority structure, has made itself vulnerable to the claims of and possibly conflicts among, the Arctic 5, who are unwilling to compromise their Westphalian sovereignty any further.

Via Hobbes, George Pavlich reminds us that *"every sovereignty is founded on an artificial covenant, or a historically and socially located set of practices that can, like Hobbes's text itself, always be reassessed and rearranged in unpredictably new ways."*¹⁴⁴ Charles Barbour and George Pavlich suggest that international law need not be rigidly grounded in a fully formed juridical reason, but can be understood as something more 'mythopoetic', and as a 'space of encounter' that then becomes a ground for 'jurisdiction' (in the etymological sense of 'speaking the law'). To focus exclusively on the collapse or the preservation of the Westphalian model of sovereign nation-state is, McVeigh and Pahuja maintain, to miss the sense in which all such sovereignty already finds its basis in international 'jurisdiction', or an open and incommensurable 'middle ground' existing prior to, and making possible, any sovereign bodies whatsoever. *"A new era of International Law; [has] thrown into crisis the modern concept of sovereignty and the notions of statehood and citizenship that rest upon it."*¹⁴⁵

Positing a sovereign as dependent upon the historical context from which it emerges causes diverse political models to relate and intersect, sustaining different versions of 'law and sovereign' relations.¹⁴⁶ Barbour and Pavlich take the example of Foucault who describes the mediaeval lineage of sovereignty politics as being utterly transformed by modern political technologies of discipline and bio-power. He even goes as far as to suggest that one might reasonably have expected the concept of sovereignty to disappear in modern political horizons, but for the role that it played inadvertently in assisting with the deployment of extensive disciplinary and biopolitical mechanisms. *"It is the afterlife of sovereignty that enables it to become a visible 'cover' for more invisible disciplinary techniques and provide a democratic 'veneer' for biopower. Such functions give mediaeval sovereignty pretexts to survive in the modern*

¹³⁹ Hector Correa, 'Game Theory as an Instrument for the Analysis of International Relations', p. 3.

¹⁴⁰ Kim Traavik, Willy Østrem, 'The Arctic Ocean and the Law of the Sea', *Cooperation and Conflict*, Vol. 9, no. 1, 1974, p. 60.

¹⁴¹ Sovereignty: Organized Hypocrisy, p. 6.

¹⁴² *Ibidem* p.7.

¹⁴³ *Ibid.* p.24.

¹⁴⁴ After Sovereignty. On the Question of Political Beginnings, p. 7.

¹⁴⁵ *Ibidem*, p.1.

¹⁴⁶ *Ibid.*, p.5.

context, but any semblance of independence associated with concepts of sovereignty is relegated to serving the emerging strategic power complexes of the day."¹⁴⁷ The Ilulissat Declaration's main objective was to block any new comprehensive international legal regime to govern the Arctic Ocean. The Ilulissat Declaration splits states into one of two unequal groups. The first, larger group includes the US (through non-accidence to UNCLOS), Sweden, Finland, Great Britain, China, and many other countries with no direct access to the Arctic who wish the region to be declared *res communis omnium*. The second, smaller group includes the Arctic countries which want to settle *ad hoc* formulae for dividing up the region (Russia, Canada, Denmark, and Norway).¹⁴⁸ We can deduce that the sovereignty principle is being used by the Arctic five in order to insulate the High North region from other interested actors.¹⁴⁹

In order to answer the second sub-question posed by this thesis, we can assert in the way of Krasner, that the role of sovereignty in the Arctic is one of 'organised hypocrisy', where outcomes of UNCLOS will be determined by calculations of interest, the Arctic being the exception which 'proves' (from the old-English word for 'test') the rule. Defining international political economy in terms of the pursuit of wealth and power leads us to perceive cooperation less as an effort to implement high ideals, and more as a means of attaining self-interested economic and political goals: the term 'sovereignty' being applied in the manner best suiting the expansionist states' aspirations, cooperation often being less an end in itself than a means to a variety of other objectives. It has been so throughout history: when papal grants preferred the Roman Catholic; when the Dutch and the English combated over legal rights; when it was deemed that only members of the 'civilised' community should be granted sovereignty; when the USSR embraced the sector theory; when the Maltese Arvid Pardo presented his plan to safeguard equality in exploitation of ocean resources; and when the Ilulissat Declaration left coastal states to develop their continental shelf claims beyond the 200nm limits autonomously. The disharmonious factor can be represented in Game Theory's Prisoner's and Chicken dilemma, where the common good is subverted by individual rationality. Each player desires the other's cooperation, yet is tempted to defect himself. Arctic land claims can be seen as extensions of Westphalian sovereignty, and as a test of the arctic nations' position regarding international legal sovereignty.

The means of attaining a solution indicated in UNCLOS, Article 33, are "[...] negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice". Thus, in theory, state parties may resort to any conceivable kind of dispute settlement mechanism, as long as it takes due account of international law.¹⁵⁰ However, Giorgio Agamben asserts that "*The sovereign deliberately declares the universality of its laws exactly there where it excludes itself from being bound by those laws.*"¹⁵¹

How large is the chance, then, that the lust for territory and the malleability of international legal sovereignty will combine in such a way as to form a relevant security threat in the Arctic today? In other words, how will conflicting approaches to the drawing of maritime boundaries in the international legislative regime and the ambiguity in the legislative language play out in territorial disputes? The answer to the last sub-question will be researched through the analyses of case studies in the following chapter.

¹⁴⁷ *Ibid.*, p. 5.

¹⁴⁸ Dmitri Trenin and Pavel K. Baev, '*The Arctic, A View from Moscow*', Carnegie endowment for international Peace, 2010, p.11.

¹⁴⁹Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', *CEPS Policy Brief*, No. 205/February 2010, p. 6.

¹⁵⁰ Pål Jakob Aasen, 'The Law of Maritime Delimitation and the Russian–Norwegian Maritime Boundary Dispute', *Fridtjof Nansen Institute*, 2010, p. 60.

¹⁵¹ *After Sovereignty, On the Question of Political Beginnings*, p.4; third kind of sovereignty, drawn from Giorgio Agamben, *State of Exception*, University of Chicago Press, 2005.

5. Case Studies

The aim of the following case studies of Arctic boundary disputes is the evaluation of the degree of likelihood that Arctic sovereignty claims are degenerating Arctic international relations, forming a potential security threat. They will each commence with a historic introduction, then the state actors' relevant domestic and international political trends will be discerned and placed within the scale, with the help of the analysis and scale-evaluation of a selection of texts concerning their political behaviour (diplomatic and policy documents, in addition to media sources relating to the claimant states) which will be restricted to the most noteworthy diplomatic moments in the relations between the state actors.

Concentrating the problem as much as possible, it can be said that international relations have only one of two directions in which they may travel. A simple colour-scheme based on Vincent's Scale was developed and given the values 0 to +2 for 'towards cooperation' and -1 to -3 for 'away from cooperation':



The values accorded to categories which were inspired by Salmore and Munton's recategorisation of WEIS:

Verbal cooperation	Cooperative action	Conservative diplomatic exchange	Disruptive diplomatic exchange	Non-military conflict	Military conflict
---------------------------	---------------------------	---	---------------------------------------	------------------------------	--------------------------

In order to be able to place source texts in the categorical discord-cooperation continuum, McClellands groups, consisting of 22 verbs, will be employed as indicators. The indicators focus on attempts by the actors to adjust their policies, or efforts to induce the other to change their policies, and any possible resistance offered:

approve promise agree request propose	yield grant reward	comment consult	accuse reject protest deny	demand warn threaten	demonstrate reduce rel. expel seize force
---	--------------------------	--------------------	-------------------------------------	----------------------------	---

When all state actors and their documents have been placed in the scale, a line will be drawn, connecting a state's position. Either cluster of lines will become apparent under the scale where the majority of indicators are located, or, in the case of strongly diverging indicators, the median value will be calculated, allowing us to place the case study within one of the three following prognoses:

No relevant security threat: speaks for the ability of current institutional bonds to safeguard cooperation.	Extra precautions advisory: i.e. alternative dispute settlement mechanisms (DSM's).	Relevant security threat: stronger case for the need of a hard-law conflict resolution settlements.
--	---	---

In order to test the predictive validity of the chosen method the first case study will serve as a control. On April 27, 2010, Norway and Russia announced an end to their 40-year arctic border dispute in the Barents Sea. The expected outcome for this case study is therefore for it to be located near the positive end of the scale (light blue to navy) as the states were able to cooperate bilaterally, or in the neutral area (green to yellow) as the conflict was of long duration and might have profited from an alternative dispute settlement mechanism. Following the control, two outstanding disputes from the list of current major claims in the North Pole will be analysed.

1. Control Case: The Barents Sea Borders Dispute

(See Figure 3, Territorial Claim 4)

Introduction

UNCLOS was ratified by Norway on 24 June 1996 and by the Russian Federation on 12 March 1997, and is thus directly applicable to both parties in the dispute. However, the dispute originated in the 1970s when the matter for the first time became the subject of negotiations between Norway and the Soviet Union, thereby exempting the state actors from the obligation to constitute a compulsory conciliation procedure.¹⁵² The dispute centred upon the delimitation of the continental shelf and EEZ's in the Barents Sea, initially between the Soviet Union, then Russia and Norway. Large parts of the seabed of the Barents Sea were regarded as continental shelf pursuant to the 1958 Convention and, thus, a need for bilateral delimitation between Norway and Soviet Union existed. Formal negotiations started in Moscow in 1974 and lasted until April 27, 2010.

In 1975 the two countries had agreed upon a moratorium prohibiting hydrocarbon exploration in the disputed area. In 1977, the negotiations became more extensive when Norway and the Soviet Union established overlapping EEZ claims. Because fishing was the most pressing issue, they agreed on a temporary arrangement to regulate fishing in the disputed area, a 60,000 km² named the 'Grey Zone' or *Gråsonen*. The so-called Grey Zone Agreement was signed in January 1978. Under the agreement each party was to exercise jurisdiction solely over fishing vessels flying their own flag and over vessels flying the flag of third states that had access to the area under license. The agreement was negotiated by Norwegian Labour politician Jens Evensen and his protégé Arne Treholt, who was later exposed as a spy for the Soviet Union and Iraq, for activities in the years 1974–83 and 1981–3 respectively, and convicted of treason. The arrest and conviction of Treholt caused Evensen to completely withdraw from public life in Norway.

Over the years there was slow progress in further negotiations. A proposal in 1988 by the Soviet Union for cooperation on petroleum resources in a joint development zone was rejected by Norway. However, the 1987 Murmansk speech by then Secretary-General of the Soviet Union, Mikhail Gorbachev, served to energise the discussion, proposing - in the spirit of glasnost- that the Arctic States initiate cooperation in various fields, including protection of the environment, and in 1988 a Soviet-Norwegian Agreement on Polar Studies was reached. Another interesting development occurred in 1988, when Soviet Prime Minister Nikolai Rysjkov visited Norway to discuss the boundary dispute with the Norwegian Prime Minister Gro Harlem Brundtland. The two came to an agreement on a compromise whereby a line would be drawn somewhere in between the sector line and the median line. However, these negotiations reached a halt in 1992, and there was practically no contact between the two nations until 1995.

During a state visit to Norway in April 2010 by Russian president Dmitry Medvedev, the president and Norwegian Prime Minister Jens Stoltenberg suddenly announced an agreement on the delimitation of the maritime zones in the Barents Sea *"based on international law in order to achieve an equitable solution."*¹⁵³ Norway and Russia had much to lose economically from Arctic conflict: the Shtokman and Snøehvit fields lifted the relevance of respectively the Russian and the Norwegian side of this formerly disputed territory. They were able to forge an equitable deal for a new boundary, through a continental-shelf area rich in fisheries and oil and gas reserves. The 'Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean' was signed on September 15, 2010 in Murmansk and entered into force on July 7, 2011, ending the 40-year old border dispute. According to the agreement, the 175,000 km² area was divided almost equally between the two. Norwegian Prime Minister Jens Stoltenberg was quoted as saying that *"This solution is about more than a border line under the ocean [...] it is about developing good neighbour relations."*¹⁵⁴

In addition to international law, the two parties declared *"having taken into account the progress achieved in the course of long-standing negotiations between the parties."* This formulation also suggests that non-legal factors may have been relevant in establishing the final delimitation line.¹⁵⁵ Prime Minister Stoltenberg stated that the median line had been used as a point of departure, but that it had to be adjusted to accommodate for the longer coastlines of Russia.¹⁵⁶ It is difficult to assess to what degree geographical and geological factors have been applied, and the treaty's approximate equal division of the

¹⁵² Pål Jakob Aasen, 'The Law of Maritime Delimitation and the Russian–Norwegian Maritime Boundary Dispute', p.64.

¹⁵³ Tore Henriksen, Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', *Ocean Development & International Law*, Vol. 42, 2011, p. 52.

¹⁵⁴ BBC News Website: 'Norway Agrees Barents Sea Arctic Border with Russia', April 27th 2010.

¹⁵⁵ Tore Henriksen, Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', p.6.

¹⁵⁶ *Ibidem*, Note 54.

disputed area raises the question of whether the agreed boundary is best described as a modified median line (as argued by Norway) or a modified sector line (as argued by Russia). Nevertheless, Norwegian State Secretary Roger Ingebrigtsen states that:

*“The recent ratification of the delimitation agreement between Russia and Norway is maybe the single most important event in Norwegian foreign policy during the last years. It has removed a potential source of conflict between Norway and Russia, and is an excellent example of the cooperative spirit in the High North.”*¹⁵⁷



Figure 7. The Compromise Line

Analysis of Domestic Trends

From the 18th century it was customary for Russian Pomor fishermen to travel as far as Finnmark, the northernmost Norwegian county, whilst searching for stocks. Eventually the existence of common resources linked the Barents region together, whilst also consolidating its national division, fishermen and hunters from either side laying emphasis on the national lines of demarcation on both land and sea. In the 19th century Pomor trade was the cornerstone of Norwegian-Russian relations and was based on complementary natural resources: Norwegian fish for Russian grain and lumber. Gradually, observations were made by travel-writers, such as Samuel Laing, and diplomats, such as John Rice Crowe, a long-serving British Consul in Finnmark and from 1845 British Consul General in Norway, insinuating that Norwegian dependence on Russian provisions was a dangerous matter. The Russian authorities were accused of intending to take advantage of their position in Northern Norway to lay claim to the territories in the region. Considerable weight was given to Consul General Crowe's accounts; and towards the end of the Crimean War in November 1855, England and France signed a treaty with Norway-Sweden in which the Norwegian-Swedish authorities undertook not to cede any part of their territory to Russia. In return, the two great powers guaranteed the inviolability of Norway-Sweden. In St. Petersburg news of the treaty was considered an expression of insulting mistrust.

Relations between Norway and Russia in the north were not entirely harmonious in pre-Revolutionary times, however clashes were resolved without conflict; reinforcing the impression of a peaceful relationship between these Arctic neighbours. One explanation for this is given by the scholar Jens Petter Nielsen, namely *“the lack of symmetry in the perception each state had of the threat posed by the other.”*¹⁵⁸ The 'Russian Threat' to North Norway was, and still is, taken very seriously by the Central Norwegian authorities, although in all likelihood, it was and is non-existent. Conversely, Russia was the first major power to recognise Norway as an independent state. When a new agreement securing the integrity of Norway was signed by all the great powers, this was deemed a diplomatic victory for Russia,

¹⁵⁷ Roger Ingebrigtsen, 'The High North – Security Challenges, Address by State Secretary at the Henry Bacon seminar', Washington, May 3rd 2011.

¹⁵⁸ J.P. Nielsen, 'Russian-Norwegian Relations in Arctic Europe: The History of the “Barents Euro-Arctic Region”', *East European Quarterly*, Vol.35, No. 2, June 2001, p. 174.

as it removed the possibility that any less reliable power might occupy one of the Norwegian Arctic ports.¹⁵⁹

A trend is recognised when one compares the above with Norway's current position towards NATO. In August of 2009, the focus of the Norwegian armed forces was shifted northwards: the National Joint Headquarters was moved from Stavanger to Bodø, just north of the Arctic Circle, thus "strengthening Norway's capacity to exercise sovereignty and authority in the north by increasing operational activity."¹⁶⁰ Simultaneously, Russia's Northern armed forces are undergoing major modernisation. Two new North Pole war brigades of 3 to 5000 troops each will be set up in Murmansk and Archangelsk and Russia will expand its fleet with six new icebreakers, a move by which Moscow will take the lead concerning a permanent, military operational presence in the High North. Russia's investment in armed forces, and the conduct of large scale military exercises close to NATO borders have increased NATO's interest in the region; and Norway supports increased Arctic NATO presence in a big way. However, Russia considers any active Alliance involvement in the region as a threat.

The Barents Observer reports that "The relationship between the military forces guarding the respective sides of the border have developed positively in the years since the break-up of the Soviet Union, parallel to the development of cross-border cooperation and confidence between regular Norwegians and Russians."¹⁶¹ Russia and Norway conducted the first substantial bilateral exercise between their armed forces in June 2010. The exercise, called Pomor-2010, was exemplar of cross-border security cooperation. However, Norway is not content with good bilateral relations, as Norwegian Defence Secretary Roger Ingebrigtsen puts it: "Cooperation with Russia in the High North is important. But equally important is the presence of our allies. We believe that Norway's relationship with Russia may be best ensured within a wider multilateral framework. Allied presence in the High North is an essential part of this. It is also a precondition for our continued close cooperation with Russia."¹⁶²

As for the Domestic trends observed in the literature, one can state that Norway is primarily *accusational*, an indicator of 'Disruptive diplomatic exchange' (-1), whereas Russia has a history of *approval* towards Norwegian politics, in the form of 'Verbal Cooperation' (+2).

Analysis of International Trends

History played a prominent role in the publicity campaign for the creation of the Barents Euro-Arctic Region in 1993, which includes the northernmost parts of Norway, Sweden, Finland and Russia, and was initiated by the Norwegian government.¹⁶³ The logic behind the Barents Region concept is that contact leads to security, with interaction at various levels stimulating mutual understanding and interdependence, seen as the best guarantors of stability.¹⁶⁴

Both countries have a policy of 'use it or lose it' toward their sectors of the Arctic. Norway stating that "Our explicit political ambition has been to strengthen Norwegian policy to promote knowledge of, and activity and presence in, the High North."¹⁶⁵ They plan on projecting their presence in the Arctic: developing resources; providing patrols, deepwater ports, training facilities, and search and rescue capabilities; and defending their territory. Most of the disputed area fell within what would be considered Norwegian territory according to the relevant international treaties.¹⁶⁶ The Norwegians favoured the median line, or equidistance principle, based upon Article 15 of UNCLOS (which is mirrored in Article 6 of the 1958 Convention). However, in 1926 the Soviet Union had decreed their sector line, based on a directive by Joseph Stalin, stretching from the Soviet Western border to Finland and along the 32° 4' 35"E meridian up to the North Pole, originally meant to clarify the sovereignty over certain islands in the sea within this area i.e. following the Grand Sector Principle, which has no standing in international law. In negotiations concerning the continental shelf and economic zones in the Barents Sea with Norway, the former Soviet Union and then the Russian Federation insisted on recognition of the sector concept as constituting an exceptional circumstance for the region.¹⁶⁷ In 2007, Russia, planted its flag on the seafloor at the North Pole to demonstrate its determination to be awarded its claimed territory.

¹⁵⁹ See: Tore Henriksen, Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty'.

¹⁶⁰ Norwegian Ministry of Foreign Affairs, 'The High North, Visions and Strategies', Oslo/Bodø, Nov. 18th 2011, p. 27.

¹⁶¹ Barents Observer website: Trude Pettersen, 'Cooperation is the Key to Security and Stability', Feb. 2nd 2010.

¹⁶² Roger Ingebrigtsen, Roger Ingebrigtsen, 'The High North – Security Challenges, Address by State Secretary at the Henry Bacon seminar', Washington, May 3rd 2011.

