

The Law and Politics of Canadian Jurisdiction on Arctic Ocean Seabed

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Abstract

The possibility that the Arctic Ocean seabed contains vast deposits of hydrocarbons is attracting considerable attention. Under the 1982 United Nations (UN) Convention on the Law of the Sea (UNCLOS), any state party may, within 10 years of ratifying, seek to extend certain sovereign rights over the seabed beyond its 200 nautical mile Exclusive Economic Zone. To do so, it must establish—through the collection and submission of information concerning topography and geology—that the area of seabed in question is a “natural prolongation” of the continental shelf within 200 miles. Canada, which ratified UNCLOS in 2003, is currently mapping the seabed along its northern coastline so that it can submit the necessary information to the UN Commission on the Limits of the Continental Shelf by December 2013. The United States, Denmark and Russia are undertaking similar exercises, albeit with different timelines. This international, interdisciplinary research project focuses on several outstanding maritime boundary disputes—involving the United States, Denmark and potentially Russia—that must be resolved before Canada can submit a comprehensive package of information to the UN Commission. The resolution of these disputes is highly desirable because the Commission lacks authority to deal with information submitted by a state where it is possible that another state will have a claim to that same area. The project will analyze the legal and political differences involved in the different disputes, explore the various options for resolving them, and provide detailed recommendations. These recommendations will specify a series of considered options occupying progressive positions on the scale of political and technical acceptability. Then, the government of the day will be able freely to select the option that best suits its priorities and objectives, or use the input from this project to craft a better option of its own.

Key Messages

- The collection of scientific data concerning the shape and sediments of the seabed beyond 200

nautical miles from shore in the Beaufort Sea has revealed the existence of far-reaching extended continental shelves over which Canada and the United States will have sovereign rights to resource exploitation.

- The existence of these extended continental shelves significantly alters the longstanding maritime boundary dispute between Canada and the United States in the Beaufort Sea, since the dispute now includes these new areas more than 200 nautical miles from shore.
- Extending the respective legal positions of Canada (i.e. the 141st meridian) and the United States (i.e. an equidistance line) beyond 200 nautical miles from shore creates a win-win negotiating situation, as a result of the presence of Canada’s Banks Island, which radically changes the direction of the equidistance line and pushes it off towards northwest. Consequently, the Canadian legal position is only beneficial to Canada within 200 nautical miles from shore, while the US line is only beneficial to the United States within 200 nautical miles from shore. Further out, the respective legal positions end up benefiting the other party.
- The new reality of a win-win negotiating situation has been drawn to the attention of the Canadian government, which opened discussions on the matter with the United States. Providing creative solutions and feeding them into the negotiation process is now a major focus of this project.
- On the other side of the Canadian Arctic, this project identified opportunities for a win-win conclusion to the Lincoln Sea dispute between Canada and Denmark. A tentative agreement was concluded in December 2012, with the only outstanding matter being the negotiation of a hydrocarbon sharing regime, with the Government of Greenland, for any deposits that might straddle the new boundary.
- Opportunities for win-win negotiating situations also exist in the Central Arctic Ocean where there are potential overlaps with respect to the

extended continental shelf submissions being made by Canada, Denmark and Russia to the UN Commission on the Limits of the Continental Shelf. Exploring these options, which include the possibility of joint or coordinated submissions as well as the negotiation of provisional boundaries, has become the central focus of this project. Significant work is now being done with our project collaborators in Denmark and Russia.

Objectives

- To identify the relevance of scientific data, which has been collected jointly by Canada and the United States and concerns the shape and sediments of the seabed beyond 200 nautical miles from shore, to the resolution of the Canada-US boundary dispute in the Beaufort Sea.
- To establish options for negotiators from Canada and the United States as they seek to incorporate the extended continental shelf into their understanding of the dispute and seek a mutually agreeable solution.
- To monitor, analyse and communicate the results of the tentative Canada-Denmark boundary agreement in the Lincoln Sea, and to identify, explore and communicate creative but realistic options for extending that boundary beyond 200 nautical miles along or near the Lomonosov Ridge.
- To identify, explore and explain opportunities for win-win negotiating situations in the Central Arctic Ocean, where there are potential overlaps with respect to the extended continental shelf submissions being prepared by Canada, Denmark and Russia to the UN Commission on the Limits of the Continental Shelf. Such options might include the possibility of joint or coordinated submissions as well as the negotiation of provisional boundaries.
- To explain the different disputes and the options for win-win solutions to government officials,

northern indigenous groups, industry, media and the general public.

