International Law: A Stabilizing Force in the Arctic?

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Arctic Sea Ice Extent – September 2010

Total extent = 4.9 million sq km

median ice edge
THE ILULISSAT DECLARATION

Arctic Ocean Conference
Ilulissat, Greenland, 27-29 May 2008

The Arctic Ocean stands at the threshold of significant changes. Climate change and the melting ice have a potential impact on vulnerable ecosystems, the livelihoods of local inhabitants and indigenous communities, and the potential exploitation of natural resources.

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 these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials. Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims.
CANADIAN COMMITMENT TO THE ‘INTERNATIONAL LEGAL FRAMEWORK’

- In his address at the News Conference for the Arctic Ocean Foreign Ministers’ Meeting in Chelsea Quebec in March 2010, Minister Cannon again repeated Canada’s “commitment to the extensive international legal framework applying to the Arctic Ocean…”

- And the August 2010 Statement on Canada’s Arctic Foreign Policy reiterated that “Canada, like other Arctic nations, stands by the extensive international legal framework that applies to the Arctic Ocean. Notably, UNCLOS…”
Who Owns the Arctic?
As global warming shrinks the ice to record lows, the global battle for resources heats up
The concept of « framework »

- a basic conceptual structure (Merriam-Webster)

- a supporting structure around which something can be built (Cambridge Advanced Learner’s Dictionary)
Paragraph 6:

The increased use of Arctic waters for tourism, shipping, research and resource development also increases the risk of accidents and therefore the need to further strengthen search and rescue capabilities and capacity around the Arctic Ocean to ensure an appropriate response from states to any accident. Cooperation, including on the sharing of information, is a prerequisite for addressing these challenges. We will work to promote safety of life at sea in the Arctic Ocean, including through bilateral and multilateral arrangements between or among relevant states.
Search and Rescue Delimitation

ARCTIC SEARCH AND RESCUE AGREEMENT
AREAS OF APPLICATION
ILLUSTRATIVE MAP

- Canada-Denmark
- Finland-Russian Federation
- Canada-United States
- Iceland-Norway
- Denmark-Iceland
- Norway-Sweden
- Denmark-Norway
- Norway-Russian Federation
- Finland-Norway
- Russian Federation-United States
- Finland-Sweden

Arctic Circle

United States

Canada

Russia Federation

Iceland

Greenland

Sweden

Finland

Azimuthal Equidistant Polar Projection
STRAIGHT BASELINES

Article 7 of UNCLOS:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured [...]

3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters [...]

5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage [...]

PART III OF UNCLOS
STRAITS USED FOR INTERNATIONAL NAVIGATION

Section 2. Transit passage

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.
THE ARCTIC ‘EXCEPTION’

- Article 234 of UNCLOS:

  Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the EEZ, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation…
**DELIMITATION OF THE EEZ AND CONTINENTAL SHELF BETWEEN STATES WITH OPPOSITE OR ADJACENT COASTS**

- Articles 74(1) and 83(1) of UNCLOS:

  The delimitation of the exclusive economic zone [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
Legal rules grant coastal States a minimum continental shelf

- Article 76(1) UNCLOS:

  The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout (#2) the natural prolongation of its land territory to the outer edge of the continental margin, OR (#1) to a distance of 200 nautical miles from the baselines...
Two options for establishing the « outer edge of the continental margin »

- Article 76(4)(a) of UNCLOS

For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines ...by either:
Option #1

Geological criterion (Gardiner formula):

Art. 76(4)(a)(i):

a line delineated ... by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
Option #2

Geomorphological criterion:

Art. 76(4)(a)(ii):

a line delineated … by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
The science of the ECS

Source: www.unfalumni.org
Aritcle 76(5):

«The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed ... either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.
Le problème des "Rides sous-marines"
Uncertainties surrounding characteristics of the Arctic ocean floor

- The continental shelf of a State does not include the « deep ocean floor with its oceanic ridges… » → art. 76(3)
- A « submarine ridge » cannot be used to justify an extension of the continental shelf beyond 350 n.m. → art. 76(5) and (6)
- But « submarine elevations » are natural components of the continental margin → art. 76(6)
ECS claims and the Commission on the Continental Shelf

Article 76(8) UNCLOS:

Information on the limits of the continental shelf beyond 200 nautical miles from the baselines ... shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf... The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
Role of the Commission

« Some delegations pointed out that there was no legal consequence stipulated by the Convention if a State did not make a submission to the Commission. Several delegations underscored the principle that the rights of the coastal State over its continental shelf were inherent, and . . . did not depend on occupation, effective or notional, or any express proclamation. »

« The Commission is primarily an instrument which will provide the international community with reassurance that coastal States will establish their continental shelf limits in strict accordance with the provisions of article 76. It has never been intended, nor should it be intended, as a means to impose on coastal States limits that differ from those already recognized in article 76. Thus to suggest that the coastal State limits shall be established ‘on the basis’ of the Commission’s recommendations rather than on the basis of article 76, could be interpreted as giving the Commission the function and power to determine the outer limits of the continental shelf of a coastal State. We are assured on all sides that this is not the intention… »

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Commission’s recommendations without prejudice to other claims:

- Art. 76(10) UNCLOS:

  The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.
Commission prohibited from ruling on ECS claim where dispute exists

« In cases where a land or maritime dispute exists, the Commission shall not consider … a submission made by any of the States concerned in the dispute. »

(Paragraphe 5(a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf)
"How on earth do we turn it off?"

"What global warming? There are icebergs everywhere."

"Evolve already! Ice caps are melting."