¹⁶³ J.P. Nielsen, 'Russian-Norwegian Relations in Arctic Europe', p. 163.

¹⁶⁴ Ibidem p. 180.

¹⁶⁵ Norwegian Ministry of Foreign Affairs, 'The High North, Visions and Strategies', p.9.

¹⁶⁶ Menas Borders Website: 'Norway to open up Barents for exploration after border demarcation', Jan. 27th 2012.

¹⁶⁷ Leonid Timtchenko, 'The Russian Arctic Sectoral Concept: Past and Present', pp. 29–35.

Whereas Norway adheres to the conventions of international jurisdiction, Russia maintains the legally faulty Sector Principle. What is more, while Norway initiated the creation for a forum for *comment* and *consult*, indicators of 'Conservative diplomatic exchange' (O), Russia resorted to actions which provoked 'Non-military conflict', history dictating that the placing of a flag could not be perceived as anything other than a *threat* to Arctic sovereignty (-2).

Policy Documents

The website of the Norwegian foreign ministry states that the High North is Norway's number one foreign policy priority, as set out in the Government's first and second policy platforms. The Government launched its High North Strategy in 2006 followed by the report 'New Building Blocks in the North' in 2009 which sets out its priorities for the next 10–15 years.

The Norwegian Government's 2006 High North Strategy introduced the High North as a new dimension of Norwegian foreign policy, it highlights that Norway considers its 'presence' in the High North key "*both through maintaining settlements and through being present in the areas under Norway's jurisdiction including Svalbard, our sea areas, coastline, and settlements and towns on land.*"¹⁶⁸ Interestingly, it continues to state that "*this strategy is also an invitation to everyone with an interest in the High North*", denoting an open form of sovereignty, "*focused on utilising opportunities for more extensive international cooperation on the use of natural resources, environmental management and research through closer contact with our neighbour Russia [...]*".¹⁶⁹ One can deduce from the text that Norway is intent on building (mutual) trust. It tells us that relations with Russia form the most important bilateral dimension of Norway's High North policy. However, next to pledging to exercise its authority in the High North in a credible, consistent and predictable way, the government does not further elucidate its foreign policy concerning its neighbour than wishing to develop closer economic, industrial and cultural cooperation in the High North, especially with Russia, and telling us that it is "*dealing with the unresolved questions related to the delimitation line between Norway and Russia in the Barents Sea.*" As predicted, indicators for Norway's pre-settlement dispute policy might therefore have to be sought elsewhere; in diplomatic statements or the media.

The Russian Security Council released 'The fundamentals of state policy of the Russian Federation in the Arctic in the period up to 2020 and beyond' on September 18, 2008.¹⁷⁰ The objective of the state policy is to transform the Arctic into Russia's foremost strategic source of natural resources. In the long-term perspective, the policy aims at preserving Russia's role as a leading Arctic power. Delimitation of the continental shelf is defined as a top priority, to be accomplished by 2015. Though exclusionary, the Russian government is clear that the process has to be carried out within the framework of international law, defining the development of cooperation with other polar states on maritime boundary delimitation as a strategic priority.¹⁷¹ Emphasis is put on the need to preserve the Arctic as a zone of peace and cooperation. It also states, however, that it sees the region as a potential area for future military conflict over resources and reveals that one of Russia's major goals is to protect the country's national interests "*in various military and political situations*". It voices Russia's long-standing opposition to any future eastward enlargement of NATO, plans to move NATO military infrastructure to the borders, and to attempts to give the Alliance global functions. The strategy asserts that in its long term perspective is to gain access to energy reserves, including the continental shelf in the Barents Sea, maintaining that problems resulting from the competitive struggle for dwindling resources worldwide cannot be excluded and may even be solved with use of military force.

Norway's 'The High North, Visions and Strategies' white paper was published post-conflict settlement and sets out seven major themes as key elements in the development of current Norwegian High North policy. The very first of these is titled the "*Deepening and renewal of cooperation with Russia*" and reiterates above findings concerning Norway's being "*all too conscious of being a close neighbour of one of the world's largest arsenals of nuclear weapons, and large arsenals of nuclear waste –the fact is also that in bilateral terms we have managed the region in a spirit of "High North – low tension",*"¹⁷² i.e. a lack of confidence on the part of Norway in otherwise good bilateral relations with Russia, which is compensated

¹⁶⁸ Norwegian Ministry of Foreign Affairs, 'The High North, Visions and Strategies', p. 6.

¹⁶⁹ Ibidem, p. 7.

¹⁷⁰ Please note that as no English translation is available, I have used the summary provided by Geopoliticsnorth.org: a research programme aimed at developing knowledge about the interaction of actors in the High North, conducted by the Norwegian Institute for Defence Studies and financed through the Research Council of Norway.

¹⁷¹ Geopolitics in the High North Website: Katarzyna Zysk, 'Russia's Arctic strategy: ambitions and constraints', June 15th 2009.

¹⁷² Jonas Gahr Støre, 'NATO Parliamentary Assembly: The 77th Rose-Roth Seminar: Changes in the High North: Implications for NATO and Beyond', Tromsø, Norway, June 22nd 2011.

for by Norway's membership of NATO.¹⁷³ In order to achieve the main objectives set out in the High North policy, 15 overall strategic priorities were drawn up, the second of which was that *"The Government will ensure that Norway exercises its sovereignty and authority in the High North in a credible, consistent and predictable manner"* and the fifth of which is to strengthen and further develop cooperation with Russia. Norway has thus maintained its strong will to comment and consult with its northern neighbour, in order to construct neutral, 'Conservative diplomatic exchange'. The white paper also states that: *"The Ilulissat Declaration corrected the notion held by certain key actors that the Arctic was an unregulated area where open conflict on resources could be expected. Its emphasis on the applicability of the Law of the Sea in the Arctic Ocean lays the foundation for orderly, predictable relations between the coastal states, while at the same time signalling to the rest of the world that the coastal states are taking their responsibility seriously. One of the Government's primary aims has been to play a part in bringing about this clarification."*¹⁷⁴

The Ilulissat Declaration constitutes a *promise to comment and consult*. It opens the door to 'Conservative diplomatic exchange' and then forms a pathway to 'Verbal cooperation' (+2). As this analysis focuses on the pre-conflict resolution policy status we can conclude that from the moment of signing of the Ilulissat Declaration on May 28, 2008, Norway and Russia as signatories to the Declaration, should at least be placed in the 'Conservative diplomatic exchange' category. Norway's subsequent reiteration of this promise and its undertaking of considerable 'Cooperative action' makes it worthy of a **(1)** on the scale.

However, Russia's September 18, 2008 'The fundamentals of state policy of the Russian Federation in the Arctic in the period up to 2020 and beyond' seems quite blatantly to take back the *promise* to settle disputes in a peaceful manner! Regardless of the fact that Russia did, in fact, cooperate in the formation of a resolution to the Barents Sea Dispute, Russia will be assigned **(-1)** for its policy 'rejection', which can be placed in the category of a potentially 'Disruptive diplomatic exchange'. Perhaps the diplomatic sources will even out this discrepancy.

Diplomatic sources

Though initially strongly criticised in Norway for its alleged implicit territorial concessions to the Soviet Union, the Grey Zone Agreement has been carried over to the 'Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean'. In a report for the Fridtjof Nansen Institute, dated December 2009, researcher Kristoffer Stabrun conducts an in-depth analysis of the diplomacy leading to the provisional, practical fisheries arrangement. His report is based on classified records: stenographic transcripts of the secret meetings of the Enlarged Foreign Affairs Committee (*Den utvidede utenrikskomité*, DUUK) in the Norwegian Parliament, the *Storting*. The Committee records are an invaluable primary source, giving insight into the decision-makers' positions. Stabrun also employs Norwegian 'Cabinet Records' (*Regjeringsnotater*) and diplomatic cables to and from the Norwegian Embassy in Moscow.

The Norwegian government proposed bilateral negotiations on 22 December 1976, motivated by resource and safety concerns caused by the unclear jurisdictional situation. Norway took the diplomatic initiative, and maintained a proactive approach throughout the process.¹⁷⁵ Stabrun states that negotiations became heavily influenced by the same foreign policy objectives as the delimitation talks.¹⁷⁶ Norwegian Prime Minister Odvar Nordli feared a unilateral proclamation of the sector line, a Soviet *fait accompli* with the possible use of force.¹⁷⁷ Negotiations were thus meant to prevent Soviet unilateral action, as much as to reach an agreement. Stabrun quotes the Director of the Norwegian Institute for Defence Studies Rolf Tamnes as saying: *"the government saw no real alternative to reducing the immediate negative effects other than to reach some sort of agreement with the Soviet Union."* The Norwegian government had coalesced that a fifty-fifty partition of the disputed area would be advantageous to Norway.¹⁷⁸ However, Oslo was highly aware of possible prejudicial effects such a definition of the area would also have, namely the juxtaposition of the two delimitation principles (median and sector). Johan Jørgen Holst describes the Grey Zone case as a dilemma where *"the long-term political task of shaping the pattern of jurisdiction and*

¹⁷³ Norwegian Ministry of Foreign Affairs, 'The High North, Visions and Strategies', p. 9.

¹⁷⁴ Ibidem, p. 31.

¹⁷⁵ Kristoffer Stabrun, 'The Grey Zone Agreement of 1978; Fishery Concerns, Security Challenges and Territorial Interests', *Fridtjof Nansen Institute Report 13*, 2009, p.16.

¹⁷⁶ Ibidem, p.1.

¹⁷⁷ Ibid., p. 12. (DUUK, 29.12.76, Nordli).

¹⁷⁸ Ibid, p.14. Cites: R. Tamnes, 'Oljealder: 1965–95', *Norsk utenrikspolitisk historie*, Vol. 6, Universitetsforlaget, Oslo, 1997, p. 29.

influence in the northern area came into conflict with the more immediate task of regulating access to vulnerable resources."¹⁷⁹

Ultimately,

- prioritisation of the protection of marine resources and accommodating fishery interests coming at the expense of broader foreign and security policy goals,
- the Norwegian government's fear of conflict with the Soviet Union and
- mismanagement of the negotiation process

resulted in the Norwegian government yielding **(+1)** to 'Cooperative action' with the Soviets. The final settlement deviated considerably from the Norwegian objective of geographical balance and subsequently threatened to harm long-term Norwegian objectives in the Barents Sea.¹⁸⁰ It was argued that the settlement might eliminate the final incentive for the Soviets to reach a compromise over the delimitation line, since the Grey Zone terms were so advantageous to Moscow.¹⁸¹ Evensen continued to stand by his claim that these were indeed the best terms that Norway could have achieved.

As for the Soviet negotiators, they had gone so far as to reject the existence of a disputed area,¹⁸² and found it unacceptable to define the area by the coordinates of the disputed area, stating that it would somehow have to be 'disguised', possibly by expanding it.¹⁸³ Particularly challenging in the Russia-Norway talks were the political changes that rocked the former Soviet Union, and the negotiation process was difficult to shield from the national politics of both states. Mid-negotiations, a serious case of espionage caused a major shift in the bilateral climate. Norway's reaction to the discovery of Soviet spies was thorough, and prompted the Soviets to accuse Norway of mounting the strongest anti-Soviet campaign of all Western countries. According to the USSR, from now on, it would be up to Oslo to take steps to restore the relationship. The Norwegian management of the process was arguably characterised by time pressure caused by the fear of a negotiation stalemate in the face of a deteriorating bilateral climate.¹⁸⁴ The objective of preventing conflict was arguably about more than merely avoiding unpleasant episodes on the fishing grounds: the consequence of such episodes might mean a *de facto* establishment of the Soviet sector line. In this way techno-judicial sector interests, were caught up in high politics. In retrospect one could agree that the conditions were fixed, continued negotiations seemed unfeasible and there were only two options left – acceptance or rejection, agreement or no agreement.

Drawing a comparison with the eventual border negotiation procedure as described by Norwegian Minister of Foreign Affairs Jonas Gahr Støre, we can conclude that the USSR, and its transformation into the Russian Federation, formed the sole independent variable in both rounds of diplomatic negotiations:

*"Contributing to a final break-through were these factors: the parties were two stable states that were ready to commit; the economic potential grew, and both sides were poised to benefit from the upside; and there was sufficient trust among the negotiators to envisage a compromise."*¹⁸⁵ *"The opportunity offered to us in these times of growing interdependence is exactly the potential of maximising common interests, for Norway and Russia to explore win-win situations. The alternative is for both of us to lose out."*¹⁸⁶ Confusingly, and perhaps characteristically, despite the Russian government's retraction of its promise to conduct peaceful bilateral negotiations concerning the delimitation of the Arctic continental shelf, the Prime Minister and other high ranking officials have consistently stated that Russia respects international law through adherence to the 1958 Conventions and UNCLOS. The USSR will therefore not be assigned (-2) for its *threatening* stance in the Barents Sea Disputes, the Soviets having engaged in multiple unnecessary searches of Norwegian vessels in the Grey Zone, among other actions, following the expulsion of its spies and Norway's anti-Bolshevik policies ('Non-military conflict').

We will suffice with **(-1)** for its *rejection* of compromise and 'Disruptive diplomatic exchange', inversely proportional to Norway's *yielding* 'Cooperative action'.

¹⁷⁹ Johan Jørgen Holst, 'Norway's Search for a Nordpolitik', *Foreign Affairs*, vol.60, 1981, p. 83.

¹⁸⁰ Kristoffer Stabrun, 'The Grey Zone Agreement of 1978', p.5.

¹⁸¹ *Ibidem*, p.24.

¹⁸² *Ibid*, p.12. (DUUK, 15.12.76, Frydenlund).

¹⁸³ *Ibid.*, p.17, cites UD 31.6/12J Sovjetunionen, 'Report on the Norwegian-Soviet negotiations', cable from the Norwegian Embassy in Moscow, Jan. 7th 1977.

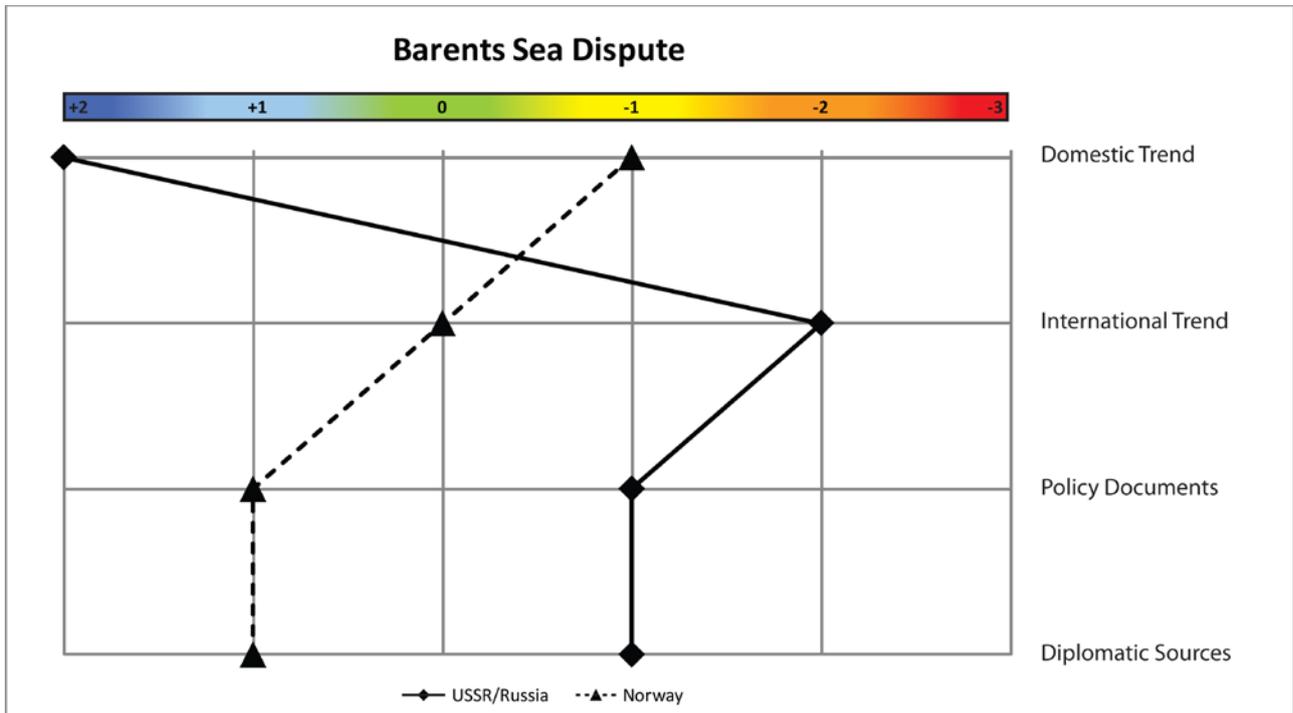
¹⁸⁴ *Ibid.*, p.23.

¹⁸⁵ Jonas Gahr Støre, 'Briefing at Harvard Law School on the Negotiations with the Russians to Conclude a Treaty on Maritime Delimitation', Dec. 6th 2010.

¹⁸⁶ Jonas Gahr Støre, 'The High North – Challenges and Opportunities. Perspectives on Norwegian-Russian Cooperation', Diplomat Academy, Moscow, March 24th 2009.

Results

As this is a control-case, results will be discussed prior to the conclusion.



There is a large disparity between the Soviet domestic trend and its international trend. As the domestic trend is based on somewhat earlier data, one can deduce that Bolshevism completely broke with the state's former foreign (trade) relations. Despite being dominated by domestic mistrust, the Norwegian trend is by far the most positively undertaking of the two. Despite accusations to the contrary by the USSR, Norway is cooperative. The mean value between the USSR, later Russia, and Norway before the 'Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean' can be drawn at 0.125.¹⁸⁷ This is within the 'Extra precautions advisory' zone (green to yellow) on the cooperation-discord continuum. This is the forecasted outcome, which lends 'predictive validity' to the method employed to answer the thesis question.

The scale results suggest that negotiations would have profited from an alternative dispute settlement mechanism (DSM). However, the Arctic Council was not yet in existence and the complications of the Cold War probably meant that the mediation of a neutral third party was impossible. Interference from NATO allies in the Norwegian–Soviet negotiations would have endangered Oslo's wish to keep the settlement removed from global high politics. The two countries have since been able to work together fruitfully in the Joint Norwegian–Russian Fisheries Commission, agreeing on quotas and regulations to be applied to Arctic fisheries. With today's benefit of hindsight, it might be argued that the criticism of the Grey Zone Arrangement was exaggerated. The agreement has since been renewed annually and the two states are to commit themselves to continuing their cooperation through the Norwegian-Russian Joint Fisheries Commission as set out in Article 1 of Annex I of the new Dispute Agreement Treaty.