- To identify, explore and explain the broader implications of Canada's Arctic boundary disputes for Arctic international relations, including bilateral relations with the United States, Denmark and Russia as well as multilateral relations within the Arctic Council, United Nations, International Maritime Organization, etc.

Introduction

- Canada has two existing boundary disputes in the Arctic. The first of these is in the Beaufort Sea where different interpretations of an 1824 treaty between Russia and the UK have given rise to a four-decade long dispute over 6,250 square nautical miles of seabed to the north of the land border between Alaska and The Yukon.
- Canadian-U.S. cooperation in the collection of scientific data concerning the shape and sediments of the seabed beyond 200 nautical miles from shore in the Beaufort Sea has revealed the existence of far-reaching extended continental shelves over which Canada and the United States will have sovereign rights to resource exploitation.
- The existence of these extended continental shelves significantly alters the longstanding maritime boundary dispute, since the dispute now includes these new areas more than 200 nautical miles from shore.
- Extending the respective legal positions of Canada (i.e. the 141st meridian) and the United States (i.e. an equidistance line) beyond 200 nautical miles from shore would seem to create a win-win negotiating situation, as a result of the presence of Canada's Banks Island, which radically changes the direction of the equidistance line and pushes it off towards northwest, where it crosses the 141st meridian and heads towards the

already delimited US-Russian maritime boundary to the west. Consequently, the Canadian legal position is only beneficial to Canada within 200 nautical miles from shore, while the US line is only beneficial to the United States within 200 nautical miles from shore. Further out, the respective legal positions end up benefiting the other party, with the dispute now resembling a somewhat tilted hour-glass with two distinct parts.

- The new reality of a win-win negotiating situation has been drawn to the attention of the Canadian government, which opened discussions on the matter with the United States. Providing creative solutions and feeding them into the negotiation process has been and remains a major focus of this project.
- On the other side of the Canadian Arctic, Canada and Denmark have long disputed 100 square nautical miles of water column and seabed located within the Exclusive Economic Zone (i.e. within 200 nautical miles from shore). This project has identified and communicated a number of opportunities for a win-win conclusion, and in December 2012 the two countries announced that a tentative boundary agreement has been achieved. The only outstanding matter concerns the negotiation of a hydrocarbon-sharing regime between Canada and the Government of Greenland with respect to any deposits that might straddle the new boundary.
- This project will monitor, analyze, and communicate information about the new Lincoln Sea boundary agreement through its networks in Canada and abroad. It will also explore, analyze and communicate options for extending the new boundary beyond 200 nautical miles from shore along or near the Lomonosov Ridge.
- Opportunities for win-win negotiating situations also exist in the Central Arctic Ocean where there are potential overlaps with respect to the extended continental shelf submissions being prepared by Canada, Denmark and Russia to the

UN Commission on the Limits of the Continental Shelf. Exploring these options, which include the possibility of joint or coordinated submissions as well as the negotiation of provisional boundaries, has been and will remain a central focus of this project. Excellent working relationships with leading Russian and Danish scholars and diplomats have been established and will be further pursued.

Activities

During the last 12 months the network investigators have engaged in collaborative information gathering and analysis, including in the following ways:

- McDorman, T.L. has extended his secondment to the Bureau of Legal Affairs at the Department of Foreign Affairs and International Trade in Ottawa where he is working on the Beaufort Sea, Lincoln Sea and Central Arctic Ocean boundaries -- work that meshes perfectly with his role as a network investigator on this project.
- Byers, M., McDorman, T.L., Lalonde, S. and our other ArcticNet project collaborators participated in a solutions-oriented workshop - organized as part of this project - on the Central Arctic Ocean boundaries. The workshop was attended by two senior diplomats from the Danish Ministry of Foreign Affairs, the Director of the Geological Survey of Denmark and Greenland, two senior diplomats from the Russian Ministry of Foreign Affairs, and a senior diplomat from the Canadian Department of Foreign Affairs - in addition to leading non-governmental experts from the United States, United Kingdom, Australia and Canada.
- Byers, M. and Lalonde, S. continue to attend international conferences and workshops and conduct interviews with foreign diplomats from Russia, Denmark, Germany, the European Union and the United States. In December 2012, Byers, M. participated in consultations at the Danish

Department of Foreign Affairs and the Geological Survey of Denmark and Greenland. Along with McDorman, T.L., they also attended meetings and workshops in Canada's Arctic.