¹⁸⁷ Mean: $0 + 0 - 1 + 0.5 / 4 = -0.125$

2. The Lomonosov Ridge

(See Figure 3, Territorial Claims 9 and 10)

While Russia has solved one of its disputes, its issue with Canada and Denmark continues. This dispute centres around one of the last major unexplored geological features on Earth: the Lomonosov Ridge, a 1,930km underwater mountain range running along the floor of the Arctic Ocean. The Ridge was first discovered by Soviet high-latitude expeditions in 1948 and is named after the Russian polymath, scientist and writer Mikhail Lomonosov. Although the Lomonosov Ridge has not been shown to have vast quantities of hydrocarbon or other energy resources, states are not willing to take any chances in this regard. Russia made a substantial shelf claim on December 20, 2001, on the basis that the underwater feature runs from the archipelago of the New Siberian Islands to the North Pole, before reaching the nexus of Northern Canada's Ellesmere Island. It argues that Russia owns the rights extending from the ridge, up to and including the North Pole. In 2002 the UN Commission neither rejected nor accepted the Russian proposal, recommending additional research.¹⁸⁸ Russia is expected to resubmit in this year (2012), with Canada and Denmark expected to offer evidence for their claims to the region in 2013 and 2014 respectively.¹⁸⁹

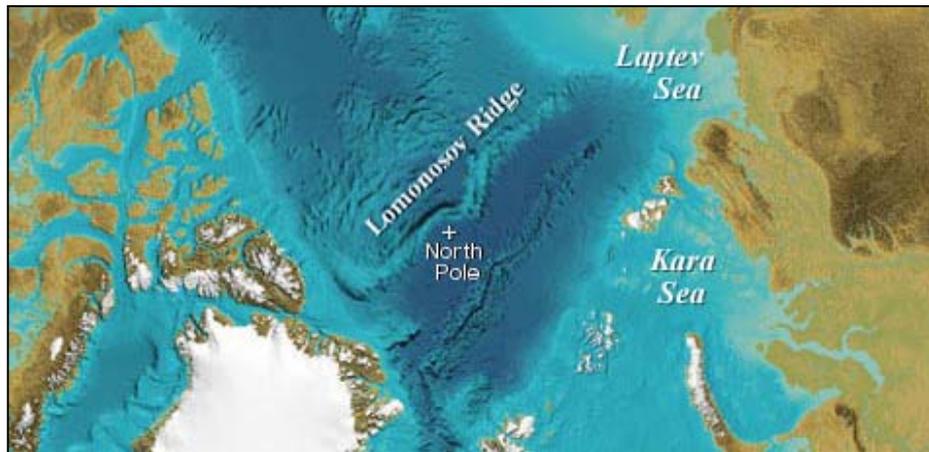


Figure 8. The Lomonosov Ridge

Introduction

In June 2007, Russian scientists returned from a Polar expedition with the news that the Lomonosov Ridge was indeed linked to Russian Federation territory, supporting Russia's previous claim over the shelf. The explorers had further used a submersible to plant the national flag on the seabed below the North Pole, in symbolic support of the 2001 claim. However, the Lomonosov Ridge's appurtenance to the continental margins of Greenland and Ellesmere Island, as well as the Siberian shelf is subject to disagreement. In 1925, Canada declared maritime boundaries at the 60th and 141st western meridians, the sector between Alaska and Greenland which converges at the pole, while the recognition of Greenland as Danish territory in 1933 suggests a potential claim between the 60th and 10th western meridians.¹⁹⁰ It is far from clear whether geological research or political consensus will play the main role in dividing the shelf. It is feared that if Russia or Canada fail to 'defend their rights' and extend their EEZs, this might lead to destabilisation of the situation in the Arctic.

Arrangements which apply to continental shelf boundaries occurring further than 350nm from the states' coastline require geological evidence proving that each state has equal entitlement to extension. To determine how far the shelf can go along submarine features, states also have to determine whether such a feature is a 'natural component of the continental margin'. Ridges that are features of the deep seabed, and therefore oceanic, may not be used to extend a continental shelf. Article 76 of UNCLOS states that the continental margin "does not include the deep oceanfloor with its oceanic ridges and subsoil thereof."¹⁹¹ For the Arctic, consensus has yet to be reached over the geological history and structure of all of its physiographic features. Data acquisition in the Arctic is a challenging and expensive undertaking. These 'ridge provisions' have become one of the most contentious and difficult aspects of applying Article 76 of

¹⁸⁸ United Nations Website: Commission on the Limits of the Continental Shelf (CLCS), 'Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Russian Federation', Press Release SEA/1729, Dec. 21st 2001.

¹⁸⁹ Menas Borders Website: 'Canada and Denmark in Hans Island negotiations', Jan. 27th 2011.

¹⁹⁰ Charlie Gillis, 'Who owns the North Pole?', *Maclean's*, Vol. 124, Issue 29/30. p. unknown (HTML source).

¹⁹¹ Mel Weber, 'Defining the Outer Limits of the Continental Shelf across the Arctic Basin', p.666.

UNCLOS.¹⁹² Russia emphasizes the qualification of the Lomonosov and Alpha-Mendeleev Ridge as 'submarine elevations' and not as 'submarine ridges'. If each of these states extends the outer limits of their continental shelves along this ridge, a significant area of overlap in jurisdiction will occur in the central Arctic Ocean.¹⁹³ But there is a possibility that the entire ridge may be encapsulated within the UNCLOS limits of the continental shelves of Canada, Denmark and Russia. If a geological connection between the Lomonosov Ridge and the continental margins of the Arctic coastal states cannot be determined, the outer limit along the ridges will be constrained at 350nm from each coastal state's baseline in accordance with Article 76 and the area beyond the constraint lines would remain as High Seas. Until there is certainty concerning the overlap, states are not obliged to report a dispute to the Commission, in accordance with Annex I of the Rules of Procedures of the CLCS.¹⁹⁴ The Commission has no role in recommending that Russia, Canada and Denmark engage in provisional, transitional arrangements. If a submission by one state is explicitly objected to by another state, owing to a boundary dispute, the CLCS will not consider the submission at all.¹⁹⁵

For a long time, international cooperation in the Arctic was largely dominated by scientists. Today, scientific measurements and criteria are essential to establishing a state's extended continental shelf, rendering scientific data consultation critical. States pursuing scientific cooperation thereby pursue significant political cooperation (*comment* and *consult*). Strong technical collaboration may render national governments more inclined to attempt to cooperate politically. Either a joint or coordinated submission belong to the transitional arrangement possibilities.¹⁹⁶ A joint submission including all concerned states would have the significant benefit of guaranteed consideration by the UN Commission. States could make a joint submission to the Commission that includes all the areas of the continental shelf which they claim, including any overlaps. The coordinated option allows for individual submissions from each state, and is therefore a less formal type of cooperation. Each state would retain its own technical team, and data sharing would be limited to the area of mutual interest.

The coordinated submission option would likely require a limited diplomatic agreement, not only because some data would be shared, but also because each country's submission may include segments that overlap with other countries' claims. Moreover, any transitional boundaries, whether established before or after any submissions, would still be subject to final diplomatic negotiations. Indeed, the commission might well find that all three claims are valid, in which case the countries will be left to resolve the overlap themselves. Additionally, the domestic challenge to any collaborative agreement is that it could be mischaracterised as a willingness on the part of national governments to 'give up' claims to sovereignty. In order to make any joint submission feasible, therefore, a critical element would be a communications strategy making clear to the media, the public, and other stakeholders the reality of the situation.¹⁹⁷

Analysis of Domestic Trends

The image of Russia as a privileged state in determining the future of the Arctic is engrained in national Russian identity and Russia's Arctic interests rest on a long national tradition and a history of claiming sovereignty over Arctic islands by discovery through Russian explorers, relative proximity to the Russian mainland, and effective occupation. The Russian Federation has the longest coastline on the Arctic Ocean and performed the first ever manned descent to the ocean bottom at the North Pole, as part of research related to the 2001 Russian territorial claim. The 2007 Arktika expedition crew consisted of the MIR-1 submersible's pilot Anatoly Sagalevich (head of the Oceanology Institute), Russian polar explorer and Vice-Speaker of the Russian Duma Arthur Chilingarov and businessman Vladimir Gruzdev. The MIR-2's crew comprised pilot Yevgeny Chernyaev, Australian adventurer Mike McDowell, and the Swede Frederik Paulsen Jr. (head of Ferring Pharmaceuticals). Chilingarov returned to a hero's welcome in Moscow not seen since Yuri Gagarin, the first cosmonaut, returned from outer space. On January 10, 2008 Chilingarov, Sagalevich and Chernyaev were awarded the titles 'Hero of the Russian Federation', "for courage and heroism showed in extreme conditions and successful completion of High-Latitude Arctic Deep-Water Expedition."¹⁹⁸

¹⁹² Jacob Verhoef, David Mosher, Steve Forbes, 'Defining Canada's Extended Continental Shelves', *Geoscience Canada*, Vol. 38, No. 2, June 2011, p.92.

¹⁹³ Mel Weber, 'Defining the Outer Limits of the Continental Shelf across the Arctic Basin', p. 661.

¹⁹⁴ Paragraph 2 of Annex I of the Rules and Procedures of the CLCS states that, in the case of a dispute, the Commission shall be informed of such a dispute and assured that the submission will not prejudice matters relating to delimitation of boundaries between states.

¹⁹⁵ *United Nations Commission on the Limits of the Continental Shelf, Rules of Procedure, Annex 1.*

¹⁹⁶ Cameron Jelinski, 'Diplomacy and the Lomonosov Ridge: Prospects for International Cooperation in the Arctic', *Master of Arts Political Science, the University of British Columbia*, Aug. 2010.

¹⁹⁷ *Ibidem*, p. 18.

¹⁹⁸ Wikipedia Website: 'Anatoly Sagalevich'.

The Arktika expedition planted a titanium Russian flag on the seabed. They also, however, left a time capsule containing a message for future generations, as well as a flag of the pro-Putin United Russia Party. It has been suggested that the Russian submission years before the ending of the deadline also resulted in large part from *"circumstances within the Government."*¹⁹⁹

This Russian action was obviously designed for domestic consumption, a commercial and party-political stunt, subject to concerns of defending notions of national pride in the Arctic. Basing party-politics on the allocation of its polar claim makes Russian domestic policy very unaccommodating to compromise. The Federation's use of the Arctic as an identity-building project, serving as *"a platform from which to reinforce a 'derzhava' (great power) mentality"*²⁰⁰ and mobilise domestic constituencies in reminiscent of Joseph Stalin's triumphal propaganda campaign of 'conquering the North', launched in 1936-1939. Naturally, a flag on the ocean bed, a demonstrative reference to the 15th century manner of territorial acquisition through national unilateral acts, constitutes a diplomatic fiasco and a *warning (-2)* that Russia is capable and willing to engage in 'Non-military conflict'. The High North is an area where the Russian government will not stand for any loss of face. Pavel Baev states that *"this model of 'control for control's sake' is in line with a state organized around the hierarchy of presidential power."*²⁰¹

Ottawa proclaimed its sovereignty over the North Pole specifically as early as the 1950s, and the Canadian Government website states that it is *"firmly exercising [its] sovereignty over [its] Arctic lands and waters – sovereignty that is long-standing, well-established and based on historic title, international law and the presence of Inuit and other Aboriginal peoples for thousands of years."*²⁰² If no other country proves, within 100 years, that they also have rights over the polar ocean floor the claim may be granted under ICJ ruling. More than half of this term has now elapsed, and Canada has started showing concern about its Northern claim. The Government of Canada has made the North a top priority, placing it higher on the agenda than it has for many decades.²⁰³

In 1953 Canada sent 87 Inuit to the far north as part of the Cold War 'High Arctic Relocation' programme in order to establish territoriality. *"The Relocated—a term still spoken in hushed terms—were then planted as human flagpoles in this desolate place."*²⁰⁴ In 1990 the government was asked to apologize to the Inuit who had been moved to the high Arctic, to provide compensation to them, and to formally recognize the residents of Resolute Bay and Grise Fiord's services to Canadian sovereignty. The federal government refused to apologize, establishing a 'Reconciliation Agreement' trust fund in 1996. Although mismanaged, the migration was never proven to have been forced upon the Inuit. It remains illustrative of the Canadian 'use or lose it' sovereignty principle.

Canadian Arctic politics keeps a highly declaratory profile, with detailed information on its Arctic (foreign) policy easily attainable from the government website, which claims that it *"is committed to helping the North realize its true potential as a [...] secure region within a strong and sovereign Canada"*,²⁰⁵ and that *"The North is a fundamental part of our Canadian heritage, our national identity and is vital to our future."*²⁰⁶ Canada's present Arctic policy dates from January 2006, when Conservative Prime Minister Stephen Harper won parliamentary elections on an Arctic 'sovereignty plan' aimed at the build-up of Canada's military defences. In the May 2011 federal election, Harper's Conservative Party again won, this time forming a majority government. Harper has declared the protection and promotion of Canada's sovereignty in the Arctic a *"non-negotiable priority"*.²⁰⁷ Securing international recognition for the full extent of Canada's continental shelf is a priority for the Government of Canada and as a result its domestic profile can be deemed inflexible to the point to being *demanding (-2)*, its defensive governmental and shipping policies could be interpreted as a willingness to engage in 'Non-military conflict' which anyone who dare disagree that Canada is the 'The True North strong and free.'

The Danish autonomous province of Greenland has the most proximate coastline to the North Pole; Danish scientists hope to prove that the Lomonosov Ridge is in fact an extension of Greenland, making Denmark another claimant to the Pole. Greenland had significant importance during WWII, due to its

¹⁹⁹ Nele Matz-Lück, 'Planting the Flag in Arctic Waters:' cites Macnab & Parson, 'Continental Shelf Submissions: The Record to Date', *International Journal of Marine and Coastal Law*, Vol. 21, 2006, p.310, with further reference in footnote 2.

²⁰⁰ Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', p. 6.

²⁰¹ Dmitri Trenin and Pavel K. Baev, 'The Arctic, A View From Moscow', p. 25.

²⁰² Canadian Government Website: 'Exercising Our Arctic Sovereignty', May 4th 2011.

²⁰³ Ibidem.

²⁰⁴ Frank Pope, 'Disappearing Arctic', *The Times Magazine*, May 14th 2011.

²⁰⁵ Canadian Government Website: 'Exercising Our Arctic Sovereignty', May 4th 2011.

²⁰⁶ Ibidem.

²⁰⁷ CBC News Website: 'Canada's PM, Arctic sovereignty 'Non-Negotiable'', Aug. 23rd 2010.

strategic location. Former US President Bush's Thule radar defence programme, the attention given to reduction of the Greenland ice-sheet in the context of global warming and last, but not least, the fact that East Greenland is ranked as potentially the 19th of the world's top-500 oil provinces has given the world's largest, yet forgotten, island a lead-role in modern Arctic geopolitics. In June 2009, the introduction of Greenlandic autonomy or 'Self Rule', with a mandate to vote on independence, made Danish arctic affairs more salient.²⁰⁸ In the event of Greenlandic independence Denmark would cease to be an Arctic state. However, Greenland would remain dependent on Denmark for human, material and institutional resources which it will be unable to muster independently.²⁰⁹ After Denmark ratified UNCLOS, the government launched its seabed research in conjunction with the Greenlandic Home Rule government. *Granting (+1) Greenland the right to Autonomy*, albeit that this did not involve relinquishing all of their say in further developments, demonstrates that Danish domestic politics is based on open and 'Cooperative action' with other regional stakeholders.

Analysis of International Trends

The Dominion of Canada and the Russian Federation are the world's two largest countries and account for more than three quarters of the coastline of the Arctic Ocean. Russia was the first state to stake a claim in the partition of the High Seas of the Arctic Ocean. As apparent from its Arctic Policy Document, Russia is a power whose economic development and political status is tightly linked to hydrocarbon extraction, and the prospect of offshore finds, however rhetorical (cf. **Figure 1**), makes the sector-related Lomonosov claim all-important. Russia's much earlier timeframe for its submission to the CSCS and its previous unilateral submission make it seem unlikely that Russia will participate in either a joint or coordinated submission, but will rather seek to present its revised submission well before Canada and Denmark have prepared theirs. Russia's gestures demonstrate that it is disinclined to agree to a shift towards equidistance-based boundaries, despite the Ilulissat promise. Literature supports the overall impression that *"Russia's Arctic policy has certain schizophrenic traits, and its spokesmen shift between blowing hot air and cold."*²¹⁰ Government officials, scholars and the media have decried Russian maneuvers in the region as belligerent. However, Roderick Kefferpütz states that *"Moscow's Arctic approach, viewed in the context of the recent Russia-Georgia war, is often demonized, while in actual fact Russian policy towards the High North does not greatly differ from those of its counterparts."*²¹¹ According to Kefferpütz, these analyses tend to focus primarily on the military aspect of Russia's Arctic policy and fail to take its finer nuances into account. Misinterpreting Russian Arctic policy could lead to detrimental policy responses and have far-reaching consequences for stability and peace in the region.

Canada's data collection programme is on schedule to meet the December 2013 deadline for submission to the Commission.²¹² Recognising that both countries could benefit from sharing costs and personnel, a Memorandum of Understanding was signed in June 2005 between the Geological Survey of Canada and the Geological Survey of Greenland and Denmark for joint surveying in the area north of Greenland and Ellesmere Island. Canada collaborated with Denmark in sharing and jointly analyzing the seismic data in the Labrador Sea. This approach is beneficial to both countries: since the interpretation of the data from each side of the Labrador Sea is consistent and in agreement, each country's submission is strengthened. They conducted joint expeditions north of Ellesmere Island called 'The Lomonosov Ridge Test of Appurtenance' (LORITA) to ascertain whether that ridge forms a natural prolongation of the North American continent.²¹³ Collaborative exercises of this kind help to avert disputes at an early stage.²¹⁴ Over the past five years, Canada has conducted seven joint surveys with Denmark, and is moving forward on joint interpretation and publication of results. *"The Government of Canada has worked closely with [...] partners in the circumpolar Arctic to ensure that the North achieves its full promise as a vibrant region within a strong and sovereign Canada."*²¹⁵ Launched in August 2010, Canada's Arctic foreign policy statement focuses on the international dimension of the Northern Strategy. *"The depth and complexity of the challenges and opportunities facing the circumpolar Arctic are significant, and many of them are best addressed by working with others."*²¹⁶ In 2007 Canadian, Russian, and Danish scientists met, and the

²⁰⁸ Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', p. 37.

²⁰⁹ Ibidem., p.38.

²¹⁰ Ibid., p. 47.

²¹¹ Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', p. 2.

²¹² Jacob Verhoef, David Mosher, Steve Forbes, 'Defining Canada's Extended Continental Shelves', p. 85.

²¹³ *The data was interpreted jointly with Denmark and the results were presented at the International Geological Congress in Oslo on Aug. 9th 2008 under the title 'Crustal Structure from the Lincoln Sea to the Lomonosov Ridge, Arctic Ocean.'* The conclusion is that there is continuity of the continental crust from the coast across the trough and onto the Lomonosov Ridge.

²¹⁴ François Côté, Robert Dufresne, 'The Arctic: Canada's Legal Claims', Parliamentary Information and Research Service Publication, Library of Parliament, Toronto, Oct. 24th 2008.

²¹⁵ Canadian Government Website: 'Exercising Our Arctic Sovereignty', May 4th 2011.

²¹⁶ Ibidem.

Russians shared detailed scientific data which had accompanied their previously confidential submission to the Commission in 2001. Canada and Russia also released a statement noting the need for cooperation and collaboration in the mapping work in the Arctic Ocean as well as a joint statement at the prime ministerial level reiterating the Ilulissat commitment to respect international law, including UNCLOS. Concretely, a Russian icebreaker was employed by Canadian and Danish scientists for survey work near Greenland.

Harper confirms that Canada has a good working relationship with Russia with respect to the Arctic; however warns that an overt NATO presence could backfire by exacerbating tensions.²¹⁷ Kefferpütz explains that enhancing NATO's role in the region without acknowledging and trying to integrate Russian interests would reinforce Russia's sense of strategic isolation.²¹⁸ NATO conducted the 'Cold Response' military exercise in 2009, and has signaled an interest in expanding into the Arctic Region. Russian military experts claim that NATO uses allegations of Russian aggression in order to justify its own military ambitions in the region.²¹⁹ Minister Harper commented that some non-Arctic members favoured a NATO role in the Arctic because it would afford them influence in an area where "*they don't belong*."²²⁰ The third stage of Russia's 'strategy until 2020' (2016-2020) envisions the transformation of the High North into the leading strategic resource base of the Russian Federation and Russia has been recognised as working to insulate the region from non-Arctic actors; by signing the Ilulissat Declaration but also by blocking the European Union's bid to join the Arctic Council.