- The project organized a panel at the December 2012 ArcticNet Annual Scientific Meeting that included Russian Ambassador (and former Legal Adviser to the Russian Foreign Minister) Roman Kolodkin as well as Professor Geir Ulfstein from the University of Oslo and Professor Justin Nankivell from the United States Asia-Pacific Institute for Security Studies. The panel examined the implications of the 2011 Norway-Russia boundary treaty in the Barents Sea for the Canada-US boundary negotiations concerning the Beaufort Sea.
- Baker, J.S. presented papers at several international conferences in Europe and the United States, and also participated in the panel organized by the project at the December 2012 ArcticNet Annual Scientific Meeting.
- Byers, M. researched and completed a full-length book manuscript on "International Law and the Arctic" which has been accepted and contracted by Cambridge University Press and will be published later in 2013.
- Our information gathering and analysis continue to generate practical results, most notably the December 2012 announcement of a tentative Canada-Denmark boundary agreement in the Lincoln Sea. We continue to assist the Canadian government with respect to these negotiations, especially concerning the extension of that boundary beyond 200 nautical miles along or near the Lomonosov Ridge. We also continue to assist the Canadian government with respect to its discussions with the United States over the Beaufort Sea boundary and with Denmark and Russia over the Central Arctic Ocean boundaries. Our efforts to develop a comprehensive understanding of the issues, including the technical legal details as well as the geopolitical context, are enabling us to

identify and explore creative options for win-win solutions that might otherwise not be considered by negotiators.

Results

- Our information gathering and analysis continue to generate practical results, most notably the December 2012 announcement of a tentative Canada-Denmark boundary agreement in the Lincoln Sea. We continue to assist the Canadian government with respect to these negotiations, most directly through Ted McDorman who is now seconded to the Department of Foreign Affairs and International Trade and working full-time on these issues. Our research and analysis is now focused on the options for extending that agreed boundary beyond 200 nautical miles along or near the Lomonosov Ridge.
- The project organized a solutions-oriented workshop - organized as part of this project - on the Central Arctic Ocean boundaries, designed to assist the governments of Canada, Denmark and Russia as they scope out the possibilities for negotiations concerning the Central Arctic Ocean as they prepare for submissions to the UN Commission on the Limits of the Continental Shelf. The workshop was attended by two senior diplomats from the Danish Ministry of Foreign Affairs, the Director of the Geological Survey of Denmark and Greenland, two senior diplomats from the Russian Ministry of Foreign Affairs, and a senior diplomat from the Canadian Department of Foreign Affairs - in addition to leading non-governmental experts from the United States, United Kingdom, Australia and Canada.
- The project organized a panel at the ArcticNet Annual Scientific Meeting that included Russian Ambassador (and former Legal Adviser to the Russian Foreign Minister) Roman Kolodkin as well as Professor Geir Ulfstein from the University of Oslo and Professor Justin Nankivell from the United States Asia-Pacific Institute

for Security Studies. The panel examined the implications of the 2011 Norway-Russia boundary treaty in the Barents Sea for the Canada-US boundary negotiations concerning the Beaufort Sea, with the insights later being communicated to the negotiating teams from both countries.

- We continue to provide input into the negotiations with the United States on the Beaufort Sea Boundary, including with a detailed consideration of the options published by Baker, J. and Byers, M. in *Ocean Development and International Law*.
- Byers, M. was a Keynote Speaker, on Arctic boundaries, at the Newfoundland & Labrador Oil & Gas Industries Association annual conference. He was called to testify as an expert before two Parliamentary committees. He researched and completed a full-length book manuscript on "International Law and the Arctic" which has been accepted and contracted by Cambridge University Press and will be published later in 2013.
- In short, our project is accomplishing exactly what we had hoped. Our efforts to develop a comprehensive understanding of the issues, including the technical legal details as well as the geopolitical context, are enabling us to identify and explore creative options for win-win solutions that might otherwise not be considered by negotiators.

Discussion

- The Arctic is often portrayed in the media as a region of conflict or potential conflict over sovereignty, jurisdiction, and the hydrocarbon resources located in the seabed. To a significant degree, this portrayal is incorrect. Almost all of the land (with the exception of Hans Island) and most of the seabed fall clearly and without dispute within the exclusive jurisdiction of one or another of the Arctic Ocean's five coastal states.
- As part of this project, we were able to draw the

new reality of a win-win negotiating situation in the Beaufort Sea to the attention of the Canadian government, which opened discussions on the matter with the United States in 2010. Providing creative solutions and feeding them into the negotiation process has been a major focus of this project - culminating in a lengthy paper published in *Ocean Development and International Law*, perhaps the top international journal in this field.

- One solution we identified involves drawing a boundary that maximizes the combined area of extended continental shelf susceptible to the assertion of sovereign rights by the two countries. For example, the boundary might be drawn in such a way as to allow the United States to assert jurisdiction over the entire extended continental shelf generated by the Chukchi Plateau, notwithstanding that the equidistance approach would put some of that area beyond U.S. jurisdiction. Similarly, the inclusion of the extended continental shelf within the dispute means that a mutually agreeable boundary could now be drawn that fully respected Canada's legal commitments under the Inuvialuit Final Agreement.
- On the other side of the Canadian Arctic, Canada and Denmark had long disputed 100 square nautical miles of water column and seabed located entirely within the Exclusive Economic Zone (i.e. within 200 nautical miles from shore) in the Lincoln Sea. As part of our project, we identified several options for a win-win conclusion to this boundary dispute, with one of our members (McDorman, T.L.) working on secondment on these issues within the Legal Bureau of the Department of Foreign Affairs.
- In December 2012, the foreign ministers of Canada and Denmark announced that a tentative agreement had been reached on the Lincoln Sea boundary. The only outstanding matter concerns the negotiation of a hydrocarbon-sharing regime between Canada and the Government of Greenland with respect to any deposits that might straddle the new boundary. Our project is now

seeking to identify options for extending the new Lincoln Sea boundary beyond 200 nautical miles along or near the Lomonosov Ridge.

- Further out, in the Central Arctic Ocean, it is possible that overlaps will result from the respective submissions made by Canada, Denmark and Russia to the UN Commission on the Limits of the Continental Shelf. Our project is currently working to identify collaborative options for addressing these possible overlaps, including by negotiating permanent or provisional boundaries in advance of the submissions. We hosted a major workshop on this issue with senior diplomatic representation from Canada, Russia and Denmark, and have recently been involved in consultations in both Moscow and Copenhagen.

Conclusion

This project has contributed towards significant changes in Canadian foreign policy as it concerns the Arctic:

- In March 2010, at an information-gathering workshop organized by this project at the Institute of the North in Anchorage, Alaska, the implications of extended continental shelves for the Canada-US dispute in the Beaufort Sea were identified - including the fact that they create an apparent win-win negotiating opportunity. That same month, a commitment to negotiate Arctic maritime boundaries was included in the Government of Canada's throne speech. Then, in May 2010, Foreign Minister Lawrence Cannon publicly invited the United States to open negotiations on the Beaufort Sea boundary. Those negotiations are currently underway, and this project has continued to provide information and identify options.
- In August 2010, the Canadian government released its Arctic Foreign Policy Statement which expressed the intent of opening negotiations on all of Canada's Arctic maritime

boundaries, specifically including the Beaufort Sea. The project's leader (Byers, M.) advised then Foreign Minister Lawrence Cannon on the Policy Statement.

- Negotiations also commenced with Denmark concerning the Lincoln Sea, with this project providing information and identifying options for the negotiators. In December 2012, the foreign ministers of Canada and Denmark announced that a tentative agreement had been reached on the Lincoln Sea boundary. The only outstanding matter concerns the negotiation of a hydrocarbon-sharing regime between Canada and the Government of Greenland with respect to any deposits that might straddle the new boundary. Our project is now seeking to identify options for extending the new Lincoln Sea boundary beyond 200 nautical miles along or near the Lomonosov Ridge.
- Further out, in the Central Arctic Ocean, it is possible that overlaps will result from the respective submissions made by Canada, Denmark and Russia to the UN Commission on the Limits of the Continental Shelf. Our project is working to identify collaborative options for addressing these possible overlaps, including by negotiating permanent or provisional boundaries in advance of the submissions. We hosted a major workshop on this issue with senior diplomatic representation from Canada, Russia and Denmark, and have recently been involved in consultations in both Moscow and Copenhagen.

Publications

(All ArcticNet refereed publications are available on the ASTIS website (<http://www.aina.ucalgary.ca/arcticnet/>).

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McDorman, T.L. and Chircop, A., 2012, Canada's Oceans Policy Framework: An Overview, *Coastal Management*, v. 40, no. 2, 133-144