The EU's bid for Arctic Council membership was also blocked by Ottawa. The Kremlin has had active discussions with Ottawa on the Arctic, which shares the opinion that "*Development of the North is not a hockey tournament open to all nations. Unlike the continent of Antarctica, which has no permanent population and is subject to an international treaty, the Arctic is composed of sovereign countries, which are responsible for the well-being of its inhabitants*."²²¹ Russian foreign policy is therefore not without its fair share of constructivist factors. There is more co-operation than meets the eye, although "*regrettably, the more heavy-handed approach has by far received most of the attention*."²²² Although Russia engages in cooperation with the EU concerning the Arctic through the Northern Dimension Programme and actively participates in Arctic Governance, Kefferpütz states that Russia's bilateral cooperation with select Arctic states (i.e. the Arctic 5) is detrimental to its multilateral relations. Referring to the resolution of the Barents Sea Dispute, a Russian official confirms that this position is quite deliberate:

*"All necessary compromises with its neighbours were found in negotiations: quietly, professionally and efficiently. This sets a good precedent for the others [who] have recently reiterated their commitment to Ilulissat Declaration [...] After 40 years of consultations all necessary compromises [...] were found and the agreement was reached. One problem less in the Arctic. Without 'enhancement of multilateral governance'."*²²³

Denmark joined the EU in 1973 and currently holds the Presidency of the Council of the European Union. The European Union's interest in the Arctic region began to manifest itself throughout 2008, with the Commission adopting a communication titled 'The European Union and the Arctic Region' in November of that year.²²⁴ The text proposed a systematic and coordinated response to rapidly emerging challenges.²²⁵ For the Danes, however European Union solidarity ends at the Arctic Circle.²²⁶ It was Danish Foreign Minister Per Stig Møller who summoned his Arctic littoral state colleagues to Ilulissat, Greenland in May 2008. "*As a minor player Denmark's fundamental interest is to promote cooperation and prevent tension in the Arctic. That was the main aim of the Ilulissat Directive*."²²⁷ Aimed mainly at the peaceful partition of the outer continental shelf, the Ilulissat Conference was convened in order to counteract two alternative options which were circling as crises-aversion options. The first option constituted a moratorium on the exploitation of Arctic natural resources, the second was the idea of an International Arctic Treaty; both concepts having been sourced from the 1957 Antarctic Treaty. The Danes insisted that the Arctic was not

²¹⁷ Wikileaks Website: 2010 cable (number 244500),

²¹⁸ Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', p. 9.

²¹⁹ Ibidem, p. 9.

²²⁰ Canadian Government Website: 'Exercising Our Arctic Sovereignty', May 4th 2011.

²²¹ Lawrence Cannon, 'Address by Minister Cannon to Diplomatic Academy of the Russian Ministry of Foreign Affairs on Canada's Arctic Foreign Policy,' Department of Foreign Affairs and International Trade Canada (DFAIT), No. 2010/70, Moscow, Sept. 15th 2010.

²²² Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', p. 8.

²²³ Anton Vasiliev, '*Is the Ilulissat Declaration adequate?*', Copenhagen, May 26th 2010.

²²⁴ Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', p.51.

²²⁵ Commission of the European Communities, 'The European Union and the Arctic Region', *Communication from the Commission to the European Parliament and the Council*, Brussels, Nov. 20th 2008, p. 3.

²²⁶ Der Spiegel Website: Christian Schwägerl, Christoph Seidler, 'Final Frontier Berlin Enters the Scramble for the Arctic', March 16th 2011.

²²⁷ Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', p.36.

terra nullius, as five coastal states could enforce sovereign rights over a considerable part of it, and that the conference aimed to stimulate cooperation in other fora, not to replace them.²²⁸ The Discussion Paper presented to invitees states that the objective was further to “give crucial political impetus to both future and current cooperation concerning the management of the Arctic.”²²⁹ Russia's ambassador-at-large for Arctic issues, Anton Vasiliev, has said that the “*The Ilulissat Declaration reminds us that by virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address new possibilities and challenges in the Arctic.*”²³⁰ Signatories to the Declaration renounce the option of institutionalisation of future wider cooperation as well as the establishment of new regimes independent of existing organisations.

On the 3rd of September 2007, following the Arktica expedition, a joint departmental note was forwarded to Danish foreign minister Møller with the proposal for the foreign minister's meeting in Ilulissat, which would result in a solemn declaration (*promise*) from the Arctic 5 concerning sustainable development and the application of international law.²³¹ The note further stated that the conference would ‘market’ Denmark as an active international actor with respect to peaceful international crises-management and the strengthening of international law, i.e. the procedure of *comment* and *consult* required by UNCLOS. Although indicative of a refusal to engage in *comment* and *consult* within wider multilateral fora, the Danish Ilulissat initiative ties its signatories to bilateral ‘Verbal cooperation’ through the *proposal, approval, promise and agreement* which it entails. Its scientific cooperation with Canada and the Ilulissat initiative definitely earn Denmark a **(+2)** on the international scene.

Furthermore, both Canada and Russia's *accusations* of non-Arctic and NATO interference in Arctic affairs are perhaps indicative of ‘Disruptive diplomatic exchange’, however *accusations* do not carry on to, and are even shared by, their Arctic neighbours. Additionally, considering the fact that their domestic historical trends and political climates dictate a strongly conservative approach to the Arctic, the fact that Canada and Russia have both pursued even minimal scientific cooperation (*comment* and *consult*) **(0)** is laudable.

Policy Documents

As stated in the control case study, the document, ‘Foundations of Russian Federation state Policy in the Arctic through 2020 and Beyond’, views the Arctic as a strategic resource base that it can expand by delimiting the Arctic waters and ominously refers to guaranteeing military security in various ‘military-political situations’. Even its more diplomatic statements offer little hope for developing the Arctic in a spirit of cooperation.²³² However, although Moscow officially declares goals such as “*establishing a Russian Federation Armed Forces group of conventional and other forces, military formations, and bodies in the Russian Federation's Arctic zone, capable of guaranteeing military security in various military-political situations,*” Russia's Military Doctrine, approved in February 2010, makes no reference to any threats arising from the Arctic. According to Marcel de Haas, of the Netherlands Institute for International Relations Clingendael, statements that the increased potential for conflict on Russia's borders (including the Arctic region) was to be listed as a new threat due to the struggle for energy and raw materials, aroused such controversy that they were likely included in a secret protocol instead.²³³ Russian Arctic Military Policy seems to be a red herring when it comes to an analysis of the Federation's priorities. Additionally, Russian military maneuvers in the region should not be treated as anything extraordinary. Canada holds regular integrated navy, air force, and army maneuvers in the Arctic under operation ‘Nanook’, one of the Canadian Forces major annual High North sovereignty exercises, and Denmark has also recently put forth a defense plan for the period 2010-2014, which includes the establishment of an Arctic military command structure and task force ready to operate all over the Arctic region.

The only tangible difference that can be found between the Russian versus the Canadian and Danish Arctic Policy Documents is its lack of sustainability concerns. Pavel Baev notes that “*Russia's offensive approach to the Arctic in which the key words are ‘conquest,’ ‘subjugation,’ and ‘development’—stands in*

²²⁸ Nanna Hvidt, Hans Mouritzen eds., ‘Danish Foreign Policy Yearbook 2009’, p. 57.

²²⁹ Ministry of Foreign Affairs of Denmark, Home Rule Government of Greenland, ‘Ilulissat Greenland Arctic Conference, Discussion Paper, 27-29 May 2008’, 46.B.103, 17 Jan. 2008, cited in Nanna Hvidt, Hans Mouritzen eds., ‘Danish Foreign Policy Yearbook 2009’, p.59.

²³⁰ Anton Vasiliev, ‘*Is the Ilulissat Declaration adequate?*’, Copenhagen, May 26th 2010.

²³¹ Ministry of Foreign Affairs of Denmark, ‘Konference om klimaforandring- ernes konsekvenser for Arktis/Nordpolen’, Joint Departmental Declaration note to Foreign Minister, 46.C.62.3, Sept. 2007.

²³² Pavel K. Baev, ‘The Arctic, A View From Moscow’, p. 15.

²³³ Marcel de Haas, ‘Russia's New Military Doctrine: A Compromise Document’, *Russian Analytical Digest*, Vol. 78, Clingendael, p.2.

*stark contrast to the West's concern for the fate of polar bears—in other words, its deeply felt passion for environmental causes.*²³⁴

In the same month as the Ilulissat Convention, the Danish Foreign Ministry and the Greenland Home Rule government published a joint paper titled 'The Arctic at a time of Transition: proposed Strategy for Activities in the Arctic Region', spelling out the state's Arctic interests. Mass media carried details of Denmark's 'Strategy for the Arctic' which states that Copenhagen plans to make a relevant submission to UNCLOS for claims of the continental shelf in five areas around the Faroe Islands and Greenland no later than 2014. The policy document titled 'Denmark, Greenland and the Faroe Islands: Kingdom of Denmark, Strategy for the Arctic 2011–2020' states in its preface that "*It is our common objective that the Arctic and its current potential must be developed to promote sustainable growth and social sustainability. This development must take place firstly to the benefit of the inhabitants of the Arctic and go hand in hand in safeguarding the Arctic's environment,*" and further that "*We will – through close cooperation in the Kingdom and with our international partners - work towards the common overall goal of creating a peaceful, prosperous and sustainable future for the Arctic.*"²³⁵

The Government of Canada introduced Canada's Northern Strategy in 2007 and in 2009 published 'Canada's Northern Strategy: Our North, Our Heritage, Our Future.' Canadian Foreign Minister Cannon stated that "*Our Arctic foreign policy is the international lens of our Northern Strategy.*"²³⁶ The Northern Strategy takes concrete action in four priority areas: (1) Exercising Arctic sovereignty, (2) Protecting the environment, (3) Promoting social and economic development, and (4) Improving and devolving Northern governance.

History shows that, when it comes to drawing borders, governments view scientific evidence through the lens of their specific national interests.²³⁷ Energy security rather than environmental concerns drives Russia's Arctic policy to a greater degree than Denmark and Canada's (on paper, at least). According to Anton Vasiliev, therefore, non Arctic states are "*Casting doubt on who rules the Arctic in fact pursues a practical purpose – to participate in ruling the Arctic in order to get a piece of a 'pie' of the opening Arctic riches. Simple as that.*"²³⁸ It is common knowledge that Russia lacks a technological modernization drive (a focal point for the 'reset' of Russia's relations with the West). Unfortunately, until the Federation reviews its aversion to competition, Russian strategic energy security will remain an area offering little opportunity for scientific or political cooperation. Hence the development of the Russian Arctic as a priority target in the national economic strategy is not conducive to either *comment* or *consult*, and is more likely to generate a *demand (-2)* for recognition of Russia's territorial claim. Some hope is offered by Dmitry Gorenburg is a Senior Analyst the CAN think-tank, who admits that Russia remains predominantly interested in the Arctic as an economic venture, but notes that "*unilateral posturing and talk of building up a Russian military presence —which featured prominently in Russian Arctic policy just three or four years ago — have now fallen by the wayside, in part because the authorities regard a cooperative approach as more conducive to exploration of and investment in Arctic natural resources*" and that Russia will therefore pursue its regional ambitions via negotiations and peaceful dispute resolution.²³⁹ Gorenburg's analysis: that the need for international cooperation on energy extraction has increasingly come to shape Russian Arctic policy, leading to a noticeable shift from confrontation to cooperation over the last three years, is not reflected in Russia's policy documents.

Scientific cooperation between Canada and Denmark includes climatology, ecosystem monitoring, and joint scientific research on the continental shelf. Protecting the environment is Canada's second priority area and respect for the Arctic's fragile climate, environment and nature is the Danish Kingdom's third overall goal.²⁴⁰ Further references to the role of Science and technology as an important foundation for Canada's Northern Strategy priorities are promising, for states pursuing scientific cooperation (*comment* and *consult*) **(0)** such as Canada and Denmark thereby facilitate significant political cooperation. The LORITA website states that Denmark and Canada's joint effort to map the sea bed "*will also reduce the environmental impact by half*"²⁴¹. Although engaging in cooperative (scientific) action, neither Canada nor Denmark are obliged to *yield, grant* or *reward* in the process, as they both stand to gain from

²³⁴ Dmitri Trenin and Pavel Baev, 'The Arctic, A View From Moscow', p.25.

* Denmark and Canada are also involved in a less harmonious territorial dispute over Hans Island.

²³⁵ Ministry of Foreign Affairs of Denmark, Department of Foreign Affairs Government of Greenland, Ministry of Foreign Affairs Governments of the Faraoes, 'Kingdom of Denmark Strategy for the Arctic 2011-2020', Aug. 2011., p.7.

²³⁶ Canadian Government Website: Lawrence Cannon, 'Address by Minister Cannon to Diplomatic Academy of the Russian Ministry of Foreign Affairs on Canada's Arctic Foreign Policy', Speech No. 2010/70, Sept. 15th 2010.

²³⁷ Dmitri Trenin, 'The Arctic, A View From Moscow', p. 11.

²³⁸ Anton Vasiliev, 'Is the Ilulissat Declaration adequate?', Copenhagen, May 26th 2010.

²³⁹ Dmitry Gorenburg, 'Russia's Arctic Security Strategy', *Russian Analytical Digest*, No. 96, May 12th 2011, p.13.

²⁴⁰ 'Kingdom of Denmark Strategy for the Arctic 2011-2020', p. 11.

²⁴¹ The Continental Shelf Project Website: 'LORITA-1, Fieldwork during April/May 2006 north of Canada/Greenland'.

cooperation. This excludes them from the 'Cooperative action' category as defined in the cooperation-discord continuum, as their policies are in harmony concerning this specific territorial claim.

Diplomatic sources

Ambassador-at-large Anton Vasiliev has complained to the Canadian media that Canada's Conservative government vilifies Russia in an attempt to boost their domestic support.²⁴² In the Canadian and Russian (English-language) media the tone is indeed belligerent and *accusational*. The Russian response is therefore quite naturally to *accuse* (as exemplified above), *reject*, *protest and deny*. The possibility of a joint submission including Russia has thus been dashed by the lack of a positive Canadian communications strategy.

However, an event dating from the beginning of this year (2012) suggests that the Canadian and Russian governments are keen on *avoiding* diplomatic tension as best they can. Media reports on Sub-Lieutenant Jeffrey Paul Delisle, a Canadian naval intelligence officer who currently stands accused of providing state secrets to a 'foreign entity', point to Russia as the probable recipient. However the claim that Ottawa has expelled four Russian embassy staff in connection to the still-unfolding espionage case is being denied by the Russian Embassy, while the Canadian government has publicly refused to confirm or deny reports that the foreign power Delisle is accused of sharing information with could be Russia.²⁴³ The Huffington Post reports on sources citing that Canada is publicly downplaying Russia's role in the matter to avoid a tit-for-tat escalation that could see Canadian diplomats expelled from Russia.²⁴⁴

We can conclude therefore that in the diplomatic scene, despite media which is full of *demands*, *warnings* and *threats* indicative of 'Non-military conflict', Canada and Russia take pains to avoid exceedingly 'Disruptive diplomatic exchange', even when traditionally warranted. Assuming that this called for a fair amount of behind-the-scenes *comment* and *consult*, Canada and Russia are maintaining a 'Conservative diplomatic exchange' on the matter (0).

Similar (probably coordinated) *Notes Verbales* from both Canada and Denmark in response to the Russian Federation's Arctic continental shelf submission in 2001 refer to their inability to formulate an opinion over the claim without additional supporting data.²⁴⁵ They further both specify that this should not be interpreted as "*either agreement or acquiescence*", and reiterate that "*the actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between states with opposite or adjacent coasts or the delimitation of the continental shelf*".²⁴⁶ Both Canada and Denmark hereby make use of the loophole through which the Arctic 5 maintain their sovereign rights to solve border disputes bilaterally.

According to Dmitry Gorenburg, Russia pursued a fairly confrontational strategy in the region prior to 2008, as it sought to maximize its claims to potential seabed resources in the Arctic. However, the Russian government has recently focused on reaching agreements with neighboring Arctic states to delimit maritime boundaries, hereby creating conditions welcoming for international cooperation in the development of these resources.²⁴⁷ *Nota Bene* that Norway has great expertise in offshore natural gas drilling in Arctic conditions. In the days after Russia reached an agreement with Norway on demarcating their Arctic border in the Barents Sea, Canada and Russia jointly announced that they *would abide* by any UNCLOS decisions in solving their dispute over the Lomonosov Ridge.²⁴⁸ Rather than leaping to the conclusion that this entails a *promise*, I would recommend that Canada and Russia be considered as beginning to consider *yielding* an amount of sovereignty. This fits with the image of Russia and Canada making diplomatic compromises in the face of probable deadlock. They will therefore be assigned **(1)**.

Denmark has not as yet made any promise to abide by an UNCLOS ruling on its future claims; however it seems unlikely that Denmark would opt-out of any cooperative agreement made between Canada and Russia. The expectation is therefore that Denmark would also *grant* UNCLOS arbitration **(1)**.

²⁴²Mike Blanchfield, 'Russian envoy blames tough talk from Tories on Cold War 'inertia'', *The Canadian Press*, Ottawa March 3rd 2012.

²⁴³Huffington Post Website: 'Jeffrey Delisle Spy Case: Russia Embassy Diplomats Expelled By Ottawa over Alleged Espionage', Jan. 20th 2012.

²⁴⁴*Ibidem*.

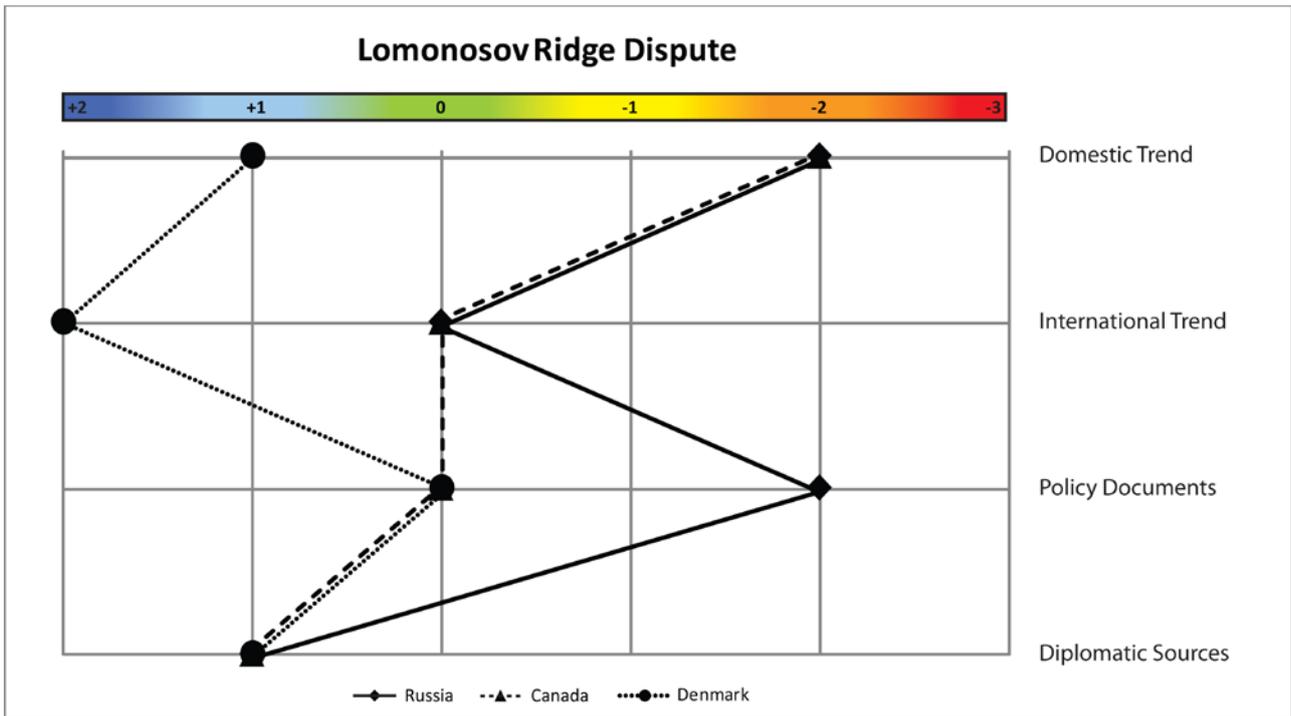
²⁴⁵ UN Website: Canada, *Note verbale* regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf.

²⁴⁶ UN Website: Denmark, *Note verbale* regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf.

²⁴⁷ Dmitry Gorenburg, 'Russia's Arctic Security Strategy', p.12.

²⁴⁸ BBC News Website: 'Russia and Canada seek UN ruling on Lomonosov Ridge', Sept 16th 2010.

Results



The mean value between Russia, Canada and Denmark concerning the Lomonosov Ridge dispute can be drawn at zero.²⁴⁹ Canada follows a noteworthy course, following similarly negative to neutral domestic and international trends as Russia, and switching to the neutral to positive policies and diplomacy of Denmark. Russia and Denmark stand proportionally opposed to each other in every situation except diplomacy. It is interesting to see that all three states converge at this point. One could deduce that Canada's role is that of the middle-man or go-between.

²⁴⁹ Mean: $-1 + 0.6 - 0.6 + 1 = 0$

3. The Beaufort Sea

(See Figure 3, Territorial Claim 7)

Figure 9.

Together with the Lomonosov Ridge, a further three territorial issues remain disputed in Canada: the status of the Northwest Passage, of Hans Island and of the Beaufort Sea. In order to have treated all five Arctic littoral states, the last case study will focus on Canada's dispute with the United States over the delimitation of the Beaufort Sea. The Beaufort Sea boundary dispute has been called "the most significant of the immediately relevant, unresolved overlapping claims in the Arctic Ocean."²⁵⁰ Although Canada is progressing towards its 2013 submission deadline, it is still uncertain how Canada and the US will resolve their maritime boundary dispute in the area.

Introduction

The dispute in the Beaufort Sea concerns the maritime extension of the land boundary between Yukon and Alaska. Canada claims that the maritime boundary runs along the 141st meridian as an extension of the territorial boundary agreed with the United States. However, the US rejects this position, arguing that the maritime boundary must be determined by the equidistance principle; tracing a line at equal distance from the closest land point of each state.²⁵¹ This disagreement, whereby Canada and the US promote the use of the delimitation method that will best serves their respective interests, creates a wedge-shaped area of about 21,000 km² extending to the north of the terminus of the Alaska-Yukon land border up to the limit of the two coastal states' EEZs (i.e. 200nm). The discovery of large oil reserves at Prudhoe Bay in June 1968 precipitated high levels of exploration activity in the North.²⁵² The extensive search for hydrocarbons on land and along the corresponding section of the Beaufort Sea continental shelf brought the unresolved delineation back to the states' attention. The prognosis is that 'peak oil' market prices will soon justify extraction.

Recent seabed mapping has now also brought the extended continental shelves into play, the rights over which might stretch for 300-400nm from the shore.²⁵³ Paradoxically, the bases for their claimed delimitations within their EEZs favor the *other* party only shortly after extending further than 200nm. Following the equidistance line preferred by the US, we see that it changes direction and begins tracking toward the northwest. Interestingly, therefore, it would not benefit either state to extend their presently claimed lines using the same rationale. Neither Canada nor the US has as yet articulated its position on the boundary beyond their current EEZs. According to James Baker and Michael Byers, the differences between the states' legal principles concerning maritime boundary delimitation within 200nm and those applicable to delimitations further out will either complicate things considerably, or facilitate a negotiated solution, as what appeared to be a zero-sum situation might now offer an opportunity for a creative trade-off.²⁵⁴



²⁵⁰ James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', *Ocean Development & International Law*, Vol. 43, 2012, p.71.

²⁵¹ François Côté, Robert Dufresne, 'The Arctic: Canada's Legal Claims'.

²⁵² Christopher Kirkey, 'Delineating maritime boundaries: The 1977-78 Canada-U.S. Beaufort Sea Continental Shelf Delimitation Boundary Negotiations', *Canadian Review of American Studies*, Vol. 25, Issue 2, 1995, p. unknown (HTML tekst, source: Academic Search Elite Database).

²⁵³ James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', p.71.

²⁵⁴ *Ibidem* p.74.

Canada and the US have been mapping the seabed beyond their EEZs since 2008, as preparation to assert jurisdiction over the extended continental shelf and, in Canada's case, to submit scientific data to the CLCS. Although the Canadian 2013 deadline is a pressing factor, states have the option of making a partial or preliminary submission, which can then be updated after the 10-year deadline has passed. The submission could exclude data with respect to the disputed zone, thus enabling the Commission to proceed and the country in question to meet its submission deadline. Baker and Byers note that, while this option may seem attractive at first glance *"it has the unfortunate consequence of leaving the outer limit of the extended continental shelf undetermined in an area where the problem that the Commission is intended to prevent—uncertainty and potential contestation of maritime zones—already exists and could well worsen."*²⁵⁵ Moreover: *"Creative solutions as opposed to a single maritime boundary are also available to the parties, though some might be as complicated to negotiate as a single boundary itself."*²⁵⁶

In order to complicate matters further, the Beaufort Sea, the only disputed Arctic region where oil is more than a theoretically relevant factor (c.f. **Figure 1**), does not have a formally established EEZ due to the fact that the US has not acceded to UNCLOS. Despite repeatedly stating that the Treaty's major provisions reflect customary international law, the US cannot receive recommendations from the CLCS. It can, however, still prepare data for the purpose of defining the outer limits of the continental shelf. Despite being unable to bring a case, it could request UNCLOS arbitration. An International Court ruling holds the potential of being injurious to either state's legal position in future cases of maritime boundary delimitation. The states have therefore engaged in bilateral negotiations.

Analysis of Domestic Trends

On July 27, 1977 Canadian Prime Minister Pierre Trudeau and President Jimmy Carter announced the appointment of Marcel Cadieux and Lloyd Cutler as principal negotiators, charged with reaching comprehensive settlements which would facilitate agreements on shared access zones, including the Beaufort Sea maritime boundaries and related resource issues. The respective national positions were discussed over the course of meetings held alternatively in Ottawa and Washington, from August 15, 1977.

The official Canadian government position is that the 141st meridian should serve as the boundary. This is consistent with Canada's overall historical legal approach to delimiting maritime boundaries. However, Canada's position is complicated by the fact that it used the 141st meridian in conjunction with the legally unstable sector theory, thus defining its jurisdiction all the way to the North Pole. In the meanwhile, Canada's attitude toward the sector theory has shifted to what Baker and Byer call 'studied ambiguity', and in a 2006 speech in Nunavut Prime Minister Stephen Harper apparently rejected the Sector theory, saying that *"[Canadian] jurisdiction extends outward 200 miles into the surrounding sea, [...] No more. And no less."*²⁵⁷ However, the roots of Canada's claim go deeper still, as they are based on a treaty between Russia and Great Britain dating from 1825. Russia sold Alaska to the United States in 1867 while Great Britain handed its Canadian possessions to Canada when it became an independent country. Successive Canadian governments have maintained that the language contained in the 1825 'Treaty between Russia and Great Britain' and in the 1867 'Cession of Alaska Treaty' clearly suggests that the 141st meridian is equally applicable to the Beaufort Sea, a standpoint reminiscent of the Grand Sector Theory. Furthermore, Canada has used the 141st meridian as a functional western boundary in the Beaufort for such purposes as the creation of an Arctic Waters Pollution Prevention Zone and the granting of hydrocarbon exploration licences.

Another matter of no small importance for the Canadian government is the Inuvialuit Settlement Area, which is located on the Beaufort coast. According to the Inuvialuit Final Land Agreement, Canada is required to fulfill obligations toward the Inuvialuit, including the maintenance of sustenance harvesting rights and the protection of hunting and fishing rights from the effects of hydrocarbon exploration.

During the negotiations, Canada was prepared to accept a compromise jurisdictional boundary along the geographic coordinates put forth by the US, providing that the US would grant Canada similar boundary concessions in the Gulf of Maine and off the Strait of Juan de Fuca.²⁵⁸ Canada also suggested a shared access hydrocarbon zone in the Beaufort Sea that would be largely located on the American side of an agreed boundary, as *"co-operative sharing of trans-boundary resources would take the sting out of any*

²⁵⁵ Ibid., p. 85.

²⁵⁶ Ibid., p.89.

²⁵⁷ Stephen Harper, 'Securing Canadian Sovereignty in the Arctic', Aug. 12th 2006, Iqaluit, Nunavut.

²⁵⁸ Christopher Kirkey, 'Delineating maritime boundaries', p. unknown.

accommodation on the boundary."²⁵⁹ This was a critical precondition for Canadian flexibility as any other option would place the Trudeau government in the politically undesirable position of having to defend an agreement that favoured American maritime jurisdictional interests in the North over those of Canada, with nothing to show for it. Although economic access rights would not fully satisfy the Canadian Inuit Land Agreement requirements, they could have contributed significantly toward securing the agreement of the Inuvialuit people to a new boundary treaty.

The United States approached the Beaufort Sea maritime boundary and accompanying shared access zone issues with an altogether opposing perspective. US officials firmly insisted that the equidistant principle applied to delimitation of the Beaufort Sea, and that Canada should accept the American position.²⁶⁰ The US has consistently put forth a position based on the 1958 Continental Shelf Convention which, despite not having ratified it, it interprets as customary international law, as well as criteria established by the ICJ.²⁶¹ In so doing, the US insists that the boundary must be arrived at using 'equitable principles' and argues that it follows an equidistant line to the northeast of the 141st meridian. In order for the US to accommodate Canada in the Gulf of Maine and off the Strait of Juan de Fuca, it would also have had to depart from its official international legal position. The Cutler team staunchly believed that compromise would be viewed as predominantly favouring Canadian interests and that it would not stand a chance of being politically supported both in the interagency process, and by Congress. Moreover, while intent on reaching agreements on all outstanding boundary disputes, the United States was opposed to any kind of package-deal. "As a first principle," David Colson confirmed, "we were not in favour of linking one boundary settlement to another [...] we did not want to give something away for the sake of simply gaining a concession on another boundary issue."²⁶² The US proposal did not include forthcoming boundary accommodations on any of the other three outstanding maritime boundaries, and thereby offered no reasonable quid pro quo.

US officials were also unwilling to recognize the 141st meridian as laid down in the 1825 and 1867 treaties as applicable for the purposes of delimiting maritime boundaries. As we have seen in the previous chapter, this is quite understandable as the sea was *terra communis omnium* at the time the treaties were made and maritime borders were unheard of! However, how can the US dispute the application of the 1825 treaty to one maritime zone, when it has already accepted that, in effect, the very same treaty defines the maritime boundary with in another, namely its western border with Russia? Camille Antinori observed that "The United States is virtually saying that the same treaty that delimits a maritime boundary in the west does not delimit a maritime boundary in the east."²⁶³ Finally, freedom of movement by indigenous peoples for the purposes of hunting and fishing is already quietly tolerated in the northern portions of the land territory and along the coastline between Alaska and the Yukon Territory, which could have formed a precedent for shared economic access.²⁶⁴

The US and Canadian legal positions are long standing and mutual cooperation between Ottawa and Washington was ultimately not forthcoming due to unbridgeable historical differences. In political terms, the joint mandate of the respective bargaining delegations had been too ambitious, and so was gradually reduced in scope with substantive attempts to resolve the Beaufort Sea boundary being cast aside. The US and Canada both prohibited any work in the disputed zone until the border was resolved. According to Christopher Kirkey, "the existence of an interdependent relationship, coupled with differing national economic, political, and legal positions, best explains why a neutral outcome was produced by negotiations over outstanding Canada-U.S. Beaufort Sea issues."²⁶⁵ In this analysis however we must say that as both states had just as much to lose, and both states were equally basing their claims on either faulty or unratified legal bases, Canada was in fact engaging in impressively 'Cooperative action' by offering to *yield* to the US border claim in the form of a package deal **(1)**, while the US staunchly *rejected* any compromise ('Disruptive diplomatic exchange') **(-1)**.

Analysis of International Trends

²⁵⁹ Erik B. Wang, 'Canada-United States Fisheries and Maritime Boundaries Negotiations: Diplomacy in Deep Water,' *Behind the Headlines* Vol. 38, No. 6, 1981, p. 8.

²⁶⁰ Christopher Kirkey, 'Delineating maritime boundaries', p. unknown.

²⁶¹ *Ibidem*.

²⁶² *Ibid*.

²⁶³ Camille M. Antinori, 'The Bering Sea: A Maritime Delimitation Dispute Between the United States and the Soviet Union,' *Ocean Development and International Law*, James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', Vol. 18, 1987, p.34.

²⁶⁴ James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', Note 138.

²⁶⁵ Christopher Kirkey, 'Delineating maritime boundaries', p. unknown.

The US only became an Arctic nation 145 years ago and, having remained inactive in the region for too long to now assume a leading role, is not a superpower when it comes to the Arctic. In recent years, the focus upon America's dependence on imported hydrocarbons has sharpened its interest in the Alaskan continental shelf. However, Washington's relatively new Arctic policy is paralyzed by two conflicting environmental, economic and legal priorities. America's long-awaited ratification of the international UNCLOS is an important issue in this respect, transporting the effects of a non-partisan domestic issue into the international arena. Though the US adheres to all UNCLOS provisions, having played a significant role in authoring a revision of the treaty in 1994, final ratification has remained blocked up till today. John B. Bellinger III, former legal adviser to the secretary of state, elucidates that *"The misconception is that signing UNCLOS would be a vast giveaway of American sovereignty."*²⁶⁶ Congressional opponents argue that its framework risks compromising US sovereignty by making international disputes subject to third-party arbitration. They also worry that UNCLOS provisions could bind the US to excessively strict international environmental and humanitarian regulations.²⁶⁷

As a matter of principle, the US has consequently rejected the notion of dividing the Arctic into sectors or spheres of influence, preferring to consider the high seas as excluded from the territorial sea or internal waters of a state.²⁶⁸ Unlike the rest of the Arctic 5, the US along with a number of non-Arctic states (including the United Kingdom, China, and Sweden) would rather establish an open-access regime modelled on Antarctica. Accordingly, the US considers the Lomonosov Ridge a *"freestanding feature in the deep, oceanic part of the Arctic Ocean Basin, and not a natural component of the continental margins of either Russia or any other State"*²⁶⁹ and is currently involved in a dispute with Canada over the Northwest Passage, which it deems international waters. Although his administration played an integral role in negotiating the treaty, President Reagan, who pursued development of a 600-ship navy and believed in a policy of 'peace through strength',²⁷⁰ ultimately did not sign it due to the clause regarding the administration of the high seas. Eventually, this contested issue was negotiated-out by the Clinton Administration which subsequently signed and submitted it to the Senate for ratification which, however, still did not occur.

By signing the Ilulissat Declaration the US has expressed the view that a new, different legal governance regime for the Arctic is not desirable. It has also stressed *"the importance of promoting stability of relations in the oceans, and of complying with the provisions of Article 76 of the 1982 United Nations Convention for the Law of the Sea"*²⁷¹ and during the Ilulissat meetings the Bush administration stated that it was willing to accede to UNCLOS.²⁷² Despite designating the legislative initiative as 'urgent' and enjoying the full support of the Democratic Party and of many Republican Senators, President George W. Bush was unable to get Republican Senators to ratify the treaty. The same Senators who refused to consent to Obama's 'New START treaty' on atomic proliferation, Senators Mitch McConnell and John Kyl, led the Senate Republican protest. According to Kevin Matha of the Foreign Policy Association, one reason why Obama was successful with New START, whereas Bush failed with UNCLOS, is that the military lobbied effectively for New START's passage.²⁷³

Currently, UNCLOS ratification has virtually universal support from all interested parties, including environmental groups, the American Petroleum Institute, the oceanographic research community, and the US Navy.²⁷⁴ The US military relies heavily on its ability to freely navigate on and over the sea, and has thus been a strong advocate of UNCLOS. Also, in the absence of treaty law, the US relies on customary law, which changes according to states' practices. Under customary law, the Pentagon claims, countries often make *"unreasonable and irresponsible claims on marine territory that frustrate US military action."*²⁷⁵ When asked in confirmation hearings at the Senate Armed Services Committee for his nomination to become Commander of Pacific Command, whether he supported US accession to UNCLOS, Admiral Samuel J. Locklear stated: *"It has been my observation as a naval officer for many years as this subject has been debated, that having this tool or being a member of this important United Nations*

²⁶⁶ Vanity Fair Website: Alex Shoumatoff, 'Dispatch: The Arctic Oil Rush', May 2008.

²⁶⁷ National Defense University (NDU) Website: 'The Arctic Circle: Development and Risk', p.6.

²⁶⁸ Akehurst's Modern Introduction to International Law, p.184.

²⁶⁹ UN Website: Representative of the United States of America to the United Nations, *fiction* regarding the submission made by the Russian Federation to the Commission on the Limits on the Continental Shelf, 2002.

²⁷⁰ Accuracy in Media Website: Cliff Kincaid, 'Obama's Ambitious U.N. Treaty Agenda', July 8th 2009.

²⁷¹ UN Website: Representative of the United States of America to the United Nations, *fiction* regarding the submission made by the Russian Federation to the Commission on the Limits on the Continental Shelf, 2002.

²⁷² Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', p. 48.

²⁷³ American Geological Institute, Government Affairs Program Website: David Applegat, 'Congressional Action Alert: Lone Senator Holds up Law of the Sea Treaty Ratification', March 31st 1999.

²⁷⁴ Wikipedia Website: United-States non-ratification of UNCLOS.

initiative will provide a better framework globally [...] It allows us a better mechanism to have a legal discussion and prevents us from having miscalculated events. It overall provides a better framework for future security." In April 2011 President Obama reshuffled the geographic partition within his command structures, planning to increase and modernize the military and giving Northcom responsibility over the Arctic region. However, Obama also recognises that UNCLOS is a worthy substitute for a strong US navy. As Susan Biniaz of the US Department of State explained during a July 17, 2007, appearance at the American Enterprise Institute: "We don't have the capacity to be challenging every maritime claim throughout the world solely through the use of naval power. And [we] certainly can't use the Navy to meet all the economic interests."²⁷⁶

Edwin D. Williamson, who served as State Department Legal Advisor from 1990 to 1993, further states that "LOST is not the answer to maritime conflicts, but it is an important tool to have. It should not be blindly ratified, but if combined with reform of our domestic energy policy, ratification would strengthen important navigational and economic rights for the U.S."²⁷⁷ The US, like other countries, has an inherent interest in knowing, and declaring to others, the exact extent of its sovereign rights in the ocean, hence 'international recognition is important in establishing the necessary stability for development, conservation and protection of these areas.'²⁷⁸

Despite the all of the above, opponents to UNCLOS ratification state correctly that the US already honors almost all the provisions of the treaty. For practical purposes, they argue, the positives of ratification do not outweigh the possible negatives. Yet, speaking at her Senate confirmation hearing as nominee for US Secretary of State on January 13, 2009, Senator Hillary Clinton said that ratification of UNCLOS would be a priority for her.²⁷⁹

In July 2007, Canadian and American officials discussed respective continental shelf research programs, including opportunities for collaborative data acquisition in areas such as the western Arctic where both countries need to collect data. In early October 2008, Canada and the US completed a joint seabed-mapping mission in the Beaufort Sea. Canada has conducted four joint surveys in the western Arctic (2008–2011) using the Canadian icebreaker CCGS Louis S. St-Laurent and the US icebreaker USCGC Healy. The US Extended Continental Shelf Task Force is an interagency body, chaired by the Department of State with co-vice chairs from the National Oceanic and Atmospheric Administration and the Department of the Interior. Ten additional agencies participate in the Task Force, including the Executive Office of the President, the Joint Chiefs of Staff and the US Navy. The Project Website states that "This collaboration continues to save millions of dollars for both countries, provide data both countries need, ensure that data are collected only once in the same area, and increase scientific and diplomatic cooperation."²⁸⁰ The Canadian Government website describes these efforts as a 'teaming up', with the Honourable Lisa Raitt, Minister of Natural Resources stating that "This project is another example of the incredible degree of cooperation between the Canadian and U.S. governments."²⁸¹ Both Canada and the US are seeking to resolve the dispute through a "collaborative process based on a shared commitment to international law. Canada is working with Denmark, Russia, Norway and the United States to undertake this scientific work."²⁸² Peter J. May et al. state that "Given the existence of a strong constituency for defining Arctic policy in research terms, one can expect a continued push for the science-driven research agenda in Arctic policymaking."²⁸³ We have already stated that pursuing scientific cooperation (comment and consult) can facilitate significant political cooperation. Kathryn Moran and John W. Farrell state that "Research serves our nation by providing information for policy decisions, and, in turn, policy choices influence the type of research supported by the nation."²⁸⁴ Considering the recent shift in delineation-where Canada has suddenly been given a new negotiating position, it is likely that Canada will maintain 'Conservative diplomatic exchange' while awaiting scientific results (O).

The fact that Canada and the US are cooperatively mapping the extended continental shelf in the Beaufort Sea raises the possibility that geological and geomorphologic features will play a larger role in international delimitation²⁸⁵ than the state's respective unconforming domestic stances on the law of the

²⁷⁶ Accuracy in Media Website: Cliff Kincaid, 'Obama's Ambitious U.N. Treaty Agenda', July 8th 2009.

²⁷⁷ Wall Street Journal Website: Edwin Williamson, 'Law of the Sea Treaty is Good for U.S.', Oct. 6th 2011.

²⁷⁸ The Extended Costinental Shelf Project Website: Welcome.

²⁷⁹ Hillary Rodham Clinton, 'Transcript of Senate confirmation hearing as nominee for Secretary of State', January 13th 2009.

²⁸⁰ The Extended Costinental Shelf Project Website: Welcome.

²⁸¹ Canadian Government Website: Lisa Riatt, 'Canada and U.S. to Conduct Second Joint Survey of Extended Continental Shelf in the Arctic', July 28th 2009 .

²⁸² Canadian Government Website: 'Canada's Northern Strategy'.

²⁸³ Peter J. May, Bryan D. Jones, Betsi E. Beem et al., 'Policy Coherence and Component-Driven Policymaking: Arctic Policy in Canada and the United States', *The Policy Studies Journal*, Vol. 33, No. 1, 2005, p.42.

²⁸⁴ Kathryn Moran and John W. Farrell, 'US Arctic Research Policy', *Oceanography*, Vol. 24, Issue: 3, 2011, p.18.

²⁸⁵ James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', p.78.

sea. Professor Byers concludes that, due to the new situation arising from the extended continental shelf, "Regardless of which method you use [to determine the boundary], each country is going to get a substantial amount of what is the new disputed sector - the perfect recipe for a negotiated compromise."²⁸⁶ For the purpose of this analysis, therefore, we can conclude that the US is overcoming serious domestic paralysis just by cooperating in the international area, and that the US is working up to abandoning its singular 'peace through strength'²⁸⁷ approach and *yielding (1)* to UNCLOS, in order to stimulate 'Cooperative action' in the Arctic.

Policy Documents

Key documents for the assessment of US Arctic policy objectives are the 2010 National Security Strategy and National Security Presidential Directive (NSPD) 66 aka Homeland Security Presidential Directive (HSPD) 25, or simply, the 'Arctic Region Policy'. Just weeks before his presidency concluded, on January 9, 2009 the Bush Administration issued the Arctic Region Policy, the first reassessment of US Arctic policy since 1994. The Policy defines US interests in the Arctic in the light of several developments, including "Altered national policies on homeland security," and "a growing awareness that the Arctic region is both fragile and rich in resources." Due to its bipartisan flavour, the Policy is considered relevant to current and future US administrations and is the official, active Arctic policy being pursued by the Obama Administration and its departments.²⁸⁸ In early 2009, the Obama Administration established an interagency policy committee, chaired by National Security staff, to coordinate its implementation.

In both the Canadian and the US Arctic policy documents, sovereignty and national security are the primary objectives.²⁸⁹ President Harper confirms that "*The geopolitical importance of the Arctic and Canada's interests in it have never been greater.*"²⁹⁰ In spite of obviously existing disputes, the Canadian Strategy claims that Canada's sovereignty over its Arctic lands and islands is 'undisputed' but that Canada's first priority will be to "*seek to resolve boundary issues in the Arctic region.*"²⁹¹ However, as Canada's second priority is stated as "*securing international recognition for the full extent of our extended continental shelf*"²⁹² Canadian Arctic Policy does not seem leave much room for negotiation, it's formulation comes down to a *demand* for recognition **(-2)** less conducive to diplomatic exchange than to 'Non-military conflict.'

The US Arctic Region Policy specifically identifies freedom of the seas as a top national priority as well as preserving the United States' ability to exercise its rights to navigation and over flight, including through strategic straits, i.e. by securing free passage of vessels across Canada's archipelagic waters. It further states that the US is "*prepared to operate either independently or in conjunction with other states to safeguard these interests.*" The Department of Defense explains that 'these interests' explicitly include such matters as missile defense and early warning; deployment of sea and air systems for strategic sealift, strategic deterrence, maritime presence, and maritime security operations; and ensuring freedom of navigation.²⁹³ It argues that "*increasing all domain awareness and preserving the global mobility of U.S. vessels and aircraft will help prevent and deter conflict.*"²⁹⁴ However, the US Arctic policy also calls for the US to, "*assert a more active and influential national presence to protect its Arctic interests and project sea power throughout the region.*"

According to the National Security Strategy, the United States has an enduring interest in working collaboratively with other nations to address the emerging challenges arising from the impacts of climate change and globalization on the Arctic.²⁹⁵ The US Arctic policy, however, while underlining the need for international cooperation in the region and promoting the US ratification of UNCLOS, retracts the Ilulissat promise and *warns (-2)* for unilateral strategic deterrence ('Non-military conflict'). Reginald Smith of the National Defence University Press confirms that "*The United States must move outside the construct of unilateral action in order to preserve its sovereign rights in the Arctic, capitalize on the opportunities*

²⁸⁶ BBC News Website: Sian Griffiths, 'US-Canada Arctic Border Dispute Key to Maritime Riches', Aug. 2nd 2010.

²⁸⁷ Anchorage Daily News Website: Rick Steiner, 'President Obama should reject last-minute arctic policy', Jan. 19th 2009.

²⁸⁸ Lassi Heininen, 'Arctic Strategies and Policies; Inventory and Comparative Study', The Northern Research Forum & The University of Lapland, Aug. 2011, p. 55.

²⁸⁹ Ibidem, p. 55.

²⁹⁰: cites Stephen Harper speech at Inuvik, Northwest Territories, Aug. 28th, 2008.

²⁹¹ Government of Canada Website: 'Exercising Our Arctic Sovereignty', May 4th 2011.

²⁹² Government of Canada Website: Arctic Foreign Policy Booklet.

²⁹³ Department of Defense, Report to Congress on Arctic Operations and the Northwest Passage, May 2011, p.7

²⁹⁴ Ibidem, p.9

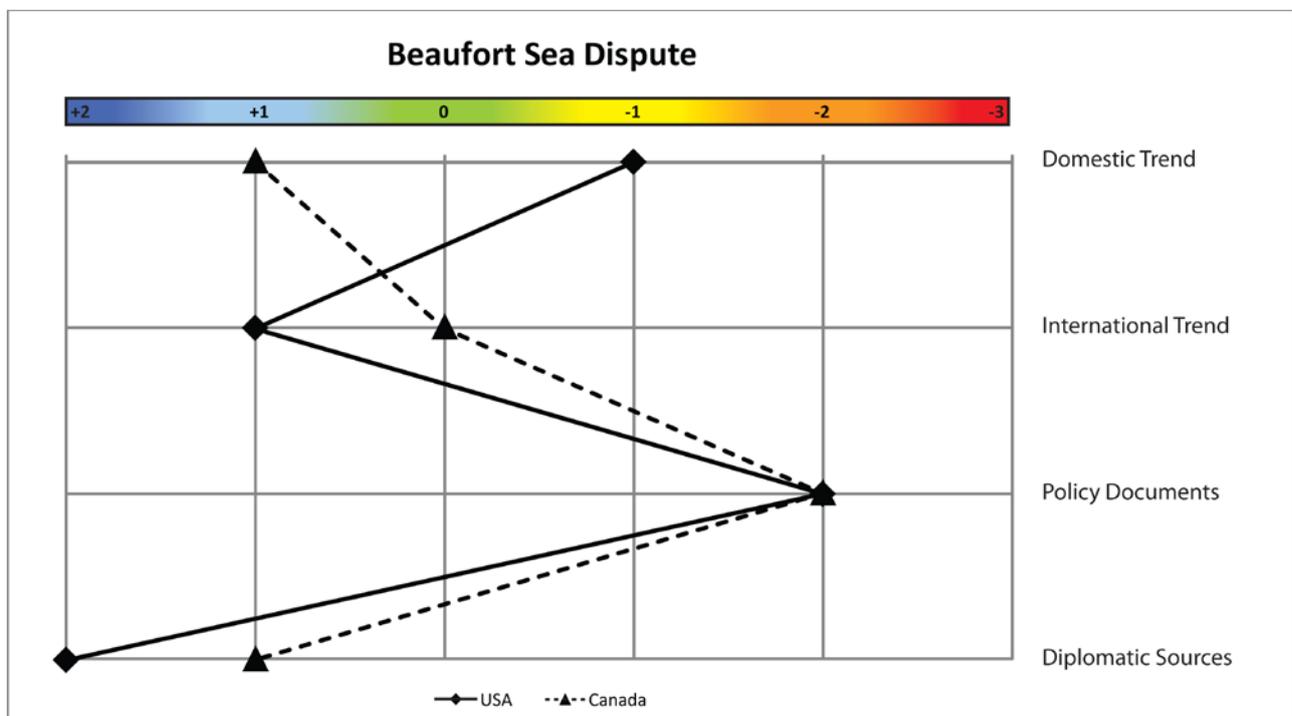
²⁹⁵ Ibid., p.7.

available, and safeguard vital national interests in the region."²⁹⁶ Moreover, it forms a direct affront to the Canadian Arctic sovereignty principle, which deems the Northwest Passage internal waters.

Diplomatic sources

When Minister Cannon released Canada's 'Arctic Foreign Policy Statement in May 2010, his speech in Washington DC included a public invitation to negotiations on the Beaufort Sea boundary, soon after, it was revealed that a 'dialogue of experts', had begun in Ottawa with the approval of Mr Cannon and US Secretary of State Hillary Clinton.²⁹⁷ These discussions are currently being conducted behind closed doors. However, some information can be gleaned from cables released by Wikileaks. These show that in 2008 the US embassy in Ottawa kindly requested Washington to delay a new presidential directive requiring the United States to assert a more active and influential national presence to protect its Arctic interests. The embassy asked Washington agencies to delay the release of the new policy until after the October 14 election, strongly believing that the release of the new Arctic Regional Policy Directive during Canada's federal election campaign had the potential to insert the US as an issue, hereby negatively impacting on US-Canadian relations.²⁹⁸ This was duly granted. The impression gained is that there is more than meets the eye in US-Canadian relations. Canadian government policy generated by and/or capitalising on domestic pressure arising from nationalist sentiments is not carried over to the diplomatic level, where 'Cooperative (verbal) action' takes place in the form of requests by Canada (2) granted by the US (1) in order to foster a cooperation-friendly climate.

Results



We see six positive to neutral values, and only two negative values, which converge at 'Policy Documents'. Canada is the US' closest partner in the Arctic, both geographically and culturally. Despite a negative American domestic trend, based on political choices made in the past, and policies which seem belligerent on paper, the will to cooperate is strong with these two. Even so, the mean value between the US and Canada concerning the Beaufort Sea Dispute must be drawn at zero²⁹⁹ as the states' cooperative stance in international and diplomatic settings is not reflected in their government's policy documents. This is suggestive of domestic support bases which are antagonistic to cooperation.

²⁹⁶National Defense University Press Website: Reginald R. Smith, 'The Arctic: A New Partnership Paradigm or the Next "Cold War"?', Issue 62, 3rd Quarter 2011.

²⁹⁷BBC News Website: Sian Griffiths, 'US-Canada Arctic Border Dispute Key to Maritime Riches', Aug. 2nd 2010.

²⁹⁸BBC News Website: Meirion Jones, Susan Watts, 'BBC Newsnight: Wikileaks cables show race to carve up Arctic', May 12th 2011.

²⁹⁹Mean: $0 + 0.5 - 2 + 1.5 = 0$

6. Conclusion

The question posed in this thesis was:

To what degree are conflicting Arctic territorial sovereignty claims emerging as a potential security threat?

The answer was attained via the following sub-questions:

- *Can territorial expansion be considered the prime source of disharmony in the Arctic?*
- *What role does sovereignty play in the Arctic?*
- *Does the combination of these two factors (territory and sovereignty) combine in such a way as to form a relevant security threat?*

Having found that territory rights indeed formed the root-source of contention in the Arctic, territorial dispute case-studies were conducted in order to evaluate the status quo of Arctic international relations. Historical and present-day jurisdiction pertaining to the sovereignty principle was presented and this served as a knowledge-base during the case study analyses, demonstrating the relevance of sovereignty as a basic component of Arctic political history and reality.

An analysis method was designed and employed in order to discern whether disputes arising from territory and sovereignty issues were likely to develop into either security threats; by being in the 'orange-red zone', cooperative situations; in the 'navy-light blue zone' or whether they were in a neutral, 'green-yellow zone'. A control case presented a dispute from the past, the known outcome of which correlated with the predictions produced, thus providing predictive validity to the method. The two contemporary case studies involved all of the states which are currently dealing with boundary disputes, i.e. four of the five Arctic littoral states. Trends in the way of increased cooperation or conflict concerning border disputes among Arctic states were predicted to hold substantial consequences for the balance of power in the region, affecting patterns of innovation in governance in the Arctic today and shedding light on the Arctic of tomorrow. The results attained through the analysis of case studies provide a solid basis from which to hypothesize on how governance of the Arctic could evolve.

According to this analysis, the Lomonosov Ridge and the Beaufort Sea Disputes involving Russia, Canada, Denmark, and Canada and the US respectively, are both currently in the 'green zone.' This suggests that the combination of Arctic territory and sovereignty do not combine in such a way as to form a relevant security threat. However, we cannot exclude the potential for conflict in the Arctic to a convincing degree either. As the current major Arctic disputes are located within the green zone, we can conclude that the ability of current institutional bonds to safeguard future Arctic cooperation sufficiently is not guaranteed *per se*, as we would have, had they been in the navy or light blue zones. Although one may not assume a security threat relevant enough to condone the formation of new, hard-law resolution procedures, the neutral zone indicates that a tipping toward the positive side of the scale is perhaps as likely as towards the negative. In the 2008 Ilulissat Declaration, the five Arctic coastal states pledged to subject the Arctic Ocean and its adjacent seas to the comprehensive legal framework provided by the law of the sea and their commitment to settling overlapping claims in an orderly way. Where a value of (+1) would have suggested a tendency towards the positive side of the scale and subsequent cooperation in line with the Ilulissat promise, and a value of (-1) a tendency towards the negative side and the promotion of discord despite Ilulissat, the neutral value suggests a balance, which could as yet be precarious. Yet, the green zone is promising; as it shows that the general trend in international relations is one of 'Conservative diplomatic exchange'.

So do results achieved in the past hold guarantees for the Arctic future? A lesson learned from the Barents Sea Dispute is that if one state takes the initiative, the other may follow. The Barents Sea treaty also demonstrates how *"good neighbours in the North can, peacefully and with patience, resolve issues of overlapping claims in accordance with international law."*³⁰⁰ Yet the wider impact of the Norwegian-Russian treaty on Arctic maritime delimitation is uncertain. Peter Malanczul notes that future judicial and arbitral decisions might clarify the UNCLOS concept of an 'equitable' solution, but that that what is

³⁰⁰ Jonas Gahr Støre, 'NATO Parliamentary Assembly: The 77th Rose-Roth Seminar: Changes in the High North: Implications for NATO and Beyond', Tromsø, June 22nd 2011.

equitable in one geographical situation will not be in another.³⁰¹ In other words, the literal and figurative 'grounds on which' each case is decided will be unique and incapable of serving as a precedent for other cases. This viewpoint insinuates that state practice with regard to the delimitation of outer continental shelves remains too limited and variable to generate customary international law. However, although the Norway-Russia delimitation treaty will probably have few concrete implications for other existent maritime delimitation disputes, it *will* be relevant in delimitation processes: as while a maritime delimitation agreement is only binding for the contracting parties, all agreements contribute to the 'state practice' which is the basis of evolutionary customary international law.

The matter of compliance is the single greatest challenge facing international law. Oran Young was right when stating that a comprehensive, legally binding treaty regime or Charter for the Arctic Ocean beyond national jurisdiction, or another legally binding arrangement for ecological preservation in the face of growing economic activity, are not the way to go in this respect.³⁰² Regardless of whether it would be politically feasible, this study shows it to be unnecessary. By facilitating accord, international legal sovereignty, combined with the habit of discussing the future of the region in a diplomatic setting, offers the possibility for rulers to secure external resources that can enhance their ability to stay in power and to promote the security, economic and ideational interests of their constituents; they can enhance security by reducing uncertainty about the commitment of other actors.³⁰³ The analysis results give us no reason to believe that individual nations will act without regard to international law. Based on the political behavior of the Arctic states, we can conclude that the 'race' for possession of the North Pole is unfolding with relative civility. While institutionalists are right in recognizing and respecting the importance of non-state actors, the continuing role of state sovereignty in establishing the rules of the game applicable to Arctic governance must still be acknowledged.

The situation in the Arctic today does not resemble that of Antarctica during the late 1950s, when the United States and the Soviet Union saw demilitarisation as a win-win option.³⁰⁴ Demilitarization is not a realistic option for the Arctic, which remains a theatre of operations for nuclear-powered military systems. While this thesis shows that war is not a likely outcome, should legal division of the region not yield cooperative results, the importance of military forces in the region might increase substantially. The Ilulissat Declaration states that no *new* legal framework will be set up to govern the Arctic. Good governance in the Arctic is therefore best served by honouring, implementing, and enhancing existing treaties among nation states. The existing capacity to address matters of governance in the Arctic is substantial, a legal framework and overarching legal regime being present in UNCLOS. However, only the freedoms and rights pertaining to navigation, over flight, submarine cables, and certain other lawful uses are subject to compulsory dispute settlement in UNCLOS.³⁰⁵ Opinions vary over whether the absence of an effective legal regime is complicating or facilitating the peaceful drawing of maritime boundaries in the Arctic, which, as this thesis shows, is hanging in the balance.

We can state that as Arctic international relations generally centre on 'Conservative diplomatic exchange', they are disposed to preserving existing conditions, preferring gradual development to abrupt change. Despite outspoken sensitivity to sovereignty principles on the part of Arctic states, the existing conditions are stable. Concerning the question to what degree conflicting Arctic territorial sovereignty claims are emerging as a potential security threat, we can reply that Arctic territorial sovereignty claims are a *latent*, indeed fundamental and historic, as opposed to an *emerging* factor in Arctic politics. They are a matter of dialectics and not of actions, either cooperative or disruptive, Instrumental or Rational (c.f. Max Weber).

In *The Republic*, Plato explains that dialectic involves dialogue (represented by the 'green zone indicators' *comment* and *consult*) between two or more people (here, Arctic states) holding different points of view about a subject (e.g. Arctic territory rights), who wish to establish the truth of the matter by dialogue (or 'Conservative diplomatic exchange'), with reasoned arguments (i.e. legal and scientific). Plato presents the alternative (reminiscent of the option of a legally binding conflict settlement via UNCLOS) thus:

"[...] we shall have to count up and measure the goods listed in the respective speeches and we shall forthwith be in need of judges to decide between us."

³⁰¹ Akehurst's *Modern Introduction to International Law*, p.196.

³⁰² Oran R. Young, 'Whither the Arctic? Conflict or cooperation in the circumpolar north', *Polar Record*, Vol.45, 2009, p.76.

³⁰³ Krasner cites Fowler and Bunk 1995, p. 142, in *Sovereignty: Organized Hypocrisy*, p. 17.

³⁰⁴ Oran R. Young, 'Whither the Arctic? Conflict or cooperation in the circumpolar north', p. 76.

³⁰⁵ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea*, Cambridge University Press, 2005, p. 141.

A striking correlation with the Arctic 5's Ilulissat Declaration can also be found in the next sentence: *"But if [...] we come to terms with one another as to what we admit in the inquiry, we shall be ourselves both judges and pleaders."* *"Quite so," he [Thrasymachus] said. "Which method do you like best?" said I. "This one," he said.*³⁰⁶

The relevance of dialectics in Arctic relations is large and stands in stark contrast to 'debate', as it is not a zero-sum game. Interdependence, for the purposes of this paper, was understood to signify a mutual dependence of at least two parties on each other for the fulfilment of their national goals. Each actor is vulnerable to the action of the other(s) for the preservation or advancement of its national interests. Christopher Kirkey asserts that an interdependent relationship exists among a set of actors when the absolute or relative gains are higher and/or the costs are lower-in terms of fulfilling their national interests through interstate cooperation-than through autonomous action.³⁰⁷ Furthermore, states favour negotiation over litigation as it enables them to retain more control over the delimitation process. The Ilulissat Declaration embodies these two statements, additionally forming a pledge of in co-operation between the other circumpolar states. Elizabeth Riddell-Dixon adds that *"[t]he prospects of dealing with [claim overlaps] in an orderly manner appear promising in light of the high degree of cooperation evident in Canada's relations with Denmark, the United States, and Russia in the preparations of their respective submissions."*³⁰⁸ Room for compromise weakens the potential for discord. However, in order to decisively tilt Arctic relations towards the cooperative side of the scale, this thesis suggests providing a more prominent 'forum for dialectic'.

Various academics have proposed options for filling the legal void present in UNCLOS in a manner which would accommodate Arctic state sovereignty, and foster dialectic. Wei-en Tan and Yu-tai Tsai suggest that disputes over the boundaries of the Arctic continental shelf should be subject to a single professional and effective dispute settlement mechanism (DSM). Stating that *"A peaceful and cooperative resolution is not out of the question, but, [...]will require an untraditional legal regime similar to that used by the WTO to settle disputes and an enormous amount of willingness on the part of disputing states."*³⁰⁹ They suggest employing an established DSM as a way to help contending states enter into a more conciliatory atmosphere. *"A DSM gives the parties involved more power and greater control over resolving their dispute, encourages problem-solving approaches, and also tends to enhance cooperation and preserve relationships."*³¹⁰ Based on the Dispute Settlement Understanding (DSU) reached in the Uruguay Round of the GATT, the DSM would be conducted via a Panel and Expert Review Group (ERG) composed of 'qualified experts in the field of inquiry'.

Similarly, Jordan Hellman puts forward the idea of Alternative Dispute Resolution (ADR)³¹¹ via a panel of conciliators or arbitrators with the necessary ability to analyze specialized geoscientific evidence and make an equitable decision. He states that ADR *"tends to enhance cooperation and to be conducive to the preservation of relationships"*³¹² and thus Arctic states might *"reach settlements that are more creative, satisfactory and lasting than those imposed by the court."*³¹³

Oran Young states that *"During the period following the winding down of the cold war, the Arctic has become a locus of energetic and often innovative initiatives relating to the governance of human-environment relations."*³¹⁴ He in turn, proposes a tripartite 'governance complex' for the Arctic involving distinct efforts to: (1) stabilise jurisdictional claims and boundary issues, (2) enhance the role of the Arctic Council as a facilitator rather than a regulator, and (3) to integrate a collection of issue-specific regulatory regimes.³¹⁵

³⁰⁶ Raymond Geuss, Quentin Skinner eds., Cambridge Texts in the History of Political Thought: Plato, the Republic, Cambridge University Press, 2000, 348a & 348b.

³⁰⁷ Christopher Kirkey, 'Delineating maritime boundaries: The 1977-78 Canada-U.S Beaufort Sea Continental Shelf Delimitation Boundary Negotiations, *Canadian Review of American Studies*, Vol. 25, Issue 2, 1995, p. unknowm (HTML text, source: Academic Search Elite Database)

³⁰⁸ Cameron Jelinski, 'Diplomacy and the Lomonosov Ridge: Prospects for International Cooperation in the Arctic', Master of Arts Political Science, the University of British Columbia, Aug. 2010, p.31, cites Elizabeth Riddell-Dixon, 'Canada and Arctic Politics: The Continental Shelf Extension,' *Ocean Development and International Law*, Vol. 39, 2008, p.351.

³⁰⁹ Wei-en Tan, Yu-tai Tsai, 'After the Ice Melts: Conflict Resolution and the International Scramble for Natural Resources in the Arctic Circle', p. 95

³¹⁰ Ibidem, p. 95

³¹¹ Karl Mackie, David Miles, et al., The ADR Practice Guide: Commercial Dispute Resolution 9 (2d. ed. 2000). *ADR is defines as: "A structured dispute resolution process with third-party intervention which does not impose a legally binding outcome on the parties."*

³¹² Jordan Hellman, 'Racing for the Arctic? Better Bring a Flag,' p.636.

³¹³ Ibidem, p.635.

³¹⁴ Oran R. Young, 'Whither the Arctic? Conflict or cooperation in the circumpolar north', p.82.

³¹⁵ Ibidem, p. 77.

Although the 1996 Ottawa Declaration established the Arctic Council as “a high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States”³¹⁶ the common Norwegian, Danish and Swedish objectives for their Arctic Council chairmanships, spanning from 2006 to 2013, do not mention territorial claims issues. This can be explained by the fact that the Arctic Council has traditionally been concerned with ‘human’ and ‘environmental security’ and territorial and sovereignty issues have been kept off the table.³¹⁷ The Arctic Council cannot determine these issues, as peace and security were left out of its mandate: the US vehemently opposing such an initiative, as international law dictates that territory and boundary claims be adjudicated by the United Nations, an international body whose jurisdiction is not regional, but global.

The above combines to suggest that Arctic conflict resolution and regional peace building would benefit from enhancement of the role of the Arctic Council. As for international mandate, “*The Arctic Council would be a fitting venue to discuss peace and security, not only because it includes the world’s two largest nuclear superpowers, but also because it includes as Permanent Participants the indigenous peoples who call this territory their homeland.*”³¹⁸ The Arctic Council is the most suitable institutional setting for any sort of Panel or Expert Review Group (ERG) as suggested by Tan and Tsai as well as the most suitable source of ‘qualified experts’ or arbitrators in the field of Arctic science, as put forward by Hellman. These two factors correlate to Plato’s ingredients for dialectic: a forum for dialogue and (expertly) reasoned arguments. What’s more, this thesis has shown that states hold a strong preference for a regional, as opposed to global, approach to Arctic sovereignty negotiations, validating Oran Young’s institutionalist preference for the Council as a facilitator for good governance in the Arctic, or as Plato puts it, the method Thrasymachus ‘likes best’. It would therefore appear that the Arctic Council has what it takes to stimulate dialectic and therefore *could* play a positive role in enhancing cooperation in the Arctic by managing eventual dispute settlement mechanisms. This thesis takes the above assertion a step further by stating that it *should*. As Janice Gross Stein, director of the Munk School of Global Affairs at the University of Toronto and Thomas S. Axworthy, senior distinguished fellow at the same university, state: “*2011 is not 1996 [c.f. signing of the Ottawa Declaration] and, as world interest on the Arctic swells, peace and security need to be on the agenda to ensure the Arctic Council remains relevant.*”³¹⁹

Timo Koivurova, director of the Northern Institute for Environmental and Minority Law at the University of Lapland Arctic Centre, states that “*The Arctic Council may not like it [...] But if it continues without a legal mandate, there is great danger of it becoming a façade under which unilateral and uncoordinated development-oriented parties of the Arctic states can proceed.*”³²⁰ However, regardless of this ‘sovereign hypocrisy’, the strength of the Arctic Council lies in its role as a policy shaping rather than decision-making body and the Westphalian sovereignty principle dictates that it is not likely to acquire the authority to make binding decisions any time soon. Instead of holding on to this static perception of hard vs. soft law, this thesis wishes to underscore the capacity of the Council to address emerging Arctic issues in a way that is conducive to far-reaching interstate cooperation, and recommends that the Arctic Council be considered the ‘forum for dialectic’ concerning Arctic boundary disputes.

In January 2011 EKOS Research Associates Incorporated published an Arctic Security Public Opinion Survey titled ‘Rethinking the Top of the World’, commissioned by The Walter and Duncan Gordon Foundation and The Canada Centre for Global Security Studies at the Munk School of Global Affairs. Respondents from the eight member states that comprise the Arctic Council were asked if they feel that the Arctic Council should also cover areas such as peace-building and military security in addition to its current focus on environmental matters. Results show very strong grass-roots support for the Arctic Council, particularly among Canadians. A majority of respondents in all countries would like to see the Council’s role expanded to include peace-building, but there are strong divisions over whether it should cover military security.

³¹⁶ The Arctic Council Website: About.

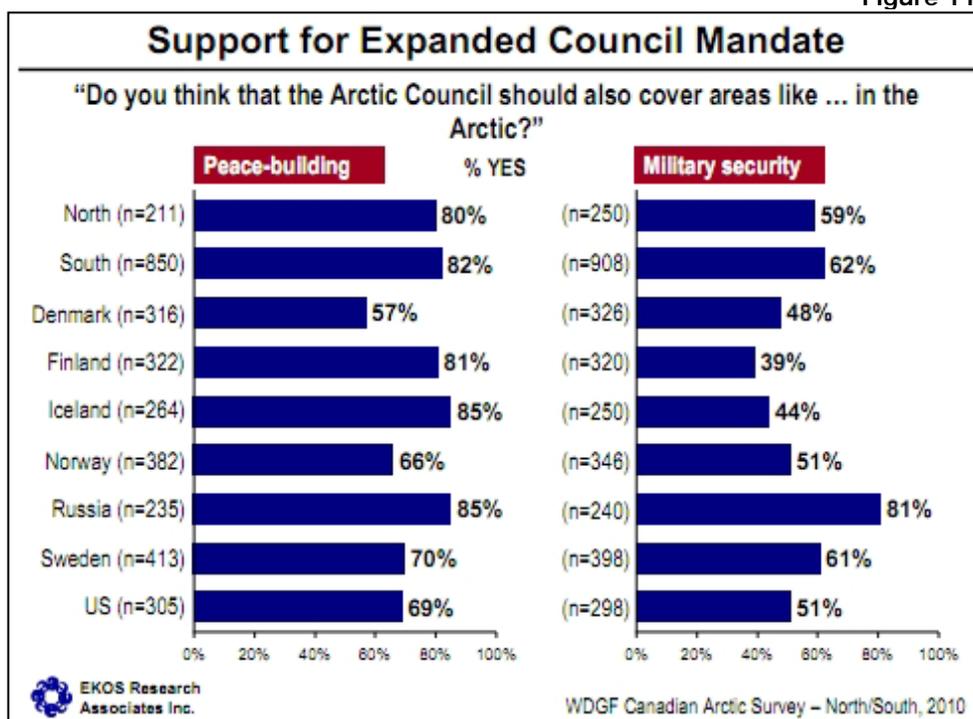
³¹⁷ Fair Observer Website: Heather Nicol, ‘The Arctic: Conservation and Co-existence’, 20 Jan. 2012.

³¹⁸ The Globe and Mail Website: Janice Gross Stein, Thomas S. Axworthy, ‘The Arctic Council is the best way for Canada to resolve its territorial disputes’, *Globe and Mail*, Jan. 25th 2011.

³¹⁹ Ibidem.

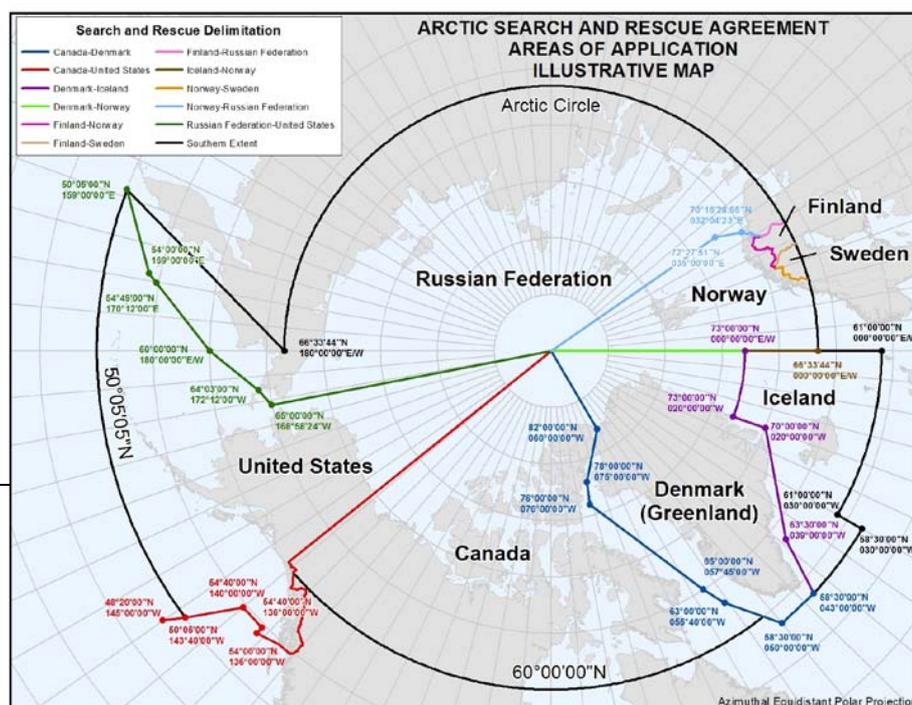
³²⁰ Timo Koivurov, ‘Alternatives for an Arctic Treaty – Evaluation and a New Proposal’, *Review of European Community & International Environmental Law*, Vol. 17, Issue 1, 2008, p.26.

Figure 11.



The impression that the Council will expand its consensus-building role is also supported by recent developments on a higher political scale. In spite of its sovereignty-related restrictions, the Arctic Council supervised the first international agreement designed exclusively for the Arctic region, and successfully brought it to completion at a ministerial meeting in Nuuk, on May 12th 2011. Here, the Arctic 8 signed the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (ASAR). According to Erik Jaap Molenaar, Senior Research Associate at the Netherlands Institute for the Law of the Sea (NILOS) at Utrecht University and Adjunct Professor at the University of Tromsø: “The successful conclusion of this negotiation-process reflects a clear determination to reform the international regime for the Arctic.”³²¹ Most significantly, Article 9 of the ASAR Agreement obliges signatories to maintain widespread cooperation on search and rescue. The Arctic Portal website confirms that “the Agreement will not just work as an important instrument for saving properties and lives, but also to further forge the cooperation of the Arctic states.” Indeed, a newly established Task Force on Marine Oil Pollution Preparedness and Response (MOPPR) appears to be following in a consensus-based direction under the auspices of the Arctic Council.

Figure 12.
The ASAR Agreement



³²¹ Willem Barentsz Poolinstituut Website: Erik Jaap Molenaar, ‘The Developing Legal Regime in the Marine Arctic’.

The May 12th Nuuk ministerial meeting also resulted in The Nuuk Declaration, which constitutes a decision by the Ministers of the Arctic Council member states to *"Strengthen the capacity of the Arctic Council to respond to the challenges and opportunities facing the Arctic by establishing a standing Arctic Council secretariat, hereinafter the Secretariat, in Tromsø, Norway to be operational no later than at the beginning of the Canadian Chairmanship of the Arctic Council in 2013"*. To aid in the erection of the permanent Secretariat, the declaration also establishes a Task Force to: *"Implement the decisions to strengthen the Arctic Council, [...]"*³²² The Task Force for Institutional Issues (TFII) held its third meeting in Tromsø last February. The second Senior Arctic Officials meeting of the Swedish Chairmanship will be held in Stockholm this week (March 28th – 29th, 2012). More than 150 participants representing all the Arctic states, Permanent Participants, working groups and observers will gather to discuss the continued and new priorities of the Arctic Council. Point 2.2 on the agenda concerns the TFII, and it will be interesting to see whether the establishment of an institution could eventually lead to the creation of a 'forum for dialectic' on delicate sovereignty issues. Canada will chair the Arctic Council in 2013 and thus will have an opportunity to set the agenda. An Arctic Sovereignty Policy Review, prepared for the Ad Hoc Committee of Deputy Ministers on the Arctic, states that Canada's main priority should be to lobby member-states to cooperate on security issues as a way to avoid any future tensions created by the increased militarization in the region. The Canadian government is in agreement that *"There is no existing intergovernmental forum for cooperation on security issues in the Arctic and adding it to the Arctic Council's responsibilities would create one,"* and that *"This initiative would strengthen the Council and push the members to cooperate."*³²³ The Russian Federation would be grateful for a shift of focus away from NATO and towards a strictly regional form of Arctic security cooperation, but is Canada willing to risk diminishing its bilateral relationship with the US in order to shift the balance of Arctic international relations towards a more actively cooperative dialectic?

The Arctic is a source of inspiration for legal innovation, as testified by the legal status of the Arctic as a *terra sui generis*. The option given above is an example of a creative solution which states may employ in order to facilitate cooperation in the High North. At the top of the world, the Arctic Ocean is cold, remote, and covered in darkness for half the year. It is testing enough to reach the ice-covered ocean, even harder to get under it and down to the seabed. The region's geopolitical challenges are as relevant as its geological mysteries: they are the implications of the development of the planet's last unspoiled wilderness.

³²² Arctic Council Website: Cites 'Nuuk Declaration' in 'Task Force for Institutional Issues', Dec. 29th, 2011.

³²³ Anneta Lytvynenko, 'Arctic Sovereignty Policy Review; Prepared for the Ad Hoc Committee of Deputy Ministers on the Arctic', April 5th 2011, p.14.

7. Further Study

The Arctic Council has been divided into two camps: the Arctic 5 and the rest. The former are considered to be the actors with legitimate sovereign interests, authorized to act on the stage of international law, while the latter are excluded, along with any NGO's. This sends a potentially mixed message regarding the continuing significance of regional political cooperation and has engendered protest from indigenous Arctic peoples' organizations. An interesting question one could pose is whether the consensus-based Arctic Council is being sidelined by a rhetoric devoted to resource and territorial competition.

International cooperation in the Arctic and the future of the region cannot be predicted without consideration of the relationship between the United States and Russia. NATO's role in the Arctic is uncertain and unfocused - five Arctic states are members, three (Sweden, Finland, Russia) are not - and the organization could go a long way toward reducing tension and building trust in the Arctic by promoting cooperation on matters of military security, law enforcement, and counterterrorism through the NATO – Russian Counsel (NRC). Without serious and constructive Russian involvement, the region could be faced with unwanted challenges to cooperation, such that they merit closer examination. Additionally, the Arctic Council states may be reluctant to add security to its mandate due to the fact that four out of five Arctic littoral states are already NATO members.



Figure 13. (L-R) Norwegian Minister of Foreign Affairs Jonas Gahr Støre, Russian Minister of Foreign Affairs Sergey Viktorovich Lavrov, Canadian Foreign Affairs Minister Lawrence Cannon, US Secretary of State Hillary Clinton and Danish Minister of Justice Lars Barfoed. March 30, 2010.

8. Bibliography

Monographs

- Robert Axelrod ed., Structure of Decision, Princeton University Press, 1976.
- Charles Barbour, George Pavlich eds., After Sovereignty, On the Question of Political Beginnings, Routledge, 2010.
- Charles Emmerson, The Future History of the Arctic, Random House, 2011.
- Raymond Geuss, Quentin Skinner eds., Cambridge Texts in the History of Political Thought: Plato, The Republic, Cambridge University Press, 2000.
- Hugo Grotius, The Freedom of the Sea or the Right which Belongs to the Dutch to Take Part in the East Indian Trade (Mare Liberum), Oxford University Press, 1916.
- Robert O. Keohane, After Hegemony: Cooperation and Discord in the World Political Economy, Princeton University Press, 1984.
- Natalie Klein, Dispute Settlement in the UN Convention on the Law of the Sea, Cambridge University Press, 2005.
- Stephen D. Krasner, Sovereignty: Organized Hypocrisy, Princeton University Press, 1999.
- Mark F. Lindley, The Acquisition and Government of Backward Territory in International Law, Begin a Treatise on the Law and Practice relating to Colonial Expansion, Longmans, Green & Co., 1926.
- Karl Mackie, David Miles, et. al., Commercial Dispute Resolution: An ADR Practical Guide, LexisNexis UK; 2nd Revised edition, 2000.
- Peter Malanczuk, Akehurst's Modern Introduction to International Law, Routledge, 1997.
- Edward D. Mansfield, Brian Pollins eds., Interdependence and Conflict, New Perspectives on an Enduring Debate, University of Michigan Press, 2003.
- Charles A. McClelland, Event-interaction Analysis in the Setting of Quantitative International Relations Research, 1967
- Donat Pharand, Canada's Arctic Waters in International Law, Cambridge University Press, 1988.
- Duncan Pryde, Ten Years with the Eskimos, Eland, 1986.
- François de La Rochefoucauld, Réflexions: Ou Sentences Et Maximes Morales (1748), Kessinger Publishing, 2010.
- Kishan S. Rana, Bilateral diplomacy, Manas Publications, 2008.
- James N. Rosenau ed., Comparing Foreign Policies: Theories, Findings and Methods, New York, 1974.
- John Selden, Of the Dominion, or, Ownership of the Sea (Mare Clausum), Arno Press, 1972.
- Leonid D. Timchenko, Quo vadis, Arcticum?: the international law regime of the Arctic and trends in its development, State University Press "Osnova", 1996.
- Oran R. Young, Arkady Cherkasov, Franklyn Griffiths ed., International cooperation in the Arctic, Arctic Alternatives, Dundurn Press Ltd., 1992.

Articles

- Pål Jakob Aasen, 'The Law of Maritime Delimitation and the Russian–Norwegian Maritime Boundary Dispute', *Fridtjof Nansen Institute*, 2010.
- Camille M. Antinori, 'The Bering Sea: A Maritime Delimitation Dispute Between the United States and the Soviet Union,' *Ocean Development and International Law*, Vol.18, 1987.
- Edward E. Azar, Thomas J. Sloan, 'Dimensions of interaction: A source book for the study of the behaviour of 31 nations from 1948 through 1973', *International Studies Association*, 1975.
- Edward E. Azar, Thomas Havenaar, 'Discontinuities in the Symbolic Environment: A Problem in Scaling', *International Interactions*, Vol. 2, Issue 2, 1976.
- James S. Baker, Michael Byer, 'Crossed Lines: The Curious Case of the Beaufort Sea Maritime Boundary Dispute', *Ocean Development & International Law*, Vol.43, 2012.
- Mike Blanchfield, 'Russian envoy blames tough talk from Tories on Cold War 'inertia'', *The Canadian Press*, Ottawa, March 3rd 2012.
- Mark J.C. Crescenzi, Andrew J. Enterline, Stephen B. Long, 'Bringing Cooperation Back In: A Dynamic Model of Interstate Interaction', *Conflict Management and Peace Science*, Vol.25, 2008.
- Hector Correa, 'Game Theory as an Instrument for the Analysis of International Relations'.
- Hannes Gerhardt, Philip E. Steinberg, et. al., 'Contested Sovereignty in a Changing Arctic', *Annals of the Association of American Geographers*, Vol. 100, Issue 4, 2010.
- Marcel de Haas, 'Russia's New Military Doctrine: A Compromise Document', *Russian Analytical Digest*, Vol. 78 No.1, Clingendael.
- Tore Henriksen, Geir Ulfstein, 'Maritime Delimitation in the Arctic: The Barents Sea Treaty', *Ocean Development & International Law*, Vol. 42, 2011.
- Jordan Hellman, 'Racing for the Arctic? Better Bring a Flag', *Cardozo Journal of Conflict Resolution*, Vol. 10, 2009.
- Johan Jørgen Holst, 'Norway's Search for a Nordpolitik', *Foreign Affairs*, Vol.60, 1981.
- Charles Cheney Hyde, 'Acquisition of Sovereignty over Polar Areas', *Iowa Law review*, Vol. 19. No 2., Jan. 1934.
- Charlie Gillis, 'Who owns the North Pole?', *Macleans*, Vol. 124, Issue 29/30.
- Joshua S. Goldstein, 'A Conflict-Cooperation Scale for WEIS Events Data', *The Journal of Conflict Resolution*, Vol. 36, No. 2, June 1992.
- Dmitry Gorenburg, 'Russia's Arctic Security Strategy', *Russian Analytical Digest*, No. 96, May 12th 2011.
- Cameron Jelinski, 'Diplomacy and the Lomonosov Ridge: Prospects for International Cooperation in the Arctic', *Master of Arts Political Science, the University of British Columbia*, Aug. 2010.
- Roderick Kefferpütz, 'On Thin Ice? (Mis)interpreting Russian Policy in the High North', *CEPS Policy Brief*, No. 205, Feb. 2010.
- Christopher Kirkey, 'Delineating maritime boundaries: The 1977-78 Canada-US Beaufort Sea Continental Shelf Delimitation Boundary Negotiations', *Canadian Review of American Studies*, Vol. 25, Issue 2, 1995.
- Timo Koivurov, 'Alternatives for an Arctic Treaty – Evaluation and a New Proposal', *Review of European Community & International Environmental Law*, Vol. 17, Issue 1, 2008.

- James H. Lebovic, 'Capabilities in Context: National Attributes and Foreign Policy in the Middle East', *Journal of Peace Research*, Vol. 22, No. 1, March 1985.
- Peter J. May, Bryan D. Jones et.al., 'Policy Coherence and Component-Driven Policymaking: Arctic Policy in Canada and the United States', *The Policy Studies Journal*, Vol. 33, No. 1, 2005.
- Nele Matz-Lück, 'Planting the Flag in Arctic Waters: Russia's Claim to the North Pole', *Goettingen Journal of International Law*, Vol. 1, No. 2, 2009.
- Kathryn Moran and John W. Farrell, 'US Arctic Research Policy', *Oceanography*, Vol. 24, Issue 3, 2011.
- J.P. Nielsen, 'Russian-Norwegian Relations in Arctic Europe: The History of the "Barents Euro-Arctic Region"', *East European Quarterly*, Vol. 35, No 2, June 2001.
- Frank Pope, 'Disappearing Arctic', *Times Magazine*, May 14th 2011.
- Charles B. Selak, Jr., 'Recent Developments in High Seas Fisheries Jurisdiction Under the Presidential Proclamation of 1945', *The American Journal of International Law*, Vol. 44, No. 4, Oct. 1950.
- Duncan Snidal, 'The Game Theory of International Politics', *World Politics*, Vol. 38, No. 1., Oct. 1985.
- Kristoffer Stabrun, 'The Grey Zone Agreement of 1978; Fishery Concerns, Security Challenges and Territorial Interests', *Fridjof Nansen Institute*, Report 13, 2009.
- Kim Traavik, Willy Østreng, 'The Arctic Ocean and the Law of the Sea', *Cooperation and Conflict*, Vol. 9, no. 1, 1974.
- Wei-en Tan, Yu-tai Tsai, 'After the Ice Melts: Conflict Resolution and the International Scramble for Natural Resources in the Arctic Circle', *Journal of Politics and Law*, Vol.3, No. 1, March 2010.
- Leonid Timchenko, 'The Russian Arctic Sectoral Concept: Past and Present', *ARCTIC*, Vol. 50, No. 1, 1997.
- Dmitri Trenin, Pavel K. Baev, 'The Arctic, A View from Moscow', *Carnegie Endowment for International Peace*, 2010.
- Jacob Verhoef, David Mosher, Steve Forbes, 'Defining Canada's Extended Continental Shelves', *Geoscience Canada*. Vol. 38, No. 2, June 2011.
- Erik B. Wang, 'Canada-United States Fisheries and Maritime Boundaries Negotiations: Diplomacy in Deep Water,' *Behind the Headlines*, Vol. 38, No. 6, 1981.
- Mel Weber, 'Defining the Outer Limits of the Continental Shelf across the Arctic Basin: the Russian Submission, States' Rights, Boundary Delimitation and Arctic Regional Cooperation', *The International Journal of Marine and Coastal Law*, Vol. 24, 2009.
- Oran R. Young, 'Whither the Arctic? Conflict or Cooperation in the Circumpolar North', *Polar Record*, Vol.45, 2009.

(Policy) Papers

- Arctic Governance Project (AGP), 'Arctic Governance in an Era of Transformative Change: Critical Questions, Governance Principles, Ways Forward', Report of the Arctic Governance Project, Norway, 2010.
- Arctic Monitoring and Assessment Programme (AMAP) Secretariat, 'Snow, water, ice and permafrost in the arctic', Executive Summary of the 2011 SWIPA Assessment, Norway, 2011.
- Kenneth J. Bird, Ronald R. Charpentier et al., 'Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle', United States Geological Survey (USGS) Fact Sheet 2008, US Geological Survey, 2008.
- Commission of the European Communities, 'The European Union and the Arctic Region', *Communication from the Commission to the European Parliament and the Council*, Brussels, Nov. 20th 2008
- François Côté, Robert Dufresne, 'The Arctic: Canada's Legal Claims', Parliamentary Information and Research Service Publication, Library of Parliament, Toronto, Oct. 24th 2008.
- Department of Defense, 'Report to Congress on Arctic Operations and the Northwest Passage', May 2011
- Ministry of Foreign Affairs of Denmark, Home Rule Government of Greenland, 'Ilulissat Greenland Arctic Conference, Discussion Paper, 27-29 May 2008', 46.B.103., 17 Jan. 2008.
- Ministry of Foreign Affairs of Denmark, Department of Foreign Affairs Government of Greenland, Ministry of Foreign Affairs Governments of the Faroes, 'Kingdom of Denmark Strategy for the Arctic 2011-2020', Aug. 2011.
- EKOS Research Associates Incorporated 'Rethinking the Top of the World; Arctic Security Public Opinion Survey', Jan. 2011.
- Lassi Heininen, 'Arctic Strategies and Policies; Inventory and Comparative Study', The Northern Research Forum & The University of Lapland, Aug. 2011.
- Nanna Hvidt, Hans Mouritzen eds., 'Danish Foreign Policy Yearbook 2009', Danish Institute for International Studies (DIIS), 2009.
- Anneta Lytvynenko, 'Arctic Sovereignty Policy Review; Prepared for the Ad Hoc Committee of Deputy Ministers on the Arctic', April 5th 2011.
- Norwegian Ministry of Foreign Affairs, 'The High North, Visions and Strategies', Oslo/Bodø, November 18th 2011.
- Task Force Climate Change / Oceanographer of the Navy, 'US Navy Arctic Roadmap', Oct. 2009.
- Philip A. Schrodt, 'Automated Coding of International Event Data using Sparse Parsing Techniques', Annual meeting of the International Studies Association, Chicago, Feb. 2001.
- Oran R. Young, 'The Structure of Arctic Cooperation: Solving Problems/Seizing Opportunities', Fourth Conference of Parliamentarians of the Arctic Region, Rovaniemi, 27-29 Aug.2000.

Speeches and Memoranda

- Lawrence Cannon, *'Address by Minister Cannon to Diplomatic Academy of the Russian Ministry of Foreign Affairs on Canada's Arctic Foreign Policy, Department of Foreign Affairs and International Trade Canada (DFAIT), No. 2010/70, Moscow, Sept. 15th 2010.*
- Grete Faramo, *'Speech for the Atlantic Council'*, Washington DC, Oct. 28th 2010.
- Grete Faremo, *'Norwegian defence and security policy speech at the Heads of State meeting'*, Ministry of Foreign Affairs, Norway, Aug. 24th 2010.
- Hillary Rodham Clinton, *'Transcript of Senate confirmation hearing as nominee for Secretary of State'*, Jan. 13th 2009.
- Ministry of Foreign Affairs of Denmark, *'Konference om klimaforandring- ernes konsekvenser for Arktis/Nordpolen, Joint Departmental Declaration Note to Foreign Minister'*, 46.C.62., 3 Sept. 2007.
- Stephen Harper, *'Securing Canadian Sovereignty in the Arctic'*, Iqaluit, Nunavut, Aug. 12th 2006.
- Anders Fogh Rasmussen, *'Speech by NATO Secretary General Anders Fogh Rasmussen on Emerging Security Risks'*, Lloyd's of London, Oct. 1st, 2009.
- Representative of the United States of America to the United Nations, *'Notification regarding the submission made by the Russian Federation to the Commission on the Limits on the Continental Shelf'*, 2002.
- Roger Ingebrigtsen, *'The High North – Security Challenges, Address by State Secretary at the Henry Bacon seminar'*, Washington, May 3rd 2011.
- Roger Ingebrigtsen, *'Nordic Defence Cooperation – A mini-NATO to the North?'* Ministry of Defence, Tromsø, June 24th 2011.
- Jonas Gahr Støre, *'NATO Parliamentary Assembly: The 77th Rose-Roth Seminar: Changes in the High North: Implications for NATO and Beyond'*, Tromsø, June 22nd 2011.
- Jonas Gahr Støre, *'NATO Parliamentary Assembly: The 77th Rose-Roth Seminar: Changes in the High North: Implications for NATO and Beyond'*, Tromsø, Norway, June 22nd 2011.
- Jonas Gahr Støre, *'Briefing at Harvard Law School on the Negotiations with the Russians to Conclude a Treaty on Maritime Delimitation'*, Dec. 6th 2010.
- Jonas Gahr Støre, *'The High North – Challenges and Opportunities. Perspectives on Norwegian-Russian Cooperation'*, Diplomat Academy, Moscow, March 24th 2009.
- Anton Vasiliev, *'Is the Ilulissat Declaration adequate?'*, Copenhagen, May 26th 2010.

Media and Government Websites

(All retrieved on March 19th 2012).

Accuracy in Media

- Cliff Kincaid, 'Obama's Ambitious U.N. Treaty Agenda', July 8th 2009.

American Geological Institute, Government Affairs Program

- David Applegat, 'Congressional Action Alert: Lone Senator Holds up Law of the Sea Treaty Ratification', March 31st 1999.

Anchorage Daily News

- Rick Steiner, 'President Obama should reject last-minute arctic policy', Jan. 19th 2009.

The Arctic Council Website

- About.
- 'Task Force for Institutional Issues', Dec. 29th, 2011.

Barents Observer

- Trude Pettersen, 'Cooperation is the Key to Security and Stability', Feb. 2nd 2010.

BBC News

- Meirion Jones, Susan Watts, 'BBC Newsnight: Wikileaks cables show race to carve up Arctic', May 12th 2011.
- Paul Reynolds, 'Trying to Head off an Arctic 'Gold Rush'', May 29th 2008.
- Sian Griffiths, 'US-Canada Arctic Border Dispute Key to Maritime Riches', Aug. 2nd 2010.
- 'Norway Agrees Barents Sea Arctic Border with Russia', April 27th 2010.
- 'Russia and Canada seek UN ruling on Lomonosov Ridge', Sept 16th 2010.

Canadian Government

- 'Exercising Our Arctic Sovereignty', May 4th 2011.
- Lisa Riatt, 'Canada and U.S. to Conduct Second Joint Survey of Extended Continental Shelf in the Arctic', July 28th 2009.
- Minister of Foreign Affairs - Lawrence Cannon, Speeches 2010.
- Arctic Foreign Policy Booklet.

CBC News

- 'Arctic sovereignty 'Non-Negotiable': Canada's PM', Aug. 23rd 2010.

Der Spiegel

- Christoph Seidler, 'Taking Stock of North Pole Riches' 9th Oct. 2009.
- Christian Schwägerl, Christoph Seidler, 'Final Frontier Berlin Enters the Scramble for the Arctic', March 16th 2011.

Durham University International Boundaries Research Unit (IBRU)

- 'Maritime Jurisdiction and Boundaries in the Arctic region'.

Encyclopaedia Britannica Website

- 'Sovereignty in political theory'.

Extended Continental Shelf Project

- News Room.
- Welcome.

Fair Observer

- Heather Nicol, 'The Arctic: Conservation and Co-existence', 20 Jan. 2012.

Foreign Affairs

- Scott G. Borgerson, 'Arctic Meltdown, the Economic and Security Implications of Global Warming', March-April 2008.

Foreign Policy

- Lawson Brigham, 'Think Again: The Arctic' Sept.-Oct. 2010.

Geopolitics in the High North

- Katarzyna Zysk, 'Russia's Arctic strategy: ambitions and constraints', June 15th 2009.

The Globe and Mail

- Janice Gross Stein, Thomas S. Axworthy, 'The Arctic Council is the best way for Canada to resolve its territorial disputes', *Globe and Mail*, Jan. 25th 2011.

Greenpeace

- Michelle Frey, 'Blogpost: New Wikileaks Revelations Shed light on Arctic Oil "Carve-up"', 12th May 2011.

Huffington Post

- 'Jeffrey Delisle Spy Case: Russia Embassy Diplomats Expelled By Ottawa over Alleged Espionage', Jan. 20th 2012.

Kommersant

- Alexander Gabuev, 'Cold War Goes North', Aug. 4th 2007.

Menas Borders Blog

- 'Canada and Denmark in Hans Island negotiations', Jan. 27th 2011.
- 'Norway to open up Barents for exploration after border demarcation', Jan. 27th 2012.

National Defense University (NDU)

- 'The Arctic Circle: Development and Risk'.

National Defense University Press

- Reginald R. Smith, 'The Arctic: A New Partnership Paradigm or the Next "Cold War"?', Issue 62, 3rd Quarter 2011.

Physical Geography

- Michael Pidwirny, 'Introduction to the Oceans', 2006.

The Continental Shelf Project

- LORITA-1, Fieldwork during April/May 2006 north of Canada/Greenland

United Nations

- Canada, *Note verbale* regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf.
- Commission on the Limits of the Continental Shelf (CLCS), 'Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Russian Federation', Press Release SEA/1729, Dec. 21st 2001.
- Denmark, *Note verbale* regarding the submission made by the Russian Federation to the Commission on the Limits of the Continental Shelf.
- Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, 'The United Nations Convention on the Law of the Sea (A historical perspective)', United Nations 2011.
- Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 'Declarations made upon signature, ratification, accession or succession or anytime thereafter', Up to: July 12th 2011.
- Representative of the United States of America to the United Nations, Notification regarding the submission made by the Russian Federation to the Commission on the Limits on the Continental Shelf, 2002.

Vanity Fair

- Alex Shoumatoff, 'Dispatch: The Arctic Oil Rush', May 2008

Wall Street Journal

- Edwin Williamson, 'Law of the Sea Treaty is Good for U.S.', Oct. 6th 2011.

Wikileaks

- 2010 cable (number 244500)
- 2009 cable (number 222559)
- 2008 cable (number 169680)

Wikipedia

- United States non-ratification of UNCLOS.
- Anatoly Sagalevich.

Willem Barentsz Poolinstituut

- Erik Jaap Molenaar, 'The Developing Legal Regime in the Marine Arctic'.